Unofficial English Translation

Re Azeff and Bobrow

IN THE MATTER OF:

An expedited hearing pursuant to Rule 20.43 of the Investment Industry Regulatory Organization of Canada (IIROC)

and

Paul David Azeff and Korin David Bobrow

2016 IIROC 11

Investment Industry Regulatory Organization of Canada
Hearing Panel (Québec District)

Heard: January 28, 2016, in Montréal
Decision: February 23, 2016

Hearing Panel:
Me Michèle Rivet *Ad. E.*, Chair, Denis-Marc Gagnon and Danielle Le May
Appearances:
Me Francis Larin Ad.E. and Me Rob Del Frate, Enforcement Counsel for IIROC
Me Marc-André Fabien Ad. E., Me Brandon Farber and Me Nicolas Mancini, for the Respondents

REASONS FOR THE DECISION

¶ 1 A Hearing Panel of the Investment Industry Regulatory Organization of Canada (hereinafter IIROC) is seized of an application for an expedited hearing filed pursuant to Dealer Member Rule 20.41, 20.43 and 20.45, and Rule 16 of the Rules of Practice and Procedure, in the matter of Paul David Azeff and Korin David Bobrow (hereinafter, the *Respondents*).

¶ 2 Rule 20.43 (1) states:

> (1) A Hearing Panel may impose any of the penalties set out in Rule 20.45 upon an Approved Person in any of the following circumstances:
>
> **Suspension or Cancellation of Registration or Approval**
>
> (b) a recognized stock exchange, securities commission, securities regulatory authority, self-regulatory organization or recognized trading or quotation system suspends an Approved Person;

¶ 3 The powers of the Hearing Panel are stated in Rule 20.45:

> (1) A Hearing Panel has the power to impose any of the following penalties upon a Respondent who is an Approved Person or Dealer Member in the circumstances prescribed in Rule 20.42 and Rule 20.43:

(a) suspension of approval or Membership;

(b) imposition of terms or conditions on a suspension of approval or Membership;

(c) imposition of terms or conditions on continued approval or Membership;

(d) direction to immediately cease dealing with the public;

(e) an order with terms and conditions to facilitate the orderly transfer of client accounts from a Dealer Member suspended under this Rule;

(f) termination of the rights and privileges of approval or Membership;

(g) expulsion of an Approved Person or Dealer Member from the Corporation; or

(h) imposition of a Monitor pursuant to Rule 20.46.

¶ 4 The measures sought here are:

An order suspending approval of the Respondents with IIROC, by virtue of Dealer Member Rule 20.45 (1) (a) and (b);

An order directing the Respondents to immediately cease dealing with the public, by virtue of Dealer Member Rule 20.45 (1) (d);

Any other measure that counsel might request and that the Hearing Panel might grant.

1. CHRONOLOGY OF THE HEARINGS HELD BY THE HEARING PANEL

¶ 5 A first hearing was held on November 17. In consideration of the submissions by the legal counsel for the Respondents, a decision of postponement until December 3 was granted verbally at the hearing.

¶ 6 The Hearing Panel drafted the written reasons for this verbal decision at the hearing. It is available on the IIROC website.[1]

¶ 7 On December 3, counsel for the Respondents filed an application for disclosure of additional information and for adjournment of an application for an expedited hearing, pursuant to Rules 2.2(b) 8 and 10 of the Rules of Practice and Procedure and IIROC's Disclosure Policy.

¶ 8 The decision rendered verbally and recorded in the minutes reads as follows:

[TRANSLATION]

"The motion for adjournment is granted on condition that Messieurs Azeff and Bobrow be under strict supervision and that this supervision give rise to weekly reports that shall be signed by the Chief Compliance Officer and the CEO and forwarded to IIROC within seven days.

The documents shall also be forwarded to the defense, to wit Mr. Azeff and Mr. Bobrow's complete records, namely all of the documentation in IIROC's possession, the exchanges between the Securities Commission and IIROC, as well as the audit notes for 2011, 2012 and 2013.

