IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF JOHN ALEXANDER CORNWALL, KATHRYN A. COOK, DAVID SIMPSON, JEROME STANISLAUS XAVIER, CGC FINANCIAL SERVICES INC. AND FIRST FINANCIAL SERVICES

REASONS AND DECISION
(Section 127 and 127.1 of the *Securities Act*)

Hearing:	February 21-23, 2007, April 23-25 and May 23-24, 2007	
Decision:	November 30, 2007	
Panel:	Robert L. Shirriff, Q.C.	- Commissioner (Chair of the Panel)
	David L. Knight, FCA	- Commissioner
	Margot C. Howard, CFA	- Commissioner
Counsel:	Sean Horgan	- For Staff of the Ontario Securities Commission
	Alistair Crawley Anna Markiewicz	- For Jerome Stanislaus Xavier
	Ian Smith	- For Kathryn A. Cook
	John Alexander Cornwall	- For himself and CGC Financial Services Inc.
	David Simpson	- For himself and First Financial Services

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REASONS AND DECISION

OVERVIEW

A. The Hearing

[1] This was a hearing before the Ontario Securities Commission (the "Commission") pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make an order against John Alexander Cornwall ("Cornwall"), Kathryn A. Cook ("Cook"), David Simpson ("Simpson"), Jerome Stanislaus Xavier ("Xavier"), CGC Financial Services Inc. ("CGC Financial") and First Financial Services ("First Financial") (collectively "the Respondents").

[2] This matter arose out of a Notice of Hearing issued by the Commission on November 7, 2003 and an Amended Amended Statement of Allegations issued by Staff of the Commission ("Staff") on August 18, 2004.

[3] Staff alleged that the Respondents were involved in an illegal distribution of shares in four private companies. They alleged that the Respondents sought out persons with locked-in retirement savings plans ("RSPs") who wanted to access the funds in these plans. It was alleged that the Respondents convinced these persons that they could access these funds by transferring their current locked-in RSP investments to an investment in one of the four private companies. Once their investment was transferred to an investment in the private companies, the Respondents would lend them a portion of the invested amount, requiring the private company shares as collateral for the loan. The alleged scheme is described more fully below at paragraphs 26-29 of these Reasons.

[4] Staff alleged the Respondents returned 65% to 70% of the funds invested to the investors in the form of loans and kept the remaining 30% to 35% for themselves in fees and other forms of compensation. Staff further alleged that the consequences for the investors included substantial tax liabilities with respect to their formerly locked-in RSP accounts.

[5] Staff seeks the following order under sections 127 and 127.1 of the Act:

(a) pursuant to subsection 127(1) clause 1, that the registration of Cornwall and Xavier be suspended for such period as is specified in the order or be terminated;

(b) pursuant to subsection 127(1) clause 2, that trading in securities by the respondents, Cornwall, Simpson, Xavier and Cook, cease permanently or for such period as the Commission may direct;

(c) pursuant to subsection 127(1) clause 3, that the exemptions contained in Ontario securities law do not apply to the respondents, Cornwall, Simpson, Xavier and Cook permanently, or for such period as specified in the order;

(d) pursuant to subsection 127(1) clause 6, that the Respondents be reprimanded;

(e) pursuant to subsection 127(1) clause 7, that the respondents, Cornwall, Simpson and Xavier resign one or more positions that they hold or may hold as a director or officer of any issuer;

(f) pursuant to subsection 127(1) clause 8, that the respondents Cornwall, Simpson and Xavier be prohibited from becoming or acting as a director or officer of any issuer permanently or for such period as the Commission may direct;

(g) pursuant to subsection 127.1 that the Respondents pay the costs of Staff's investigation and the costs related to the hearing that are incurred by or on behalf of the Commission; and

(h) such other orders as the Commission deems appropriate.

[6] We have to decide whether the Respondents engaged in the conduct alleged by Staff and if so, whether it would be appropriate to make an order in the public interest against the Respondents.

B. The Respondents

[7] The Respondents are: Cornwall, CGC Financial, Simpson, First Financial, Xavier and Cook.

1) Cornwall and CGC Financial

[8] Cornwall resides in the Province of Ontario. He was registered under the Act as a salesperson with Global Educational Marketing Corporation from April 11, 2000 to October 5, 2001. Global Educational Marketing was registered under the Act as a Scholarship Plan Dealer.

[9] CGC Financial is an Ontario corporation located at 1010 Polytek St., unit 2, Gloucester, Ontario ("1010 Polytek"). CGF Financial was incorporated on June 14, 2000. Cornwall is the sole shareholder and director of CGC Financial.

2) Simpson and First Financial

[10] Simpson resides in the Province of Ontario and was an unregistered mortgage dealer. Simpson has never been registered in any capacity with the Commission.

[11] First Financial is the business name of 567349 Ontario Ltd., an Ontario corporation located at 6 Gurdwara Rd., Nepean, Ontario ("6 Gurdwara"). 567349 Ontario Ltd. was incorporated on October 14, 1983. Simpson is the sole shareholder and director of First Financial.

3) Xavier

[12] Xavier resides in the Province of Quebec. He has been registered under the Act as a salesperson with Keybase Investments Inc. ("Keybase") since September 23, 1999. At all material times Keybase was registered under the Act as a Mutual Fund Dealer, Limited Market Dealer and Scholarship Plan Dealer, but Xavier's registration only permitted him to sell mutual fund securities. Keybase changed its registration to Mutual Fund Dealer and Limited Market Dealer on December 31, 2001 and changed its name to Keybase Financial Group Inc. on January 1, 2003.

[13] Prior to his registration as a salesperson with Keybase, Xavier was a registered salesperson from October 21, 1992 with various corporations registered as Mutual Fund Dealers and/or Limited Market Dealers.

4) Cook

[14] Cook resides in the Province of Ontario. She is a chartered accountant and has never been registered in any capacity with the Commission.

C. Private Companies to which the Allegations Relate

[15] Staff's allegations, which are described fully below at paragraphs 26-31, relate to securities issued by four private companies ("Private Companies"):

- Themis Hospitality Inc. ("Themis");
- Stramore Inc. ("Stramore");
- Faelen Concepts ("Faelen"); and
- Camcys Inc. ("Camcys").

1) Themis

[16] Themis is an Ontario corporation with a registered address at 1585 Royal Orchard Drive, Cumberland, Ontario. Themis was incorporated on October 21, 1998. Madhu Duthie ("Duthie") and Sakuntala Chinniah were the only directors of Themis. Duthie was also president of Themis. Neither Themis nor Duthie was registered under the Act.

[17] Duthie testified that he incorporated Themis to build a 90-unit retirement residence in Kanata, Ontario. The projected cost of building the residence was $7 million dollars and required mortgage financing of $5.5 to $5.7 million. Duthie arranged for a first and second mortgage for the entire amount. However, the mortgage lender for the first loan required Themis to raise $500,000 through equity financing before it would advance its loan. The retirement facility eventually became operational and was sold by Themis in November 2006.

2) Stramore

[18] Stramore is an Ontario corporation with a registered address at 6 Gurdwara – the same address as First Financial. It was originally incorporated on March 23, 2000 as 1395026 Ontario Limited. It changed its name on August 9, 2000 to Stramore Inc. Simpson was the sole director of Stramore. Neither Stramore nor Simpson was registered under the Act.

[19] Scott Boyle, a senior investigator in the Enforcement Branch of the Commission ("Boyle"), testified that Simpson claimed he incorporated Stramore to build an 18-unit retirement residence in Smith Falls, Ontario. Simpson expected it would cost $1.6 million to build.

[20] Stramore purchased the land for the retirement residence. When Boyle attended the site in April 2001, there was no evidence of any development and his investigation revealed mortgages registered on title to the land in an aggregate principal amount exceeding its purchase price.

3) Faelen

[21] Faelen is an Ontario corporation with a registered address at 1010 Polytek St. – the same address as CGC Financial. Faelen was incorporated on April 26, 2000. Lino Marchi ("Marchi") was the sole director of Faelen. Neither Faelen nor Marchi was registered under the Act. Boyle testified that Marchi sought to create and produce cooking shows as well as to buy or build a high-tech resort in the Ottawa Valley area. As of April 23, 2001, Faelen had not sold any product or generated any revenue.

4) Camcys

[22] Camcys is an Ontario corporation incorporated on November 2, 2000. Its registered office was a Mailboxes Etc. post office box located at 532 Montreal Rd., Suite 410, Ottawa, Ontario. Patrick Roney ("Roney"), Cornwall's son-in-law, was the sole director of Camcys. Neither Camcys nor Roney was registered under the Act.

[23] Camcys was created to provide web design, network engineering designs and layouts, and all-in-one technical services for clients. At the time Camcys was incorporated, it did not have a business plan.

[24] Further, neither Roney nor Camcys had any working capital and there was no business plan for raising money to operate the business. However, Roney did remember speaking with Cornwall about how he could raise money. Roney testified that Camcys never had any employees or assets. He did not recall any sales by or accounts receivables of Camcys; he had only scouted potential clients.

[25] There was evidence that Camcys had an address at 5460 Canotek Rd., unit 102, Gloucester, Ontario. However, Boyle testified that there was no Camcys sign in front of the property and the employees of the business in the neighbouring unit had no information or knowledge of anyone renting the Camcys unit.

