Ontario Securities Commission
Commission des valeurs mobilières de l'Ontario
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IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER AND
MAN KIN CHENG (a.k.a. FRANCIS CHENG)

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the *Securities Act*)

Hearing: June 17, 2015

Decision: August 24, 2015

Panel:	Alan J. Lenczner	- Chair of the Panel
	AnneMarie Ryan	- Commissioner
Appearances:	Donna Campbell Tamara Center Clare Devlin	- For Staff of the Commission
	Gordon Capern Jeffrey Larry	- For Mitchell Finkelstein
	Tyler Hodgson	- For Paul Azeff and Korin Bobrow
	Simon Bieber Daniel Bernstein Terrence Liu	- For Howard Miller
	Janice Wright Greg Temelini	- For Francis Cheng

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REASONS AND DECISION

I. INTRODUCTION

[1] Pursuant to a merits decision issued on March 24, 2015, Mitchell Finkelstein was found to have contravened section 76 of the *Securities Act*[1] by tipping on three separate occasions.[2] Similarly, Paul Azeff contravened section 76 of the *Act* five times, Korin Bobrow twice, Howard Miller three times, and Francis Cheng twice, by insider trading and tipping. We now render our decision and reasons for the sanctions and costs consequent to the merits decision.

II. LEGISLATIVE FRAMEWORK

[2] The objectives of the *Act* are twofold: to protect investors from unfair or fraudulent practices and to foster confidence in fair and efficient capital markets.[3] The attainment of these objectives is extremely important because Canadian investors build wealth through the capital markets, either by trading directly for their own investment accounts, or indirectly, through funds and pension plans. Protecting the integrity of the capital markets is a fundamental policy objective of the Ontario Securities Commission (the "Commission" or "OSC"). The *Act*, which embodies the policy objectives, has been in existence for many decades.

[3] The objectives of the *Act* are supported by the requirements of full transparency, utmost integrity of registrants and a level playing field for all those who participate in, and engage with, the capital markets.

[4] Sanctions are meted out to those registrants and non-registrants who violate these principles, harm investors and abuse the integrity of the capital markets.

[5] Sanctions are imposed not to punish past conduct per se, but to remove the opportunity for violators, in the future, from harming investors and from lowering the integrity of the capital markets.[4] Protection of investors and of the market is a key consideration of sanctions.

[6] Quite apart from personal deterrence, the Supreme Court of Canada and various other courts and securities commissions have recognized, as the proper exercise of a sanctions regime, the need for general deterrence to discourage other registrants and non-registrants, who might be tempted to breach the *Act* or impair the integrity of the capital markets.

[7] Section 127 of the *Act* establishes the sanctions that may be imposed on those who have breached sections of the *Act*. They include trading bans, registration bans, director and officer exclusions and administrative penalties up to $1 million per breach of the *Act*. The imposition of one or more of these sanctions must take into account the number of breaches, the severity of each breach, the need to protect investors and capital markets in the future, the personal

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[1] R.S.O. 1990, c. S.5, as amended (the "*Act*").
[2] *Re Paul Azeff et al.* (2015), 38 O.S.C.B. 2983.
[3] Section 1.1 of the *Act.*
[4] *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 43.

circumstances of the respondents, and specific personal and general deterrence.[5] The layering on of sanctions must not aggregate to a result that is punitive rather than protective and deterrent. Punishment is not a permissible goal of sanctions.

[8] The hierarchy of sanctions will depend whether the respondent is a registrant or non-registrant. For a registrant, removal from the capital markets provides a good measure of the future protection for investors and the markets. Trading bans round out that protective shield. Administrative penalties mainly serve the personal and the general deterrence elements.

[9] For a non-registrant, trading bans and exclusion as a director and officer of a public issuer address future protective measures, but often an administrative penalty is also necessary to make the protection meaningful, particularly where the respondent does not have a significant portfolio of investments and has never been, nor likely will ever, be a director or officer of a public company and thus in a position to impact the public markets.

[10] Sanctions have to be carefully tailored to the particular breaches of the *Act*, the role of the perpetrator and the particular circumstances applicable to each respondent. Prior decisions of this Commission, or of any other regulator, must be considered, as we have done, to gain the wisdom from peers. However, it would not be an appropriate exercise of our discretion to slavishly follow prior sanctions decisions and make adjustments to them based on the amount of profit garnered in these situations, or of the number of breaches. We have taken careful note of decisions such as *Suman,* urged on us by Staff and *Agueci*, urged on us by the respondents.[6] We have considered those decisions, and several others, as guides to the approach we adopted. In the result, we have weighed the factors of this case, being mindful of the interests of the respondents, but also being aware of our duty to investors and the public markets.