The Chair invites counsel to discuss the required documents between them. If an unviable proposition or dispute arises, the parties are invited to contact the hearing coordinator for follow-up with the Hearing Panel."

2. THE FACTS IN THE MATTER

[1] *Re Azeff and Bobrow*, 2015 IIROC 41.

2.1 THE RESPONDENTS' APPROVAL HISTORY IN QUÉBEC

¶ 9 As has been filed in evidence before us, the Respondents have been registered since March 2011 as dealing representatives of a full-service dealer in accordance with the Québec *Securities Act* and approved as registered representatives of Euro Pacific Canada Inc., an IIROC dealer member.

¶ 10 Pursuant to decisions by the Approval Sub-Committee of IIROC's Québec District Council, dated May 31, 2011, the Respondents' approval as registered representatives was limited by conditions. These conditions imposed a certain number of heightened supervision obligations on Euro Pacific.

¶ 11 These conditions were accepted and signed by both Respondents and are identical. Reproduced here are those signed by Paul David Azeff:

(a) The Respondents would be placed under Strict Supervision as prescribed by IIROC;

(b) Supervision reports as prescribed by IIROC are to be filed with IIROC on a bi-monthly basis for the first 3 months following registration approval. Upon review by IIROC Registration staff of all the supervision reports submitted by Euro Pacific and if there are no issues reported by the firm, the supervision reports would be submitted on a monthly basis as per IIROC's procedures;

(c) The Respondents must work at an IIROC approved business location where a qualified on-site Supervisor is located. Failure to have a qualified on-site Supervisor located at the business location where the Respondents are conducting their registerable activities will result in the automatic suspension of their registration and IIROC approval;

(d) No later than 4 weeks from the date of registration approval, Euro Pacific must appoint a qualified on-site Supervisor, other than the Chief Compliance Officer, to the business location where the Respondents' will conduct their registerable activities. Failure to do so will result in the Respondents' registration and IIROC approval being automatically suspended;

(e) Should the current regulatory proceedings described in the Ontario Securities Commission's Amended Statement of Allegations dated April 18, 2011 result in: (i) a finding (for greater certainty, after any and all reviews and/or appeals thereof) that the Respondents have violated Ontario securities law or acted contrary to the public interest; and (ii) an order that trading in any securities by the Respondents cease permanently or for a specified period or that the Respondents be prohibited from becoming or acting as a registrant, the Respondents' registration and IIROC approval will be automatically revoked;

(f) These conditions will continue until OSC proceedings against Paul David Azeff are completed. Once an initial decision is rendered by the OSC, regardless of whether there is a review and/or an appeal requested, a review of Mr. Azeff's registration file will be conducted by Staff of IIROC to determine whether any of the conditions should be maintained, modified, or lifted, if conditions remain on the registration approval, periodic reviews every 6 months after that will be conducted until it is determined by the District Council, upon recommendation by Staff of IIROC, that the conditions can be lifted.

¶ 12 The agreement ends with this remark by the Sub-Committee [2]: "The registration Sub-Committee is of the opinion that Paul David Azeff should be subject to a very strict supervision due to the OSC allegations being very serious including alleging a pattern of misconduct over a period of 4 years. The conditions are

[2] The remark is the same for Korin David Bobrow.

imposed as a preventive and precautionary measure in order to protect the interest of the public".[3]

¶ 13 On May 31, 2011, the IIROC District Council approved both Respondents' registration application under the conditions stated in the preceding paragraph.

¶ 14 These conditions were modified in 2013 to reduce the telephone checks from 5 to 2 daily and, in 2014, to allow supervision to be carried out from Toronto.

¶ 15 According to these conditions, Euro Pacific must supervise, review and approve all of the Respondents' securities trades beforehand, including their personal business dealings, trades in securities offered as new issues, and trades in fixed-income products. These conditions state that Euro Pacific must attest, notably, that all client recommendations and all buy and sell orders have been reviewed and initialed beforehand by the chief compliance officer or an authorized supervisor.