D. Alleged Violations of the Act and Conduct Contrary to the Public Interest

[26] Staff alleged that from approximately April, 2000 to March 2001, Cornwall/CGC Financial Services Inc., Simpson/First Financial Services, Xavier, and Cook, participated in a scheme that involved the liquidation of securities in existing locked-in RSP trusts of clients and the transfer of the funds arising from such liquidation to new locked-in RSP trusts created for them. These new trusts then used the funds to purchase shares in one of the Private Companies which were held out to be Canadian Controlled Private Corporations ("CCPCs"). The clients would then receive a loan generally in an amount equal to 65% to 70% of the purchase price of the shares.

[27] Shares of a CCPC can constitute a qualified investment for a locked-in RSP. The criteria for shares in a corporation to qualify as such an investment are prescribed by section 146 of the *Income Tax Act* and Regulations.

[28] Normally, holders cannot access the money in their locked-in RSPs until they reach an eligible age and then only in prescribed amounts, subject to the exception of a government administered hardship program. Funds or assets held in locked-in RSPs cannot be used as collateral nor can they be used for loans.

[29] According to Staff, the transactions in question were carried out as follows:

(a) Clients responded by telephone to newspaper advertisements offering access to funds within locked-in RSPs. Cornwall and/or Simpson would meet the clients and the required documents would be signed, often in blank. In some cases, the documents were sent to clients by courier and returned by mail;

(b) These documents created a new self-directed locked-in RSP account held by a new trustee selected by Xavier. New Client Application forms for Keybase were signed by each client. Keybase was the dealer where Xavier was employed;

(c) The new trustee was directed to purchase shares of the designated Private Company from the proceeds transferred to it. The new trustee would forward the purchase price for the shares to the Private Company and would receive in return share certificates in the name of the client to be held in the client's account; and

(d) The Private Company would then transfer all or a portion of this purchase price to CGC Financial or First Financial. Subsequently, the client would receive a loan from CGC Financial or First Financial based on a percentage of the value of shares purchased in the Private Company. A security interest in these shares was given to whichever of CGC Financial or First Financial made the loan to secure its repayment. In some cases, clients made loan payments to CGC Financial or First Financial on the understanding that if the loan were fully repaid including interest, the Private Company shares would be redeemed and the redemption proceeds paid the client.

[30] Staff alleged that:

(a) In trading shares of the Private Companies, Cornwall, Simpson and Xavier participated in an illegal distribution of securities, contrary to section 53(1) of the *Securities Act*, by trading in these securities for which there was no exemption available;

(b) By failing to ascertain the general investment needs and objectives of the investors who purchased shares of the Private Companies, and the suitability of the proposed purchases or sales of the securities for these clients, Xavier acted contrary to section 1.5 of Ontario Securities Commission Rule 31-505; and

(c) By failing to process trades through Keybase, Xavier acted contrary to section 25(1) of the *Securities Act*.

[31] Staff also alleged that:

(a) Cornwall's conduct, as described above, is contrary to the public interest;

(b) Simpson's conduct, as described above, is contrary to the public interest;

(c) Cook's conduct, as described above, is contrary to the public interest;

(d) Xavier's conduct, as described above, is contrary to the public interest; and

(e) CGC's and First Financial's conduct, as described above, is contrary to the public interest.

PRELIMINARY ISSUES

A. Unrepresented Respondents

[32] Cornwall/CGC Financial and Simpson/First Financial were not represented by counsel but were present at the hearing. They consented at the beginning of the hearing to proceed without the assistance of counsel.

B. Cornwall's Absence February 22, 2007 and February 23, 2007

[33] Cornwall was absent from the hearing on February 22, 2007 and part of February 23, 2007. However he consented to have the hearing proceed in his absence.

C. Sealing Order with respect to documents and financial information

[34] During the hearing, Staff sought a sealing order with respect to certain documents and financial information. Staff submitted that many of the documents presented during the hearing contained a significant amount of personal information, as well as commercially sensitive financial information.

[35] The Panel granted the sealing order, which applies to the portion of oral testimony and exhibits containing personal information and commercially sensitive financial information.

THE ISSUES

[36] The issues for us to determine in this matter are as follows:

- Did Cornwall, Simpson and Xavier participate in an illegal distribution of securities contrary to section 53(1) of the Act by trading in the securities of the Private Companies for which there was no exemption;

- Did Xavier act contrary to section 1.5 of Ontario Securities Commission Rule 31-505 by failing to ascertain the general investment needs and objectives of investors purchasing shares of the Private Companies and the suitability of the proposed purchases or sales of the securities for these investors;

- Did Xavier act contrary to section 25(1) of the Act by failing to process trades through Keybase; and

- Did Cornwall/CGC Financial, Simpson/First Financial, Xavier and Cook engage in conduct contrary to the public interest?

THE ONUS

[37] The standard of proof in Commission proceedings will vary with the subject matter. Where the respondents are not registrants, and any decision by the Panel would not interfere with their ability to earn a livelihood in the securities industry, the standard of proof to be applied is the civil balance of probabilities (See *Re Standard Trustco Ltd. et al.* (1992), 15 O.S.C.B. 4322 at paras. 130-133 and *Re Banks* (2003), 26 O.S.C.B. 3377 at para. 109).

[38] Where the potential consequences of an order that could be imposed by the Commission would interfere with a respondent's ability to earn a livelihood, then the appropriate standard of proof to be applied is "clear and convincing proof based upon cogent evidence" (See *In the Matter of Piergiorgio Donnini* (2002), 25 O.S.C.B. 6225, at paras. 100-101; *Donnini v. Ontario Securities Commission*, [2003] O.J. No. 3541 (Div. Ct.), appeal allowed on other grounds; *Donnini v. Ontario (Securities Commission)*, [2005] O.J. No. 240 (C.A.), appeal allowed on other grounds; *Re Lett* (2004), 27 O.S.C.B. 3215, at paras. 30-34).

[39] Accordingly, in the circumstances of this case, Staff submitted that the Panel should make its determination as to whether Xavier violated the Act and acted contrary to the public interest on clear and convincing proof based upon cogent evidence. We agree with this submission.

THE EVIDENCE

A. Overview of the Evidence

[40] Staff presented evidence to demonstrate that the Respondents were directly involved in issuing shares to 87 investors for an aggregate investment of $1,957,200 in the Private Companies: Themis, Stramore, Faelen and Camcys.

[41] The documentary evidence introduced by Staff included the following:

- Corporation Profile Reports from the Ministry of Consumer and Commercial Relations showing corporate information such as the registered office address and the names of directors and officers;

- Section 139 certificates from the Commission setting out the registration status of individuals or companies;

- Loan documentation relating to loans from either First Financial or CGC Financial to investors. This documentation included (i) loan agreements; (ii) assignments by an investor of his or her shares in the Private Companies to First Financial or CGC Financial as collateral for the loan; (iii) service contracts and fee agreements between the investor and CGC Financial that provided for "professional fees" that were deducted automatically from the loan. There was no evidence presented of service contracts between investors and First Financial;

- Offering memoranda or investor packages for the Private Companies that were allegedly used to attract investors;

- Financial statements including balance sheets for the four Private Companies and interim income statements and cash flow projections for Camcys;

- Qualification letters from Cook opining that the investments in the Private Companies were qualified investments for the investors' RSPs;

- Bank statements for First Financial, CGC Financial, and Xavier;

- Keybase new plan applications, which were completed when an investor first became a Keybase customer;

- Trust account opening forms, account information, and transfer authorization forms for the following trust companies: Laurentian Bank of Canada, B2B Trust, Canadian Western Trust and MRS Trust; and

- Transcripts of interviews with Simpson, Cornwall, Xavier, Cook, Duthie, Roney and Marchi.

[42] Staff called eight witnesses during the hearing:

- Boyle, a senior investigator in the Enforcement Branch of the Commission;
- Duthie;
- Roney;
- Investor One, a client who purchased shares in Camcys;
- Investor Two, a client who purchased shares in Themis;
- Investor Three, a client who purchased shares in Faelen;
- Investor Four, a client who purchased shares in Themis; and
- Investor Five, a client who purchased shares in Stramore.

[43] These five investors testified as to how they became involved in the investment/loan scheme, their financial status, the extent of their interaction and communication with each of the Respondents, their understanding of the transactions and the ultimate financial impact of these transactions. The investors reviewed various documents identifying whether they had in fact signed the documents or had seen the documents before making the investments. We discuss their evidence in detail below.

B. Hearsay Evidence

[44] Some of the oral and documentary evidence Staff presented at the hearing was hearsay evidence. This hearsay evidence fell into the following categories:

(a) Transcripts of interviews between Boyle and the individual respondents;

(b) Transcripts of interviews between Boyle and Marchi;

(c) Documents collected in the course of Staff's investigation; and

(d) Oral testimony of witnesses during the hearing with respect to statements made by third persons presented to establish facts alleged in those statements.

[45] Subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 governs the admission of evidence in proceedings before the Commission. It provides that the Panel may admit any relevant oral testimony, document or other thing as evidence at a hearing "whether or not [it would have been] admissible as evidence in a court." This permits the Panel to admit hearsay evidence, subject to considerations of relevance and reliability.

[46] Issues arose with respect to two of the transcripts.

1) Transcripts of interviews between Boyle and individual Respondents

[47] An issue arose during the hearing with respect to the admissibility of transcripts of Boyle's interviews with the individual respondents.

[48] Staff argued these transcripts, in their entirety, are admissible for the truth of their contents. They argued that the statements made in the transcripts are admissions against interest, which have always been an exception to the hearsay rule.

[49] Staff relied on the Supreme Court's decision in *R. v. Terry*, [1996] 2 S.C.R. 207 where it stated at para. 28:

> An admission against interest made by the accused is admissible as a recognized exception to the hearsay rule, provided that its probative value outweighs its prejudicial effect.