2.2 THE RESPONDENTS' TROUBLE WITH THE LAW IN ONTARIO

¶ 16 In November 2010, the Ontario Securities Commission (hereinafter, the *OSC*) filed a notice of hearing in the matter of five people, the Respondents among them.

¶ 17 After 24 days of hearings, the OSC, on March 24, 2015, found both Respondents guilty of communicating and exploiting privileged information, i.e. "tipping and insider trading"[4] in multiple cases, and for a period that ran from November 2004 to August 2007.

¶ 18 On June 17, 2015, the OSC held a hearing to determine the appropriate sanctions, which decision it rendered on August 24, 2015.

¶ 19 It is appropriate here to cite some lengthy excerpts from the OSC's decision. The Commission states in its decision that continued registration for the Respondents, even under strict supervision, does not provide a sufficient shield to the market;

> [23] Azeff and Bobrow are retail investment advisers who have worked together for many years. They shared a single trading code while working at CIBC Wood Gundy ("CIBC") and were, in every sense of the word, business partners, though not formally so. Both are in their mid-40s. By the time of these events, 2004 to 2007, they had built a substantial book of business with a large following of loyal customers. As registrants, both should have understood the prohibitions in the Act against trading on and tipping of MNPI. Additionally, Azeff had been, at one time, a branch manager of a brokerage firm and had the responsibility of supervising others to ensure compliance with securities regulations.
>
> [24] After their termination of employment by CIBC, following upon the issue of the Notice of Hearing and Statement of Allegations, Azeff and Bobrow found employment with Euro Pacific Canada Inc. ("Euro Pacific") and applied to the Investment Industry Regulatory Organization of Canada ("IIROC") for approval to have their registration re-activated pending the decision of the OSC on the merits. IIROC, by decision rendered May 31, 2011 approved their registration subject to strict supervisory conditions. Eighteen specific monitoring conditions were required by the IIROC decision.
>
> [25] For the past four years, Azeff and Bobrow have complied with all those conditions. The co-founder and CEO of Euro Pacific provided an affidavit, at the sanctions and costs hearing, attesting to his familiarity with the proceedings by the OSC and its decision on the merits of March 24, 2015. He further confirmed that Azeff and Bobrow "have been fully

[3] Our emphasis.

[4] *Re Paul Azeff et al.*, (2015), 38 O.S.C.B. 2983

compliant with the conditions imposed upon them by IIROC and all governing securities laws for a period of over four (4) years" (para. 6). He concluded by stating that Azeff and Bobrow have been valued employees and that: "As CEO of Euro Pacific, it is my profound hope that the Respondents can continue their employment with our company under strict terms of supervision" (para. 8). We appreciate the sincerity of the offer. Azeff and Bobrow, in their submissions, requested that they be allowed to continue in their professions under close monitoring and strict supervision for 15 years. We can well understand that Azeff and Bobrow's loyal customers and their volume of trading is valuable to Euro Pacific.

[26] Azeff and Bobrow argue that the continuation of their registration with these conditions adequately protects markets in the future. Any registration ban, they say, is akin to professional capital punishment.

[27] However, in our view, a continuation of registration, even with supervision, may not be sufficient to protect investors and the capital markets and reflects neither personal deterrence nor general deterrence. Azeff and Bobrow violated the most fundamental aspect of the Act, insider trading and tipping, on seven occasions, five times for Azeff and twice for Bobrow. Both insider trading and tipping have been compared to a cancer that damages innocent investors and erodes public confidence in the capital markets. Both types of violations are hard to uncover and the evidence to establish them is painstakingly tedious to assemble. Azeff, in particular, as a registrant, was a primary gatekeeper in the events. He received MNPI from his good friend, Finkelstein. He knew he should have disregarded the information, not used it to benefit himself, his family members, clients and friends. But for his conduct and his activity, no harm would have been occasioned to the public market and to other investors. Azeff and Bobrow together bought Masonite International Corporation ("MHM") stock for about 150 accounts and on some days, their purchases represented a substantial percentage of the total volume of MHM shares traded on the TSX. They knew that the compliance department at CIBC would be alerted to this volume of trading prior to a takeover and would want to see their reasonable basis file. Azeff and his partner Bobrow set about gathering a file of analysts' and technical reports in an attempt to justify their accumulation of MHM shares. We have rejected, in our merits decision, the explanation by Azeff and Bobrow for purchasing large amounts of MHM stock. In addition, we note that when asked at the compelled examination about his relationship with Finkelstein, Azeff gave the impression that he did not know him well or that he worked at Davies. Both statements were far from the truth.