[50] Staff argued that in this case the probative value was extremely high because the transcripts relate to the exact allegations in issue before the Panel. They further argued that there was no prejudicial effect. They argued that prejudicial effect arises when such statements are used for an improper purpose or are gleaned from prejudicial information that should not be relied upon in the reasoning process. They argued these transcripts do not contain any such information.

[51] However, Staff conceded that a respondent's statements in the transcripts would only be admissible against him, and not against the other respondents.

[52] Xavier argued that *R. v. Terry* is distinguishable because it dealt with the admission of an accused's statement in a proceeding where he had no co-accused. In the instant case, he argued, there are four different individual respondents. He argued that the prejudice in this circumstances arises where Staff succeeds in admitting the transcript of one respondent's interview and uses that transcript against another respondent, such as himself. He argued that he would have no opportunity to cross-examine the respondent whose transcript was being relied on.

[53] However, Xavier did not object to the transcripts of a respondent being used against that respondent only and not the other respondents.

[54] Xavier also argued that it would not be appropriate to admit the transcripts through Boyle, but rather counsel for Staff should read into the record the relevant portions of the transcripts they seek to admit.

[55] We decided at the hearing to admit the transcripts of Boyle's interviews with each of Cornwall, Simpson, Xavier and Cook, for use only against that individual, subject to the transcripts being introduced through Boyle.

2) Transcript of interview between Boyle and Marchi

[56] An issue arose during the hearing with respect to the admissibility of transcripts of Boyle's interviews with Marchi. Staff argued that Marchi's transcript was admissible

under the principled approach to admitting hearsay evidence. Staff relied on the Supreme Court's decisions in *R. v. Khan*, [1990] 2 S.C.R. 531, *R. v. B. (K.G.)*, [1993] 1 S.C.R. 740, and *R. v. Smith*, [1992] 2 S.C.R. 915, which state that hearsay evidence is admissible subject to considerations of necessity and reliability.

[57] Staff argued Marchi's transcript was necessary because Marchi was suffering from a medical condition and that he was unable to travel. With respect to reliability, Staff noted that statements in Marchi's transcript were made under oath with a court reporter.

[58] Xavier argued that the Panel has power to call any witness, including Marchi. He argued that the Respondents and Panel are entitled to the best evidence available. He argued it is unfair to deny a respondent the opportunity to cross-examine a witness.

[59] We decided at the hearing that the transcript of Boyle's interview of Marchi was admissible. We stated that we would have preferred to hear from Marchi directly and for the respondents to have the opportunity to cross-examine him. However we decided that these considerations would go to the weight we give this transcript.

[60] We added that the Respondents would also be able, as part of the hearing, to comment on any particular portion of the transcript they chose, or to direct the Panel's attention to those portions they considered to be relevant to the case they wished to put forward.

ANALYSIS

A. Involvement of the Respondents with the Transactions

[61] The Respondents' involvement in these transactions can be divided into four overlapping periods:

(a) Themis – April to October 2000

(b) Stramore – May 2000 to March 2001

(c) Faelen – June 2000 to March 2001

(d) Camcys – September 2000 to February 2001.

[62] While Simpson and First Financial were only involved in the distribution of shares of Themis and Stramore, all other respondents were involved in the distribution of shares of all the Private Companies.

[63] At the hearing Simpson described the program and the involvement of the Respondents in the program as follows:

> MR. SIMPSON: The investment program is basically what we see here. Telco Financial were raising money through the RRSPs and investing in small business. […]

THE CHAIR: Collapsing RRSPs? Is that what you're saying?

MR. SIMPSON: I wouldn't use the term "collapsing". They were raising money through taking money out of the RRSPs through the financial dealers. And at this point in time I might say, yes, collapsing RRSPs. But at that point in time it was a way for them to access RRSP money, which they were in turn representing that they were investing in small business. And at that time we didn't know about the loans.

…

Ron convinced me that there was nothing wrong with the program. He was prepared to set it up and do it himself. *I ended up setting it up and doing it with John Cornwall instead*.

…

So when I looked at it, I thought it was a way to raise funds for Themis, and in fact it gave them a bit of a boost. As far as John and I were concerned, we didn't make a lot of money on fees. Despite the numbers that we're seeing from Mr. Boyle, the fees associated with raising the money was somewhere in the neighbourhood of $100,000, which John and I split. We paid some out to Kathryn Cook and to other -- we paid for newspaper advertising.

…

As far as Stramore is concerned, Stramore is my own company.

…

So in my eyes, at that time both Themis and Stramore were viable companies. Both of them are still in business today. We've -- in the case of Themis, as we've heard Mr. Duthie -- Mr. Duthie's testimony, he has – he has repaid some of the money that he received. The amount that each investor put in, if we say that was 100 per cent, they have all, with the loan and with the repayment from Themis, they've all received back probably 80 or 85 per cent of the amount that they put in.

…

It was always my intent that the money that went into Themis and the money that went into Stramore would eventually go back to the investors. They had received -- they had received 65 or 70 per cent of the money invested by way of a loan. The balance would be recovered -- the entire program was set up so that had they all, in a perfect world, repaid all of their loans, the money that they repaid on their loans would then be returned to Themis.

Themis or Stramore would then contribute back the portion that they received in the initial part of the investment to make the entire investment whole again. And there would actually be the loan plus the 5 per cent or the 6 per cent interest rate on the loan, along with the money that Themis used for the seven-year period, would in fact create a sufficient pool to be able to buy the shares back that Themis had sold initially. And so when you make the two whole again, there would be more than 100 per cent returned to the RRSP at the end of seven years. And that was the concept, and that was the way it was set up for these two companies.

…

THE CHAIR: In the case -- it may be different for Themis, say, and Stramore, but if you took a sum like $10,000 -- let's just use that sum, for example -- and this was obtained by collapsing a LIRA RSP, and it was used, what, for -- initially to purchase shares in, say, Themis.

…

THE CHAIR: So Themis would receive $10,000.

MR. SIMPSON: Yes.

THE CHAIR: Now, then there would be a loan -- there would be certain charges, fees and charges. Can you just tell me briefly what they are? Because I want to -- I'm interested in knowing, if Themis captured any of the proceeds, how much of that $10,000 did it keep? So [apportion] the sum, and explain to me where the money went.

MR. SIMPSON: If Themis sold $10,000 worth of their shares, they would get a cheque from one of the trust companies, be it Laurentian, whichever one. There would be a cheque come to Themis Hospitality for $10,000. Themis would keep about 25 per cent of it, so roughly [$2,500, maybe $3,000,] …

THE CHAIR: For corporate purposes.

MR. SIMPSON: For corporate purposes. So that would remain in the company for them to use. The balance -- the $7,000 would come to First Financial. First Financial would then meet with the client –

THE CHAIR: Let me stop you there. It would go to First Financial by what means? Themis would buy shares in First Financial?

MR. SIMPSON: No, it was an investment arrangement between Themis and First Financial.

THE CHAIR: And what were the terms of that arrangement, roughly?

MR. SIMPSON: The terms were that Themis would issue a cheque to First Financial. It was actually supposed to be set up as an share purchase in First Financial. And so Themis would invest 7,000 in First Financial. First Financial would then invest it subsequently, and the investment subsequent was simply the loan back to the RRSP holder.

THE CHAIR: [Less] the charges.

MR. SIMPSON: There was approximately 15 per cent of the loan amount, I believe, deducted in charges.

THE CHAIR: So that would be 15 per cent of the –

MR. SIMPSON: $7,000.

THE CHAIR: -- $7,000. And the 15 per cent would cover -- what would it cover? Mr. Xavier's charges.

MR. SIMPSON: Correct. *There was $100 initially paid to Kathryn Cook per deal. That increased to, I think [$200]. There was a small fee to Mr. Xavier. And Mr. Cornwall and I would pay for some advertising out of the balance and split what was left over.*

THE CHAIR: So on that basis [a loan] would be $6,000.

MR. SIMPSON: *That's correct. And the $1,000 would -- 100 would go to Kathryn, perhaps 200 to Jerome or 100 to 200, 250, initially. We'd pay the newspaper advertising and split the difference.* So had the investor that received the loan repaid the loan with the -- it would have accumulated back to an amount more than $7,000, which, at the end of seven years, would then buy back the First Financial shares, which would give Themis back the 7,000, plus the interest, and they would then put back the $3,000 that they received originally. So they would have the 3- plus the 7- to make the 10-, plus the interest on the loan portion of it, to bring it up to some number above the $10,000, which would then be used to re-buy Themis shares. And so that was the program that was set up, and that's the way it, in theory, was supposed to work. Unfortunately, virtually all of the cheques that were received as loan payments were returned NSF. The Bank of Montreal that I dealt with at that time and still deal with had threatened to cancel my account should I deposit any more uncertified cheques from the investors, and so we stopped collecting almost immediately. Most of them were returned NSF in any event. And so that was really the basis of the investment program. We foolishly relied on Mr. Nadeau's assurances that the program that Telco Financial had set up in Montreal was fully legal. Gowlings had indicated to me that they could probably prepare a legal document, and had we gone about it properly in the beginning, indicated that we could probably still be selling shares today had we prepared it properly from day one. So anyways, foolishly, I didn't. Foolishly, we've come to this situation, which I deeply regret. But that's basically -- basically what I...

…

MR. SIMPSON: *I prepared the documents for both Themis and Stramore. My contact was substantially with Mr. Cornwall. John and I prepared the ads and did the advertising, and Jerome was in the background doing the paperwork.*

THE CHAIR: Well, now, what would happen? Somebody would respond to an ad or –

MR. SIMPSON: Correct.