[28] Continued registration for Azeff and Bobrow, even under strict supervision, does not provide a sufficient shield to the market. It would leave Azeff and Bobrow, as registrants, in the milieu where financings and takeover bids are regularly discussed. We have no confidence that Azeff and Bobrow would resist temptation any more in the future than they did in the past. Supervision, while laudable, does not cover the whole day. Tipping can occur by various difficult-to-detect means and may not always occur at the workplace. However, we do not agree with Staff's request for a permanent ban on registration. For men in their mid-40s, that is too long. We conclude that a 10-year ban for both Azeff and Bobrow as registrants is appropriate. As well, a lifetime ban for both from being officers and directors of a reporting issuer must be imposed.[5]

¶ 20 The OSC imposed the following sanctions on August 24, 2015:

(a) The OSC prohibited the Respondents from trading in any securities for 10 years;

[5] Our emphasis.

(b) The OSC prohibited them from acquiring any securities for 10 years;

(c) The OSC prohibited them from becoming or acting as a registrant, as an investment fund manager or as a promoter for 10 years;

(d) The OSC permanently prohibited them from becoming or acting as a director or an officer of any reporting issuer, registrant or investment fund manager;

(e) The OSC reprimanded both of the Respondents;

(f) The OSC ordered Mr. Azeff to pay an administrative penalty of $750,000, to disgorge $49,996 to the Commission and to pay costs in the amount of $175,000;

(g) The OSC ordered Mr. Bobrow to pay an administrative penalty of $300,000, to disgorge $10,217 to the Commission, and to pay costs in the amount of $125,000.

¶ 21 On September 23, 2015, the Respondents appealed both the decision on conviction and the penalties decision before the Ontario Divisional Court.

¶ 22 On October 19, 2015, the Respondents filed a motion for a stay from the Commission's sanctions decision, until the ruling on their appeal to the Divisional Court.

¶ 23 On October 21, 2015, the Divisional Court dismissed the Respondents' motion for a stay from the OSC's sanctions decision. The Divisional Court concluded that it was not in the public interest to grant a stay that would allow the Respondents to engage in registerable activities.

¶ 24 The Respondents appealed the decision to dismiss the stay motion on sanctions, which appeal was heard last February 19.

3. THE TWO PARTIES' ARGUMENTS

3.1 THE JURISDICTIONAL FOUNDATION OF THE PROCEEDINGS INITIATED BY IIROC

¶ 25 IIROC filed an application for an expedited hearing pursuant to Rule 20.41, Rule 20.43 and Rule 20.45 of its Dealer Member Rules, which provisions are reproduced in the introduction to the reasons for our decision[6].

¶ 26 Counsel for the Respondents argue that the Hearing Panel does not have jurisdiction to hear this application on grounds that the text that must apply is found in Rule 20.18.

¶ 27 It is therefore appropriate to dispose of this jurisdiction issue first.

¶ 28 To this end, one must correctly situate the various provisions in question within Rule 20.

¶ 29 Rule 20.18 is found in Part 7 of Rule 20, namely the part concerned with individual and membership approvals. More specifically, Rule 20.18 pertains to approval applications. It states the powers of the District Council, which may approve or refuse an application for approval, as well as impose terms and conditions on the approval of a member. That is what the District Council did in the matter before us, by imposing terms and conditions on the Respondents' approval.