THE CHAIR: John Smith responds to an ad.

MR. SIMPSON: Yes.

THE CHAIR: And then what happens after that? Just take me through it. Take me through an example.

MR. SIMPSON: Again, it would -- I didn't contact -- I didn't -- John answered the ads in the paper and dealt directly with the respondents from the -- and so John looked after a lot of the paperwork, so I don't have a lot of background into how the mechanics of it worked. I'm the type of person that likes to flick the switch, and if the lights work, they work. If they don't -- so I apologize, sir. I just -- I don't have a lot of background. I know that John looked after a lot of the paperwork.

THE CHAIR: And what was Mr. Xavier's role?

MR. SIMPSON: Again, he was someone that worked with John in the background. I don't have a lot of input into who did the paperwork or how it was done.

THE CHAIR: But the documents – the arrangement would involve selling to these investors or their trusts shares of Themis or shares of Stramore.

MR. SIMPSON: Correct.

THE CHAIR: Securities, in other words.

MR. SIMPSON: Correct.

THE CHAIR: And did it ever occur to you that securities laws might require certain refinements with respect to that sale, that you might have to have the shares sold through -- under a prospectus or under an existing exemption from the prospectus or sold through a registered representative of some sort?

MR. SIMPSON: *Well, yes, it did, but I did believe at that time that there was an exemption, that for a small business, that you could -- you could bring in up to 25 investors without going through a full-blown prospectus or offering memorandum.* They were very expensive documents to have done, and -- but I thought that there was an exemption for a small business, just so long as we kept it under 25 shares. And that was Mr. Nadeau's feeling as well. He was a representative. I don't know how you would term his position with Telco Financial. But he had indicated that their lawyers in Montreal had given them the go-ahead. There were other firms that were advertising in the paper, selling similar investments. And so we were under -- and I have -- as I indicated, we did it quickly. Themis needed funding. They were desperate for funds. We needed some short-term funding, and it just wasn't available through other sources at the time. This was an opportunity. *To do a full-blown prospectus would have probably cost $50,000 at the time, would have taken months and months to prepare, and so, as I said, foolishly, we didn't do it.*

THE CHAIR: Did you have any involvement with Faelen [or] Camcys?

MR. SIMPSON: No, I didn't.

THE CHAIR: None at all?

MR. SIMPSON: None.

[Emphasis added.]

[64] In cross-examination by Staff, Simpson further confirmed the involvement of Xavier and Cook in the scheme:

…

Q. And in order to facilitate this entire scheme, you needed somebody who was a registered representative; is that correct?

A. Yes.

Q. And that was Mr. Xavier.

A. Yes.

Q. And you relied on Ms. Cook to provide you an opinion with respect to whether or not it was a qualified investment for tax purposes, correct?

A. Yes.

Q. And without Ms. Cook, this little scheme wouldn't have worked either. Is that fair?

A. Yes.

1) Did Cornwall, Simpson and Xavier participate in an illegal distribution of securities contrary to section 53(1) of the Act by trading in the securities of the Private Companies for which there was no exemption?

(a) The Law

[65] In order to find that there was an illegal distribution, we must be satisfied that: (i) a trade was involved that (ii) constituted a distribution for which (iii) no preliminary prospectus or prospectus was filed, and (iv) there was no available exemption from the prospectus requirement. If all elements are present, the Panel must determine if each Cornwall, Simpson and Xavier traded in the securities in question.

[66] Section 53(1) of the Act provides:

> 53.(1) No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company where such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefore obtained from the Director.

[67] The term "trade" is defined in section 1(1) of the Act:

> "trade" or "trading" includes,
>
> (a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,
>
> …
>
> (c) any receipt by a registrant of an order to buy or sell a security,
>
> …
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[68] The term "distribution" is defined in section 1(1) of the Act to mean:

> a trade in securities of an issuer that have not been previously issued.

[69] Section 73(1)(a) together with paragraph 10 of section 35(2) of the Act set out an exemption to the prospectus requirement of section 53. Section 73(1) provides:

> 73(1) Sections 53 and 62 do not apply to a distribution of securities,
>
> (a) referred to in subsection 35(2), excepting paragraphs 14 and 15 thereof;

[70] The relevant portion of section 35(2) reads:

> 35(2) Subject to the regulations, registration is not required to trade in the following securities:
>
> …
>
> 10. Securities of a private company where they are not offered for sale to the public.

(b) Cornwall and the Evidence

[71] Cornwall was registered as scholarship plan dealer under the Act and was the sole director of CGC Financial.

[72] Staff alleged that Cornwall participated in an illegal distribution of securities contrary to section 53(1) of the Act by trading in the securities of the Private Companies where there was no exemption available.

(i) Distribution of Faelen and Camcys shares without a prospectus

[73] In his final written submissions, Cornwall stated:

> Cornwall was introduced to an idea by the responded (sic) Simpson. As per the evidence of Simpson, both respondents researched the idea and sourced out the required licensed agents needed, a Chartered accountant, and a securities dealer. The respondent Cornwall came to the conclusion that it was both legal, and possible to transfer funds from a locked in registered retirement savings plans to purchase shares in controlled private Canadian corporations. This would allow the clients to receive loans on their purchase with the security being the shares of the corporation. The plan was to have the clients pay back the loan and the monies would be returned to the clients' (sic) trust that held their LIRA and redeem the shares of the private corporation. As given in evidence those clients that did repay had their shares redeemed in full. This was a contract agreement. The respondents Cornwall and Simpson honoured the contract by providing the loans. Clients that refused to repay the loans did in fact cause their LIRA to be crashed. I therefore respectfully submit that it was the clients that caused the investments to be crashed and not the respondents that caused the LIRA to be crash (sic).

[74] Further, in his written submissions, Cornwall stated:

> The respondent Cornwall sought the advice of a Chartered Accountant who confirmed to Cornwall, and the respondent Simpson both orally and in writing that what they were doing was appropriate, and that the private corporations were indeed qualified under all tax laws for the province of Ontario and indeed for Canada. The respondent Cornwall, along with Simpson contacted that responded (sic), Kathryn Cook, who provided them with the required documentation, being the letters of opinion (entered as an exhibit). The respondents Cornwall and, Simpson advertised and obtained clients who needed help. The excess monies were to be invested into legitimate investments through the broker and Co-Respondent Xavier. The respondent Cornwall had no further input with any of the excess funds within the annuitants' (sic) account.

[75] Boyle testified that Cornwall was involved in issuing shares in all the Private Companies and in seeking out investors for Faelen and Camcys. In particular, Boyle testified that he had identified that there were 26 investors holding 61,130 Faelen shares and 33 investors holding 115,480 Camcys shares. Their investments totalled $611,300

and $566,400 for Faelen and Camcys, respectively. Boyle testified that there is no record of any Faelen share redemptions and none of the parties presented evidence showing any Camcys share redemptions.

[76] In his voluntary interview, Cornwall admitted that he sought out investors using, in addition to other means, a newspaper ad in the *Toronto Sun*. This ad stated in its entirety "Do you need money from your locked-in RRSP or LIRA? 1-888-877-7765".

[77] With respect to Camcys, Roney testified that Cornwall had raised money for his business through a share offering. He testified that he did not know any of the Camcys investors and never met them. He also did not know how investors were found or what benefits Cornwall was receiving.

[78] Investor One was a Camcys investor and had invested $10,100. He testified that he learned about investing in Camcys through a newspaper ad that discussed getting access to one's locked-in RSP. He contacted the person in the ad and spoke with Cornwall. Cornwall then met with Investor One in his home where he told Cornwall about his $11,000 locked-in RSP. Cornwall explained that he could access part of those funds through a loan by investing in his companies, one of which was a new high-tech "dot-com" company named Camcys. Cornwall gave him a prospectus-like package.

[79] Investor One further testified that Cornwall was the only person he dealt with in respect of his Camcys investment, except for one occasion when he tried to call Xavier.

[80] Investor One testified that he received the Camcys Offering Memorandum, either at his initial meeting with Cornwall or later in the mail. During the hearing, Investor One produced a letter written from CGC Financial that enclosed the Camcys Offering Memorandum.

[81] The offering memoranda for Faelen and Camcys were both titled "Offering Memorandum: Private Corporation Exemption, Class B Common Shares" (the "Faelen Offering Memorandum" and the "Camcys Offering Memorandum"). They stated on their front page that "The securities described herein are offered for sale without a prospectus pursuant to the Private Corporations Exception of the Securities Act." They also stated that each was a "qualified small Business Property as defined in … the Income Tax Act."

[82] With respect to the Faelen Offering Memorandum, it stated the value of Faelen shares was $10 per share. It also stated that Marchi "was in the process of building a Hi-Tech seminar station in the Perth area." Marchi informed Boyle that Faelen did not have a location and that they were still scouting prospective locations.

[83] With respect to the Camcys Offering Memorandum, it stated that the value of Camcys shares was $5 per share and included a sales forecast, pro forma income statements for three years, and a description of the market size with a "conservative estimate of $10,000,000 in sales over three years…" It also stated "Camcys Inc. will be profitable within the first year of operation, and is expected to have … gross sales of over

$1,000,000 within the first two years." Roney did not recall ever seeing the Camcys Offering Memorandum and did not know who prepared it. He testified he provided no input into its content and that he did not understand how the shares were valued at $5 per share. He also testified that he did not provide input about the market size, that he was not aware of any sales forecasts for Camcys, and that Camcys did not have any sales.

[84] Finally, Staff presented evidence that financial statements were prepared without regard to either Faelen's or Camcys' actual state of affairs and that Cornwall delivered these financial statements to investors.

[85] Staff presented two balance sheets for each of Faelen (May 30, 2000 and January 30, 2001) and Camcys (November 30, 2000 and February 28, 2001). They also presented an interim income statement and a cash flow projection for the year 2001 for Camcys. Investor One testified that he received the Camcys balance sheets, income statement, and cash flow projection. He produced copies from his records during the hearing.

[86] The Faelen balance sheet as of January 30, 2001 showed assets of $1,036,850 – including $21,000 in cash and $590,000 in long-term investments. However, Faelen's bank account statements showed a balance of approximately $3,300 during the same period and Boyle testified that Faelen had no long-term investments.

[87] The first of Camcys' balance sheets stated that as of November 30, 2000, Camcys had $57,875 in assets. The second balance sheet stated that as of February 28, 2001, Camcys had $728,301 in assets.

[88] Camcys' income statement showed sales of $16,050 and expenses of $11,140 – including $3,000 for salary and wages – for the month ending October 31, 2000. The cash flow projection showed a forecast of income and expenses for 2001 for a 12-month period.

[89] During the hearing Roney was shown the Camcys income statement and cash flow projection. He testified that the income statement was incorrect as Camcys had no sales at the time. Further, he had no employees and did not know of any expenses relating to salary and wages. Roney testified that he was not paid as a director and received no money other than for the purposes of paying Camcys' bills. With respect to the cash flow projection, Roney testified that he had never seen this document and that there were no sales forecasts.

(ii) Flow of funds and documents used to effect share purchases

[90] Staff presented evidence at the hearing to demonstrate the flow of funds from the investors' locked-in RSPs to Faelen and Camcys and subsequently to CGC Financial.

[91] With respect to the flow of funds from the locked-in RSPs to Faelen and Camcys, the evidence showed Xavier played a significant role in that flow of funds; Staff's evidence with respect to Xavier is discussed below.

[92] Staff also presented evidence showing that Cornwall was also involved in creating the necessary documents to effect the share purchases.

[93] Staff presented evidence that Cornwall had investors complete Keybase new plan applications. Investor One testified that during their initial meeting, Cornwall had him sign numerous documents. One of these documents was a Keybase new plan application that Cornwall had filled out dated October 14, 2000. It included a "know your client" section. Investor One remembers discussing his investment knowledge, but does not recall discussing his investment objectives.

[94] Staff also presented evidence showing Cornwall arranged for payments from Faelen and Camcys to CGC Financial.

[95] Roney testified that Cornwall had him write Camcys cheques for large amounts, in the range of $10,000, but he could not remember to whom he made out these cheques. He also testified that Camcys held CGC Financial shares, but he did not know why.

(iii) Cornwall arranged loans to investors using invested amounts

[96] In the Amended Amended Statement of Allegations, Staff alleged Cornwall, through CGC Financial, provided loans to investors using the funds from their investments in Faelen and Camcys.

[97] Staff presented loan documentation for seven Faelen investors and five Camcys investors. This loan documentation included the following:

- Loan agreements between each investor and CGC Financial, seven of which Cornwall had signed on CGC Financial's behalf;

- Assignments of shares, whereby investors assigned their shares in Faelen or Camcys as collateral for the loan. Cornwall had signed seven of these assignments;

- CGC service contracts for some of these investors. The service contracts were either unsigned or signed by Xavier or Cornwall. Those with dollar amounts required the investor to pay "professional fees" ranging from $1,350 to $2,400 in return for the loan;

- Fee agreements for some of the investors.

[98] Staff provided evidence that Cornwall had investors sign these loan documents. Investor One testified that at their initial meeting Cornwall had him sign a loan agreement, an assignment of his Camcys shares, a service contract, and a fee agreement.

(iv) Consequences of the Transactions

[99] Staff presented evidence that Faelen and Camcys investors suffered significant consequences with respect to this scheme. For example, Investor One was reassessed by

Revenue Canada and as a result of his participation in the investment and loan transactions, was required to pay $2,000 in taxes.

[100] Investor One testified that he invested $11,000 with Cornwall – $10,100 of which went into Camcys shares. The $10,100 investment was included in Investor One's income for the 2000 taxation year because it failed to meet the criteria for a "qualified investment" under the Income Tax Act and property in his locked-in RSP constituting the Camcys shares was used as security for a loan.

[101] Investor One testified that he actually received $6,500 out of the $11,000 he invested and only made one loan payment. He understood that his failure to make further loan payments meant B2B Trust kept his Camcys shares.

[102] Boyle estimated – based on a figure of 65% of the total amount invested being returned to investors – that Cornwall/CGC Financial received gross proceeds of approximately $367,000. Although this amount is an estimate and is imprecise we do find that Cornwall/CGC Financial received a substantial amount.

(c) Simpson and the Evidence

[103] Simpson was not registered under the Act. He was the sole director of First Financial.

[104] Staff alleged that Simpson participated in an illegal distribution of securities contrary to section 53(1) of the Act by trading in the securities of the Private Companies where there was no exemption available.

(i) Distribution of Themis and Stramore shares without a prospectus

[105] In his written submissions, Simpson confirmed his involvement in the program. He wrote:

> It is my respectful submission that the respondent Simpson was introduced to the investment program by Ron Nadon and as per the evidence of Simpson, he researched the idea and with John Cornwall's assistance sourced out the required licensed agents needed, a Chartered accountant, and a securities dealer. The respondent Simpson came to the conclusion that it was both legal, and possible to transfer funds from a locked in registered retirement savings plan to purchase shares in controlled private Canadian corporations.
>
> The respondent Simpson believed that both companies, Themis Hospitality Inc. and Stramore Inc. qualified as small business investments. Simpson also believed that it was legal to have as many as 25 shareholders in a private corporation without issuing a prospectus.

[106] Boyle testified that Simpson was involved in issuing shares of and seeking out investors for Themis and Stramore.

[107] Boyle testified that there were 24 investors holding 24,576 Themis shares and six investors holding 16,510 Stramore shares. Their investments in Themis and Stramore

totalled $614,400 and $165,100 respectively. However, Staff presented other evidence showing a greater investment in Stramore. Stramore's shareholders' register and deposit slips from its bank account showed that the six Stramore shareholders invested $190,000.

[108] With respect to Themis, Duthie testified that Simpson had suggested a Themis share offering as a means of raising necessary equity and that Simpson would seek out investors. Duthie testified that he never had any contact with the investors and did not know what Simpson had told them. He also did not know what fees, if any, Simpson was collecting.

[109] Duthie testified that in total Themis received approximately $140,000 of the approximately $600,000 invested and that Themis has since redeemed most of the shares at a price of $4 or $5 per share.

[110] Staff also presented evidence showing that Stramore redeemed Investor Six's shares in Stramore for $16,000 on April 9, 2002. This was done in response to Investor Six having paid the entire balance of her loan to First Financial.

[111] Staff also presented two documents Simpson had prepared that resembled offering memoranda.

[112] Each of these documents was titled "Investment Opportunity: Private Corporation Exemption, Class B Common Shares" (the "Themis Offering Memorandum" and the "Stramore Offering Memorandum"). They stated on their front page that "The securities described herein are offered for sale without a prospectus pursuant to the Private Corporations Exception of the Securities Act." They also stated that each was a "qualified Small Business Property as defined in … the Income Tax Act".

[113] The Themis Offering Memorandum stated that the value of Themis shares was $25 per share. Duthie testified that he did not contribute to the contents of the Themis Offering Memorandum and did not see it until after the shares were issued. He testified that he did not know how Simpson decided to value the shares at $25.

[114] The Stramore Offering Memorandum stated the value of Stramore shares was $10 per share. Staff presented a letter Simpson wrote to B2B Trust stating that to the best of his knowledge, "a purchase price of $10 per unit for [Stramore] securities represents the fair market value."

[115] The Stramore Offering Memorandum also identified legal, accounting, engineering and banking consultants who were purportedly connected with the Stramore offering.

[116] Boyle testified that Simpson had told him that the legal consultants "were not necessarily his legal counsel … and that they played no role in approving or creating [the offering memorandum]". Simpson also told him that the accountants "played no role whatsoever in the creation of this document" and "they were unaware that [Stramore]

was doing an offering". Simpson told him that the engineers "had … developed some engineering package".

[117] Finally, Staff presented balance sheets for Stramore and Themis each as at May 31, 2000. Staff's evidence demonstrated significant inconsistencies and untrue entries in them.

[118] Stramore's balance sheet showed assets of $194,102.19, which included land at $179,102.19. The total liabilities were $192,548, including a mortgage of $161,000 and $31,000 owing to shareholders.

[119] However, Boyle testified that Stramore's only asset was vacant land purchased for $175,000 in Smith Falls, Ontario and that this land was assessed for tax purposes at $86,000. There were also significant encumbrances on the property. Staff presented evidence from the local land registry office showing three mortgages on the vacant land totalling $236,000. Boyle testified that he had confirmed there had not been any payments on two of the mortgages and that there was no evidence any of the mortgages were discharged.

(ii) Flow of funds and documents used to effect share purchases

[120] Staff presented evidence to demonstrate the flow of funds from investors to Themis and Stramore and subsequently to First Financial.

[121] With respect to the flow of funds to Themis and Stramore, Staff provided evidence that Simpson had an understanding of this flow of funds to Themis and Stramore.

[122] Duthie testified that Simpson explained that of the $25 per share investors paid, $20 was returned to Simpson or First Financial. He testified that, whenever there was a purchase of Themis shares, Themis would receive cheques for amounts reflecting $25 for each share purchased.