¶ 30 Rule 20.43, for its part, is found in Part 10, Enforcement Hearings. Rules 20.41, 20.43 and 20.45 are in the section relating to expedited hearings. Rule 20.43 1 c) [sic] states very clearly that a hearing panel may hold an expedited hearing when an approved person has been suspended by a recognized organization.

¶ 31 Rule 20.45 states the penalties that the Hearing Panel may then impose.

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[6] See paragraphs 2 and 3 above.

¶ 32 When we look at the allegations made in these proceedings, we must conclude that they fall within the scope of Rules 20.41, 20.43 and 20.45.

¶ 33 Consequently the Hearing Panel declares that it has jurisdiction to hear the application[7].

3.2 THE SCOPE OF THE LEGAL STATUS OF THE RELATIONSHIP BETWEEN IIROC AND ITS REGISTRANTS

¶ 34 Counsel for the Respondents invoke the contractual nature of the legal relationship that binds them to IIROC, an argument with which IIROC says it agrees moreover.

¶ 35 In *Re Mechaka*[8], a thorough and detailed decision that concerns a motion for dismissal and declinatory exception due to lack of jurisdiction, a hearing panel of IIROC chaired by Me Jean Martel, upheld the contractual nature of the relationship that unites the Association and its members: "the contract that is signed by each and all of the Association members in order to establish their existence contractually, bind themselves to their rules and decisions, and agree to conduct themselves accordingly."[9].

¶ 36 This is also what emerges from the 2011 Québec Court of Appeal decision *IIROC v. Beaudoin*[10]. The Court of Appeal[11] notably espouses the principles stated by the Supreme Court of Canada in *Senez v. Montréal Real Estate Board* [12]. The 1980 *Senez* decision is the keystone that paves the way followed by all subsequent case law in the legal analysis of self-regulatory organizations (SRO)[13].

¶ 37 The contractual nature has thus been recognized for all of the Canadian provinces[14].

¶ 38 It is interesting to cite this passage by Judge Beetz in *Senez*[15]:

> "When an individual decides to join a corporation like the Board, he accepts its constitution and the by-laws then in force, and he undertakes an obligation to observe them. (…) Relying solely on the enactments and on principle, therefore, I conclude that the rules and by-laws infringed by the Board are contractual in nature."

¶ 39 This is therefore a membership contract; the members are thus undertaking to observe the rules decreed by IIROC.

¶ 40 The parties do not agree on the significance of the contractual nature of the obligations that unite them, more specifically on the scope of the terms and conditions of the Respondents' registration agreement in 2011[16].

¶ 41 It is appropriate to read this undertaking in light of the principle that we just quoted, namely the commitments inherent in a membership contract.

¶ 42 Paragraph (e) of this agreement provides that, in the event of a guilty finding by the Ontario Securities

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[7] See notably, *Re Jory Capital*, 2012.

[8] *Re Mechaka*, 2009 IIROC No 18.

[9] At paragraph 77 of the decision.

[10] *Investment Industry Regulatory Organization of Canada v. Beaudoin*, 2011 QCCA 2247.

[11] At paragraph 26.

[12] *Senez v. Montreal Real Estate Board*, 1980 CanLII 222 (SCC), [1980] 2 S.C.R. 555.

[13] *Bourse de Montréal c Letellier*, 1999 Can LII 13461(QCCA).

[14] Notably: *Deeb v. IIROC*, 2012 ONSC 1014 (Ontario); *Re Steinhoff*, 2010 IIROC 28 (British Columbia).

[15] *Ibid*.

[16] Which we cited in full earlier; see our paragraph 11.

Commission "(for greater certainty, after any and all reviews and/or appeals thereof)", "the Respondents' registration and IIROC approval will be automatically[17] revoked".

¶ 43 Is this to say, as the Respondents argue, that IIROC may not initiate any proceeding whatsoever until all of these steps occur? In no way do we think so.

¶ 44 The paragraph is clear: in the event of a final decision, the Respondents' registration will automatically be revoked. The term "automatically" should be interpreted in its fullest sense. It means that in the event of a final decision, once all appeals have been exhausted, the Respondents would see their registration ipso facto revoked. The terms used here are clear.