[123] Staff also presented evidence showing Simpson arranged for payments from Themis and Stramore to First Financial.

[124] Simpson told Duthie that $20 out of the $25 per share investors paid for Themis shares was returned to Simpson or First Financial. Duthie testified that once he received funds for Themis shares, Simpson had him write cheques to First Financial for amounts equalling $20 per share. Duthie testified that he did not know what First Financial was doing with these funds or about any loans to the investors.

(iii) Simpson arranged for loans to investors using invested amounts

[125] Staff alleged Simpson had First Financial provide loans to investors using the funds invested in Themis and Stramore.

[126] During their investigation, Simpson gave Staff copies of loan documentation for all six Stramore investors. At the hearing, Staff presented these documents with respect to one of the Stramore investors, Investor Seven.

[127] Investor Seven purchased 3,100 shares of Stramore for a purchase price of $31,000. Investor Seven's loan agreement with First Financial provided for a loan to him of $24,800 and was signed by Simpson on behalf of First Financial. Investor Seven had also assigned his 3,100 Stramore shares to First Financial as collateral for the loan. However, Simpson's records showed that Investor Seven's loan was $21,500 and that he received $19,000 and that the following "disbursements" were made with respect to the loan: $1,500 to Cornwall, $200 to Cook, $500 to Xavier, and $300 to Simpson.

[128] Staff also provided loan documentation for Investor Eight, an investor in Themis.

[129] Investor Eight purchased 360 shares of Themis. Investor Eight's loan agreement with First Financial stated that First Financial agreed to loan her $7,200 at an annual interest rate of 5%. The total amount of principal and interest to be repaid was $9,719.64. This was accompanied by an assignment whereby Investor Eight assigned her 360 Themis shares to First Financial until the entire amount of her loan, including interest and any administration costs, was paid. Investor Eight had also signed a service contract requiring her to pay $1,400 in "professional fees" to CGC Financial if she received the loan. It also provided that First Financial would withhold these fees from the loan amount and pay them directly to CGC Financial. Finally, Staff presented evidence that Investor Eight signed a fee agreement.

(iv) Consequences of the Transactions

[130] As a result of their participation in these transactions, Themis and Stramore investors suffered significant consequences. We accept the evidence presented by Staff that subsequent to his involvement in the scheme, Investor Two was required to pay $6,000 in tax to Revenue Canada and that his Themis shares were "cashed out" of his account without him knowing what had happened, and that Investor Four was subsequently required to pay $18,000 to Revenue Canada, which she is still paying.

[131] Based on a figure of 65% of the total amount invested being returned to investors, and Themis retaining $140,000, approximately $130,000 was received by Simpson/First Financial.

(d) Xavier and the Evidence

[132] Staff alleged that Xavier participated in an illegal distribution of securities contrary to section 53(1) of the Act by trading in the securities of the Private Companies where there was no exemption available.

[133] Staff submitted that Xavier, by opening client accounts at Keybase and by processing new client application forms for various trust companies (B2B Trust, Maple Trust, Laurentian Bank and Canadian Western Trust), participated in the transactions.

Further, Staff point out that Xavier's name appeared on the documentation as the registered representative/investment advisor.

[134] Xavier provided blank new client application forms for Keybase, blank new client application forms for various trust companies, and blank Revenue Canada T2033 forms to Cornwall to fill out when he met with investors. In a majority of cases, Xavier did not meet personally or speak with the investors at the time these forms were filled out. These forms were returned to Xavier completed and signed, including the know your client information. In some cases, the forms were sent out by courier and returned to his attention. Subsequently, Xavier purported to confirm with the investors the information contained in the forms. Xavier's name appears as the registered representative/investment advisor on the accounts that invested in the Private Companies.

[135] Xavier's own evidence confirmed that he was aware of the distribution of securities of the Private Companies to his clients. Following his testimony, the Chair of the Panel summarized his evidence as follows:

> THE CHAIR: -- just to clarify an earlier question. It seems from looking at Exhibit 20, which is the list of clients, Mr. Xavier, that all of these people referred to, in at least 8 circumstances, as your counsel describes them, were clients of yours. *So, I'm assuming -- I understand your testimony when you say you did not know about the loans. But insofar as you assisted in collapsing the original RRSP and its transfer into an account and had access to the account records and you would see the trades from time to time, I take it that you understood that some of that money was being utilized by those clients to purchase Themis, Faelen and Camcys or something else.* So, you knew it was being employed in that fashion, and you're saying you weren't involved in the sale of those and that you didn't know about the loans connected with them. That be a fair statement?
>
> THE DEPONENT: That would be a fair statement, sir.
>
> [Emphasis added.]

[136] In his voluntary interview with Staff, Xavier admitted advising investors to invest in Themis. He stated:

> Q. Did you ever convince anyone not to go into one product, but they would insist on and throw them into a different product?
>
> A. There were a couple, yes, that ended up going to Themis.
>
> Q. And that was at your suggestion?
>
> A. Yes, from the discussion, yes.

[137] On cross-examination, Xavier was read this passage and questioned on it, as follows:

> Q. … Now, I'm going to suggest to you, sir, that that's advising people. Would you agree with me?
>
> A. Yeah, that would appear so.

Q. So when you said you never advised anybody, that's not entirely true, is it?

A. I didn't want it to appear that I was providing anybody advice, but I guess the way I've said it here, it would appear that I have.

…

A. I didn't perceive it that way at the time, but I guess that would be the case.

Q. Okay. But you did provide investment advice to [Investor Nine] to invest in Themis Hospitality?

A. That's correct.

Q. That's right?

A. Yes.

Q. And that's something that you knew you weren't registered to do at the time?

A. That is correct.

[138] Further, despite Xavier's refusal to acknowledge his awareness of the loans as an integral part of the transactions, we find that Xavier signed, at various times, a number of documents relating to loans to investors that were admitted as evidence. He signed on behalf of CGF Financial or First Financial as lender or as a witness.

[139] We find the signing of these documents by Xavier constitutes clear and convincing evidence that he was aware of and furthered the investment and loan scheme.

[140] Further, during his cross-examination by Staff, Xavier admitted that he participated in the distribution program and that without him, the transactions would have never occurred. He testified as follows:

Q. All right. Now, I'm going to suggest to you that for all of these 87 transactions, you were a necessary part of the transaction. Would you agree with that?

A. That's true.

Q. Without you, these transactions never would have occurred?

A. True.

[141] Despite the fact that Xavier denied trading small business securities because he was only registered to trade securities in mutual funds, he admitted on cross-examination that he facilitated the purchase of a small business security in regard to another investment by Investor Four. He testified:

Q. Well, let's go to point 6 then, on that same page: "The purchase of the small business securities is suitable for my client and is appropriate for my client's investment needs." (As read) Do you see that?

A. I see that, yes.

Q. And that's not talking about mutual funds, is it?

A. No, it is not.

Q. *That's talking about small business securities, correct?*

A. Yes, that's correct.

Q. *And just below there is your signature. Do you see that?*

A. *Yes, I do see that.*

Q. So you're signing this, warranting or indemnifying MRS, saying that, 'The purchase of the small business securities is suitable for my client.' Would you agree with that?

A. I imagine that is what that is saying, yes.

Q. And you're now saying that that is not what you were doing?

A. That is correct.

Q. And are you still going to take the position that you've done nothing wrong in relation to these 87 investments?

A. *In my heart of hearts, yes. But it's clear that I could have been more diligent, as per the requirement.*

[Emphasis added.]

[142] With respect to the requirement to file a prospectus, we note that if the respondents relied on the exemptions for private companies contained in sections 73(1)(a) and 35(2), paragraph 10 of the Act, such an exemption would only be available in the case of "securities of a private company where they are not offered for sale to the public." In this case, advertisements were placed in newspapers asking if persons needed money from their locked-in RSPs or LIRAs. Those who responded were invited to participate in an arrangement involving the purchase of securities and the receipt of loans, and a number did so. The sales of the securities constituted a sale to the public and therefore the respondents cannot enjoy the benefit of the private company exemption.

[143] Furthermore, once the facts establish that trading has occurred, the burden of proof rests with the Respondents to show that the appropriate exemption was available.

[144] We note that Xavier did not have proper understanding of the available exemptions under the Act, and that there were no exemptions available in respect of the trades which are the subject of this hearing.

(e) Conclusion on Illegal Distribution of Securities

[145] We find that Cornwall and Simpson solicited the public through newspaper advertisements, met with investors and advised them to purchase shares in the Private

Companies. Cornwall and Simpson created three of the four Private Companies and supporting documents used to persuade the public to make these investments. They subsequently completed paperwork to open accounts, obtained signed directions to purchase shares, transfer funds between trust companies, ensured share certificates were signed by the principals of these Private Companies and forwarded necessary documents to a registrant, Xavier.

[146] Xavier, as the registered representative involved in the transactions, was an integral component of the scheme. Several times in cross-examination, Xavier admitted that without him these transactions *would not have occurred* and that he was a necessary part of each transaction.

[147] Xavier acted in a dual role: on behalf of Cornwall and/or Simpson (stock promoters) and on behalf of investors as their representative. Xavier received compensation from either CGC Financial or First Financial for each and every transaction, and was listed on account documentation as the registered representative/investment adviser.

[148] Xavier's role in these transactions was much more than as a mutual fund adviser or mere conduit. As a registrant, he received a package of documents from Cornwall or Simpson including directions to purchase Private Company shares. Xavier processed these forms as the investment advisor for all of the investors as well as provided administrative services in the course of an arrangement where investors were issuing orders to buy Private Company shares and to receive loans for which such shares were pledged as security. He received remuneration on a per account basis. The amount increased from $200 per account in June 2000 to $1200 in early 2001. We consider these to be acts in furtherance of a trade.

[149] We find that Simpson/First Financial, Cornwall/CGC Financial and Xavier were all involved in the trades of securities to the public where there was no prospectus filed and no exemption available contrary to section 53(1) of the Act.

2) Did Xavier act contrary to section 1.5 of Ontario Securities Commission Rule 31-505 by failing to ascertain the general investment needs and objectives of investors purchasing shares of the Private Companies and the suitability of the proposed purchases or sales of the securities for these investors?

[150] Keybase was a dealer in the category of Mutual Fund Dealer, Limited Market Dealer and Scholarship Plan Dealer. On December 31, 2001, Keybase changed its registration category so that it was no longer a scholarship plan dealer.

[151] Xavier had been registered under the Act as a salesperson since September 23, 1999 with Keybase; but he was restricted to the "sale of mutual fund securities only". His registration depended on his continued employment with Keybase.

(a) The Law and the Evidence

[152] A registrant's obligations include ascertaining the client's investment objectives and suitability of investments for the client. These are set out in section 1.5 of the Commission Rule 31-505 which states:

> **1.5 Know your Client and Suitability** - (1) a person or company that is registered as a dealer or adviser and an individual that is registered as a salesperson, officer or partner of a registered dealer or as an officer or partner of a registered adviser shall make such enquiries about each client of that registrant as
>
> …
>
> (b) subject to section 1.7, are appropriate, in view of the nature of the client's investments and of the type of transaction being effected for the client's account, to ascertain the general investment needs and objectives of the client and the suitability of a proposed purchase or sale of a security for the client.

[153] We now turn to the evidence.

(i) Xavier did not meet the know-your-client and suitability requirements

[154] Staff presented evidence that Xavier did not have contact with many of the Themis, Stramore, Faelen and Camcys investors and that he made investments for clients without first consulting them.

[155] A new plan application was required for each new Keybase customer. Staff presented 44 Keybase new plan applications, which they had received from Xavier. Many of them indicated that Keybase was the dealer and Xavier the representative for that account. For example, Staff presented a Keybase new plan application for Investor One signed by Xavier. However, Investor One testified that Cornwall completed the Keybase new plan application with him, not Xavier. He testified that he never met or spoke with Xavier and that he only learned Xavier's name because it appeared as the contact person on his B2B Trust statements.

[156] There was also evidence that some of the investors had never seen the trust account opening forms. During his testimony, Staff showed Investor One a B2B Trust account opening form in his name dated February 22, 2001 and purportedly signed by him. He testified that he had never seen this document and that the signature did not look like his signature.

[157] Staff presented evidence of two account statements from AIM Trimark detailing Investor One's investment in units of AIM Trimark's "Select Growth Fund". They indicated that Xavier was Investor One's financial advisor. Furthermore his B2B Trust statements showed the purchase of units in the AIM Trimark fund. However, Investor One testified that he never gave instructions to purchase units in this fund. Investor One

testified that he had never met Xavier and never spoke to him; in fact, he left a message for him questioning an investment but never received a response. Investor One was only aware of Xavier's name by reading it on his B2B Trust Statements, *after his investment in Camcys.* Investor One called Xavier to ask him about the AIM Trimark investment and left a message; Xavier never returned his call.

[158] Investor Two testified that he transferred $20,440 from his locked-in RSP, invested $19,000 in Themis, received a $12,000 loan and in fact made 6-8 monthly payments of $300 in an attempt to repay the loan. Investor Two was subsequently required to pay $6,000 in tax to Revenue Canada as a result of this investment and loan. The Themis shares were subsequently "cashed out" of Investor Two's account and he testified he had no idea how that happened.

[159] Investor Two testified that he never met Xavier, never spoke to Xavier and when asked about investments made in mutual funds in his account, he testified that he had never heard of them and had never had a conversation with anyone about them. When suggested, in cross-examination, that it might have been possible that he spoke to Xavier about those specific mutual funds, Investor Two was adamant that he had never discussed them.

[160] Investor Two testified that he was never asked any questions about investment objectives or risk tolerance when he signed documents, and he never saw the Themis Offering Memorandum. The only conversations he had with Xavier related to transferring funds from Themis to an AGF Fund or to transfer his entire portfolio to his present investment broker.

[161] Investor Three transferred $45,000 from a locked-in RSP, invested $17,000 in Faelen, and eventually received $15,000 in loans. There was some evidence that an unspecified amount may have been transferred elsewhere. As of September 2002, the value of both of his RSP accounts was $5,107.87.

[162] Investor Three testified that he spoke to Xavier only twice and that he was never asked "Know Your Client" ("KYC") questions.

[163] A number of Keybase and trust company documents were purportedly signed by Investor Three, but he testified that they did not contain his signature and the investments were unfamiliar to him. Investor Three asserted that he did not provide instructions for the purchase of mutual funds in his portfolio. Furthermore, he did not provide instructions to transfer his investments from Canadian Western Trust to MRS Trust.

[164] Investor Four and Investor Five are married to each other. They both testified that various documents, including an MRS Plan Application, a Revenue Canada form and a document dealing with disclosure of adviser fees, contained signatures which were not theirs. Investor Four testified she had never met Xavier, and only spoke to him on the telephone after these investments were made to find out what was going on. Xavier never advised her of the specifics of her investments, only that she would eventually get

back what she had put in. Repeated efforts to obtain documentation from Xavier on her investments yielded no results. Investor Five never spoke to Xavier.

[165] Investor Four did not recognize any of the mutual fund investments and did not provide any specific instructions with respect to the purchase of investments. Furthermore, Investor Four and Investor Five were never asked any questions about investment objectives or risk tolerance.

[166] As a result of her involvement in this scheme, Investor Four was required to pay $18,000 to Revenue Canada, which she is presently paying.

[167] We find that the evidence provided by witnesses who testified with respect to the role and conduct of Xavier was generally consistent and compelling. Further, we find their evidence generally consistent with the evidence of the respondent Simpson, who explained how the scheme worked. Their evidence consistently demonstrated that they did not have discussions with Xavier about their investment. Their evidence also established that account documentation was inconsistently completed and that the information was inadequate and/or incomplete.

[168] Furthermore, Xavier did not speak on the telephone with most clients when KYC forms were completed. He typically provided blank new application forms for Keybase and the various trust companies to Cornwall and expected that they would be returned to him completed and signed.

[169] Xavier admitted the KYC assessments and documentation were his responsibility, and that the various trust companies were relying on him to complete proper KYC assessments and documentation for these transactions.

(b) Conclusion on Know-Your-Client and Suitability Requirements

[170] The evidence establishes that Xavier never personally met with most of the clients to conduct a KYC assessment at the time the account opening documentation was completed. Xavier testified that he only met personally with eight or ten investors and for the others he received the documentation by courier or from Cornwall.

[171] Despite Xavier's assertion during his testimony that he consistently followed-up on the telephone with the investors, the evidence does not support his version of the facts. Some investors who testified at the hearing did not recall his ever contacting them; some of the information on the forms was incomplete and/or inaccurate; and some of the account documentation that was submitted by Xavier contained signatures that witnesses disavowed.

[172] We conclude that Xavier abdicated his duties as a registrant and contravened section 1.5 of Ontario Securities Commission Rule 31-505 by failing to ascertain the general investment needs and objectives of investors purchasing shares of the Private Companies and the suitability of the proposed purchases or sales of the securities for these investors.

3) Did Xavier act contrary to section 25(1) of the Act by failing to process trades through Keybase?

[173] Staff alleged that by not processing trades though Keybase, Xavier breached section 25(1) of the Act.

[174] Staff submitted that Xavier was required, as the registered representative, to process these transactions though his sponsoring dealer, Keybase, something he failed to do for all 87 of these transactions. Staff submitted that there is a critical distinction between dealer and adviser registration. Any trade in a security must be processed through the dealer, which in this case was Keybase.

[175] Xavier submitted that he did not process any transactions with respect to the Private Companies through Keybase, as the purchases were directed by the investors themselves and the transfer forms sent to the trust companies did not require the signature of an advisor, only that of the client.

[176] Xavier submitted that the purchases of the Private Companies were processed through the trust companies who were dealers and thus, he did not breach section 25(1) by not processing these purchases through Keybase.

[177] Xavier also submitted that he was only registered as a mutual fund salesperson and therefore knew that he could not advise on or execute trades of securities other than units of mutual funds. If he had attempted to do so, all a trust company would have had to do was look at his salesperson code to discern that he could not be putting through a trade of anything other than a mutual fund on a client's behalf. Private Company purchases could have been made whether or not Xavier was involved.

(a) The Law and the Evidence

[178] Section 25(1) of the Act states:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer.

[179] This section requires that in order to trade in a security, Xavier must not only be registered as a salesperson with a dealer, but must also be acting on behalf of that dealer when making the trade.

[180] The requirement that an individual be registered in order to trade in securities is an essential element of the regulatory framework put in place to achieve the purposes of the Act.

[181] In *Brosseau v. Alberta Securities Commission* (1989), 57 D.L.R. (4th) 458 (S.C.C.) at para. 35, the Supreme Court of Canada acknowledged that "securities acts in general can be said to be aimed at regulating the market and protecting the general

public." Pursuant to section 25 of the Act, a person or company is prohibited from trading in a security unless the person is registered. Through the registration process, the Commission attempts to ensure that those who engage in trading activities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards.