¶ 45 An agreement must be read in its entirety to be interpreted correctly. The agreement must be looked at in its entirety and, notably, paragraph "e" must be read together with paragraph "f" which clearly states that once an initial decision is rendered by the Ontario Securities Commission, the terms and conditions imposed on the Respondents may be modified.

¶ 46 Finally, we wish to add that the contract must be interpreted in the context in which it is signed, taking into account the parties' intended aim, the contextual and teleological interpretation methods. In this case, it would be at the very least incongruous if the Respondents, who were registered in Québec under strict terms and conditions, were not subject to the rules decreed by IIROC, notably under Rule 20.41 and following, and thus benefited from a more favorable system than that to which other members are subject. As we saw previously, this is a membership contract with the inherent obligations that result.

¶ 47 It is thus that the provisions of this agreement must be interpreted, that paragraph "e" must be understood, and the Respondents' arguments cannot consequently be upheld here.

3.3 THE SUPERVISION EFFECTED BY EURO PACIFIC

¶ 48 One of the questions in dispute and on which the two parties disagree completely has to do with the adequacy of the supervision that Euro Pacific had undertaken to do.

¶ 49 According to IIROC[18]:

> "19. In August 2015, the Business Conduct Compliance Department (the "BCC Department") of IIROC conducted a regularly scheduled business conduct examination of Euro Pacific's business, including a review of Euro Pacific's Montreal business location where the Respondents are both employed.
>
> 20. The BCC Department uncovered a number of problems with the supervision of the Respondents, including a number of failures to comply with the Supervision Conductions."

¶ 50 In the affidavits of October 5 and October 9, 2015, Michael Librizzi, Business Conduct Compliance Manager in IIROC's Montréal office, notes several flaws in Euro Pacific's supervision of the Respondents: Failure to Pre-Approve Trades in Client Accounts; Failure to Pre-Approve Mr. Azeff's Personal Trading; Failure to Pre-Approve Trading in New Issues; Failure to Pre-Approve Trading in Fixed Income Securities; Inadequate Monthly Trading Reviews; Failure to Supervise Cheque Requests and Withdrawals.

¶ 51 In conclusion, Michael Librizzi states:

> "Based on our findings, I have concerns regarding Euro Pacific's supervision failures and outlined in this affidavit. I also have concerns with the veracity of the certifications provided

[17] Our emphasis.

[18] See the Notice of Application, paragraphs 19 and 20.

by Euro Pacific's compliance personnel, including Mr. Cusson, in the monthly Strict Supervision Reports. I therefore have concerns that Euro Pacific will not conduct adequate supervision of Mr. Azeff and Mr. Bobrow in the future in accordance with the Supervision Conditions imposed by the Registration Sub-Committee.»[19]

¶ 52 We note that these affidavits were deposited in the Respondents' Ontario record at the time of the appeal to stay the execution of the OSC's decision, in October 2015. [20]

¶ 53 The Respondents have a completely different position on the question of strict supervision.

¶ 54 On the one hand, they argue that this supervision was done correctly:

"(…) the evidentiary record overwhelmingly demonstrates that both the Respondents and Euro Pacific have complied and continue to comply with the terms and conditions of strict supervision".[21]

¶ 55 On the other hand, the Respondents argue that, if there was any flaw in the supervision done by Euro Pacific, they cannot be held responsible for it:

"Staff of IIROC cannot invoke Rule 20.43 of the Dealer Member Rules to request the suspension of the Respondents' registration stemming from concerns related to Euro Pacific's supervision (and not the Respondents' own failure to comply)."

¶ 56 Finally, they indicate that contradictions exist between Michael Librezzi's testimony at the hearing to stay the execution of the OSC's decision, and the affidavits and audit reports[22] :

"I have reviewed the disclosure and have observed contradictions between the information contained in these "audit notes" and the affidavits sworn by Michael Librizzi and the testimony given by Michael Librizzi during the hearing of the Stay Application."