[182] This was discussed further by the Supreme Court of Canada in *Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 at paras. 11-15, as follows:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons who therein carry on such a business. For the attainment of this object, trading in securities is defined in s. 14; **registration is provided in s. 16 as a requisite to trade in securities….**
>
> The Act Respecting Securities, 3-4 Elizabeth II, c. 11, is not marketing legislation within the meaning attending the legislation considered in these cases. In order to protect the public against fraud, it provides for the establishment and operation of a control and supervision over the conduct, in the Province of Quebec, of person engaged, therein, in carrying on the business of trading in securities…[emphasis added]

[183] Registration serves an important gate-keeping mechanism ensuring only properly qualified and suitable individuals are permitted to be registrants. The investing public is entitled to expect and rely on the fact that any one who acts as an advisor has satisfied the necessary proficiency and good character requirements.

(i) Xavier's Registration

[184] It is not disputed that Xavier is registered only as a mutual fund salesperson with Keybase. There is also no dispute that Xavier processed all of the trades of mutual funds through Keybase but he did not process the trades in the Private Companies in question through Keybase.

[185] As previously found, Xavier participated in the illegal distribution of the shares of the Private Companies. Given that he was registered as a salesperson with Keybase and the transactions in question were trades in securities, he should have processed the trades through Keybase. There is no dispute that these transactions were not processed through Keybase and it is clear that Xavier knew that he would not be able to do so since his registration was limited to mutual fund trades.

(b) Conclusion on Trading Without Registration

[186] Accordingly, we find that Xavier was a registrant who acted contrary to section 25(1) of the Act by failing to process trades through Keybase.

4) Did Cornwall/CGC Financial, Simpson/First Financial, Xavier and Cook engage in conduct contrary to the public interest?

(a) Cornwall/CGC Financial and Simpson/First Financial

[187] Staff submitted that Cornwall and Simpson, as the sole directors of CGC Financial and First Financial, respectively, were the architects of these transactions. They argued that members of the public in need of immediate financial assistance were targeted, provided misleading and unreliable information and induced to make highly risky investments combined with loans with high administrative fees.

[188] We accept the evidence that Cornwall and Simpson arranged for the issuance of shares in the Private Companies and sought out investors. They placed advertisements in a number of newspapers offering people the opportunity to gain access to funds in their locked-in RSPs. Simpson and Cornwall had investors sign documentation that permitted the transfer of funds from their locked-in RSPs into separate trust accounts for each investor for the purpose of investing in one of the Private Companies. These trust accounts were held at the following trust companies: Maple Trust Company, Canadian Western Trust, MRS, B2B Trust, and Laurentian Bank.

[189] Simpson and Cornwall then arranged the purchase of shares of the Private Companies using the funds in the trust accounts. On receiving the funds from the trust accounts, each of the Private Companies transferred a substantial portion of these funds to First Financial, in the case of Themis and Stramore, and CGC Financial, in the case of Faelen and Camcys.

[190] Simpson and Cornwall also had investors sign loan agreements with either First Financial, in the case of Simpson, or CGC Financial, in the case of Cornwall. The loan agreements provided that the principal amount of these loans was approximately 75% of the funds originally invested in the relevant Private Company. However, after deducting various fees, investors would only receive between 65 to 70% of the funds so invested from their locked-in RSPs. The loan agreements also provided that the shares held by investors in the Private Companies would be collateral for the loans.

[191] Cornwall/CGC Financial and Simpson/First Financial traded in securities without being registered to do so and for which no exemption was available. Also, they significantly benefitted from their participation in these transactions.

[192] We find that the four respondents took unfair advantage of people in need of immediate financial assistance. In particular Cornwall, as a registrant did not meet the high standard of conduct investors were entitled to expect.

[193] We find the respondents' conduct to be contrary to the public interest.

(b) Xavier

[194] Staff submitted that Xavier was fully aware of, and participated in a scheme for investors that involved the illegal distribution of shares of the Private Companies and the

subsequent loan to the investors of an amount equal to a significant percentage of the purchase price for the shares. These investments were highly risky and unsuitable for all the investors.

[195] Xavier admits to having received $45,700 from his participation in these transactions.

[196] We find that Xavier took unfair advantage of people in need of immediate financial assistance. As a registrant, he did not meet the high standard of conduct investors were entitled to expect.

[197] We find Xavier's conduct to be contrary to the public interest.

(c) Cook

[198] As stated above, Cook is a chartered accountant and was not registered in any capacity with the Commission. Staff alleged that Cook was an integral part of each and every one of the transactions at issue.

[199] Staff submitted that Cook acted contrary to the public interest by engaging in the following conduct:

- Cook signed documents that confirmed that "to the best of [her] knowledge" the shares of Camcys and Stramore represented a "fair market value." (This submission was denied by Cook through her counsel);

- Cook did not conduct any due diligence with respect to Camcys and Stramore;

- Cook signed letters confirming that the share purchases in the Private Companies were qualified investments for the annuitant's RRSP.

[200] Staff submitted that Cook's involvement must be viewed in a similar context to that of Xavier, that is, as a licensed professional entrusted with gatekeeper responsibilities.

[201] At the beginning of the hearing, Cook, through her counsel, made the following admissions of facts alleged in paragraph 14 of the Amended Amended Statement of Allegations:

> To facilitate the trust company's acceptance of the transactions as RRSP eligible investments, Cook signed a letter confirming the share purchases of Stramore, Faelen, Camcys and Themis were a "qualified investment for the annuitants (sic) RRSP."

[202] On November 24, 2005, Cook entered into an Agreed Statement of Facts ("Agreed Statement") with staff of the Institute of Chartered Accountants of Ontario in a disciplinary proceeding brought against her in respect of this matter. Through her counsel

in this proceeding, she admitted the Agreed Statement in its entirety and admitted the accuracy and completeness of the reasons given by the Discipline Committee.

[203] The following facts were admitted by Cook in the Statement of Facts at paragraphs 18-25, 29 and 33, and many of them were supported by the evidence given by Boyle and the witnesses called by Staff at the hearing:

> [18] Cook agrees that each opinion letter that she signed was prepared on her behalf by Xavier or others and each was presented to her fully completed for her signature.
>
> [19] Cook agreed to sign the opinion letters initially upon the payment of a fee of $100 per letter. Subsequently the fee was increased to $200 per letter.
>
> [20] Cook prepared invoices on account of the letters that she signed. Most of the invoices were prepared by Cook long after she had signed the letters and been paid for doing so. Cook prepared the invoices in preparation for an arranged meeting with Scott Boyle ("Boyle"), an investigator with the Ontario Securities Commission who was looking into the entire investment scheme. (…)
>
> [21] The total fees received by Cook received for signing all of the letters was $13,900 (…). Cook received no other benefit for her role in this matter.
>
> **Due Diligence**
>
> [22] Cook did not meet with any of the investors prior to signing the opinion letters (…) during the period April 1, 2000 through March 31, 2001.
>
> [23] Cook did not view incorporation documents or minutes of the companies. She did not speak with the principals of any of the corporations or view any of the corporate locations until after most of the opinion letters were signed. Some time after most of the opinion letters were signed Cook visited three of the corporate locations and met with three of the corporate principals. (…)
>
> [24] At the time of signing the opinion letters Cook had read section 146 of the *Income Tax Act* (…) and the *Income Tax Act Regulation* 4900(6) and 4900(12) (…) but she had no experience in interpreting or applying them. She sought no advice or other professional assistance in this respect and now understands that she should have done.
>
> [25] Before signing an opinion letter regarding the eligibility of shares of a particular corporation as a "qualified investment" for an RRSP, a reasonably competent Chartered Accountant would have reviewed the facts having regard to the rules as outlined in either Regulation 4900(6) or 4900(12) (…) of the Income Tax Regulations.

…

[29] Cook acknowledges that she failed to perform her professional services with integrity and due care by participation in this arrangement where, for a fee, she lent her name and designation to approximately 90 letters confirming her opinion that named investments were qualified investments for RRSPs.

Impact On Investors

[33] The most significant impact on investors, however, may be that the Corporations in this case do not qualify as eligible holdings in a self-directed RRSP. This may result in significant adverse tax consequences to the investors.

[204] Those witnesses at the hearing who participated in the purchase of shares of the Private Companies and received loans from CGC Financial or First Financial testified that they had been reassessed by Revenue Canada on the basis that the investments did not qualify as eligible holdings in a self-directed RSP and suffered adverse tax consequences.

[205] Based on the facts admitted, we find Cook's conduct to be contrary to the public interest.

CONCLUSION

[206] For these Reasons, we find that:

- Cornwall, Simpson and Xavier participated in an illegal distribution of securities contrary to section 53(1) of the Act by trading in the securities of the Private Companies for which there was no exemption;

- Xavier acted contrary to section 1.5 of Ontario Securities Commission Rule 31-505 by failing to ascertain the general investment needs and objectives of investors purchasing shares of the Private Companies and the suitability of the proposed purchases or sales of the securities for these investors;

- Xavier acted contrary to section 25(1) of the Act by failing to process trades through Keybase; and

- Cornwall/CGC Financial, Simpson/First Financial, Xavier and Cook engaged in conduct contrary to the public interest.

[207] Staff and the Respondents shall contact the Office of the Secretary within the next 10 days in order to set time limits for filing written submissions and setting a date for a hearing on sanctions.

Dated at Toronto, this 30th day of November, 2007.

"Robert L. Shirriff"
Robert L. Shirriff, Q.C.

"David L. Knight"
David L. Knight, FCA

"Margot C. Howard"
Margot C. Howard, CFA