¶ 57 We should note here that the Ontario Securities Commission reached the conclusion, based on the August 2015 affidavit by David Cusson, President and CEO of Euro Pacific, that the Respondents complied with all of the terms and conditions imposed by IIROC in 2011[23].

¶ 58 Despite this finding, the Commission nevertheless added that strict supervision of the Respondents: "does not provide a sufficient shield to the market"[24] and imposed a 10-year suspension on them.

¶ 59 On October 21, 2015, the Ontario Divisional Court dismissed the Respondents' application for a stay from the sanctions imposed by the OSC.

4. THE DECISION

¶ 60 The use and disclosure of privileged information (tipping and insider trading), of which the Respondents were found guilty in 2015 in Ontario[25], are among the most serious offenses in the securities industry.

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[19] At paragraph 34.

[20] At paragraph 35.

[21] The Respondents each filed a first affidavit on November 16, 2015 and a second on January 27, 2016, with numerous exhibits appended, reflecting the chronology of events since the Respondents' application for reapproval with IIROC in 2011.

[22] Supplementary Affidavit of Paul Azeff and Supplementary Affidavit of Korin Bobrow, January 27, 2016, paragraphs 38 to 48.

[23] In paragraphs 24 and 25 of the decision: " (…) Eighteen specific monitoring conditions were required by the IIROC decision. (…) For the past four years, Azeff and Bobrow have complied with all those conditions."

[24] At paragraph 26.

[25] *Re Paul Azeff et al.,* (2015), 38 O.S.C.B. 2983.

They completely undermine the public trust. Since these offenses are very difficult to detect, they must be sanctioned in as severe a manner as possible in order to have a general deterrent effect and protect the integrity of the industry.

¶ 61 As the OSC says in its sentencing decision of August 24, 2015[26] : "Both insider trading and tipping have been compared to a cancer that damages innocent investors and erodes public confidence in the capital markets."

¶ 62 The position is also that of a consistent body of jurisprudence in the matter. It has been held in many tipping and insider trading decisions.[27]

¶ 63 It was notably expressed in these words, in 2012 in Ontario, by a Hearing Panel chaired by Martin L. Friedland, in *Re Bortolin*[28] :

> "The capital market are damaged by insider trading because its existence encourages a belief by many potential investors that they cannot get a fair deal in the capital markets and that it is insiders only who profit through their special access to information (…) It is therefore incumbent on securities dealers and other gatekeepers to be vigilant not to facilitate those activities. And that is why when a case of insider trading is proven, the penalty tends to be substantial as a deterrent to others."

¶ 64 The Respondents, both Paul David Azeff and Korin David Bobrow, in their supplemental affidavit of January 27, 2016, invoke their personal circumstances in order to convince the Hearing Panel not to impose suspension as a penalty.

¶ 65 For IIROC, the gatekeeper role, protecting the public and the trust that must exist in the securities industry, is IIROC's principal duty and reason for being, while allowing members to practice their trade to the best of it their ability in order to provide for their needs.

¶ 66 It is interesting to revisit the words of Judge Claire l'Heureux-Dubé in 1995, in *British Columbia Securities Commission v. Branch*, which are echoed here[29]:

> "As always, a delicate balance must be forged. On one hand, of course, we must not deny individuals the fullest possible Charter protections where a reasonable and less intrusive alternative measure exists by which to address the pressing and substantial desired objective. Moreover, federalism concerns already dictate that provincial securities statutes not confer upon administrative or enforcement agencies powers that would trench upon the federal jurisdiction over criminal law and procedure. On the other hand, however, we must not so handcuff securities enforcement agencies within the Constitution as to prevent them from being able to perform their jobs effectively, and fulfil their mandate of protecting the public interest."

¶ 67 This "delicate balance" must always lean towards protecting the public interest.

¶ 68 Can strict supervision mechanisms be put in place here to adequately and completely ensure the protection of the investing public? We do not think so, just as the OSC did not in 2015 for offences committed between 2004 and 2007.

¶ 69 Suspension is the only appropriate measure here. It is a severe sanction certainly. It is appropriate because of the Respondents' actions over a long period, actions that were taken repeatedly and knowingly.

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[26] At paragraph 27 of the August 24, 2015 decision.

[27] Notably, *Re Donini*, 2003 Carswell 3445; 2003 WL 2100433, (Ont. Div. Ct.).

[28] 2012 IIROC 13, March 15, 2012, cited at paragraphs 61 and 62.

[29] 1995 2 SCR 3, at paragraph 92.

¶ 70 All the decisions rendered in Ontario relative to the Respondents leave no doubt. Even were we to conclude that all the conditions imposed on the Respondents had all been respected, the fact nonetheless remains that the marketplace is not adequately protected. This is, it bears repeating, the conclusion reached by the OSC.

¶ 71 The strictest supervision measures could not hope to completely cover all of the Respondents' activities. The findings in the Ontario decisions and the concerns expressed in the affidavits by Michael Librizzi are very serious and must weigh in the balance, making them a priority.

¶ 72 **WHEREAS** Rule 20 of the IIROC Dealer Members;

¶ 73 **WHEREAS** Rules 20.41, 20.43 and 20.45 are applicable here;

¶ 74 **WHEREAS** the Hearing Panel consequently has jurisdiction to hear this matter and rule on it;

¶ 75 **WHEREAS** the relationship that binds IIROC and its members is of a contractual nature and it is a membership contract;

¶ 76 **WHEREAS** the registration of Paul David Azeff and Korin David Bobrow as representatives of a full-service dealer pursuant to the Québec *Securities Act* and their approval as registered representatives of Euro Pacific Canada Inc.;

¶ 77 **WHEREAS** the decisions of the Approval Sub-Committee of the Québec District Council of IIROC dated May 31, 2011, by which the Respondents' approval as registered representatives was limited by conditions, which conditions imposed a certain number of heightened supervision obligations on Euro Pacific;

¶ 78 **WHEREAS** the OSC, on March 24, 2015, found both Respondents guilty of the use and disclosure of privileged information, "tipping and insider trading" in multiple cases, over a period that ran from November 2004 to August 2007;

¶ 79 **WHEREAS** despite the strict supervision to which the Respondents were subject, the OSC imposed a penalty of suspension in 2015 for offences committed between 2004 and 2007;

¶ 80 **WHEREAS** the decision rendered by the OSC on August 24, 2015, prohibiting the Respondents from trading in any securities, from acquiring any securities, from becoming or acting as an investment fund manager or as a promoter for 10 years;

¶ 81 **WHEREAS** the Respondents appealed both the guilty finding and the penalty decision before the Divisional Court on September 23, 2015;

¶ 82 **WHEREAS** the Divisional Court, on October 21, 2015, dismissed a motion by the Respondents for a stay from the OSC's sanctions decision;

¶ 83 **WHEREAS** the Respondents appealed this decision which was to be heard on February 19, 2016;

¶ 84 **WHEREAS** the offences of use and disclosure of privileged information are extremely serious;

¶ 85 **WHEREAS** in the face of such behaviours, general deterrence measures must be taken to protect the investing public and preserve the integrity of the securities industry;

¶ 86 **WHEREAS** the applicable texts and the jurisprudential interpretation thereof;

¶ 87 **WHEREAS** the objectives that must necessarily guide IIROC;

¶ 88 **FOR THESE REASONS**, the Hearing Panel,

GRANTS the application filed by IIROC;

ORDERS the suspension of Paul David Azeff and Korin David Bobrow with IIROC, pursuant to IIROC Dealer Member Rule 20.45 (1) (a) and (b);

ORDERS Paul David Azeff and Korin David Bobrow to immediately cease dealing with the public pursuant to IIROC Dealer Member Rule 20.45 (1)(d).

Montréal, February 23, 2016

Michèle Rivet

Denis-Marc Gagnon

Danielle Le May