III. ANALYSIS

A. Mitchell Finkelstein

[11] Finkelstein is a lawyer, who for some 14 years to 2010, was a rising partner in the mergers and acquisitions department of Davies, a nationally renowned, transaction oriented, law firm. For all those 14 years, he was continuously engaged with clients who accessed the capital markets for investment funds or for takeover transactions. Finkelstein, as a lawyer, knew the strict requirements of client confidentiality, i.e. that information of a private nature acquired could not be discussed or disseminated outside the confines of the solicitor-client relationship. He also knew the prohibitions of section 76 of the *Act* against tipping or insider trading on generally undisclosed materials facts, referred to as material non-public information ("MNPI"). He must have been keenly aware that

[5] *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 ("*M.C.J.C. Holdings*") at 1136; *Re Cartaway Resources Corp.,* [2004] 1 S.C.R. 672 at para. 60.
[6] *Re Shane Suman and Monie Rahman* (2012), 35 O.S.C.B. 11218; *Re Agueci et al.* (2015), 38 O.S.C.B. 5995.

passing on confidential information not only broke Davies' code of conduct, was prohibited conduct for any lawyer and was a contravention of the *Act*, but that the consequences, if discovered, would be dire, potentially resulting in loss of partnership, loss of employment and significant regulatory penalties.

[12] Yet, as we have determined, on three occasions between 2004 and 2007, he passed on MNPI to his good friend and investment adviser, Azeff, respecting two takeover transactions in which he was directly involved as a lawyer, and one in which his firm was acting and which he informed himself of by accessing corporate documents from Davies' Document Management System. But for his unlawful conduct of tipping contrary to subsection 76(2), no insider trading by others and further tipping would have occurred. Finkelstein was the instigator of significant consequences to market integrity and must bear responsibility for the chain of events which took place as a result of his breach of confidence.

[13] The passing of MNPI to a person not authorized to receive it strikes at the core of fairness to all investors engaged in the market. Tipping of MNPI undercuts one of the foundational pillars of the *Act*, namely confidence. It provides an informational advantage to some market participants at the expense of others. Those who take advantage of the MNPI have the opportunity to profit while depriving others of a like profit. In this case, the profit earned by the family, friends and clients of the respondents in the three takeover transactions totalled approximately $2 million earned over a relatively short period of investment and represented a significant percentage return on those investments.

[14] As the instigator of the subsequent insider trading by others in disregard of his duties of confidentiality and of the high standard of probity towards the capital markets expected of a mergers and acquisitions lawyer, Finkelstein's transgressions must be considered to be at the upper end of severity.

[15] Enforcement Staff ("Staff"), among other things, requested a lifetime trading/acquisition ban, subject to a carve-out, a lifetime exclusion as a director and officer of a reporting issuer and administrative penalties totalling $1.5 million, being $500,000 of a possible $1 million for each of the three breaches.

[16] Against these demands, we weighed the particular circumstances of Finkelstein.

[17] In the period between 2004 to 2007, the evidence disclosed that Finkelstein did not have significant investments. No further information was presented regarding Finkelstein's investments or net worth at the sanctions hearing on June 17, 2015. Without any further evidence, we are left with the impression, from his subsequent work history after leaving Davies, that he may still not have a significant investment portfolio. While we agree that Finkelstein deserves a ban on his ability to trade freely in the equities and bond markets, we find that a trading ban alone may not be a significant personal deterrent.

[18] We carefully considered other sanctions which, combined with a trading ban, would accomplish the three goals of investor protection, future personal deterrence, and an expression of general deterrence to like-minded individuals.

[19] Finkelstein's counsel reminded us that Finkelstein had already suffered from the loss of a promising career as a rising mergers and acquisitions partner. Coupled with the significant publicity surrounding these proceedings, it is unlikely that Finkelstein would again be offered a position in a law firm engaged in major transaction mandates. While we accept, unreservedly, the monetary and

reputational harm Finkelstein has occasioned to himself, we must nevertheless remove any risk that he will be in a position to affect capital markets adversely and we must notify like-minded individuals of the consequences that will accompany misconduct.

[20] The Ontario Court of Appeal in *Rowan* noted that penalties of up to $1 million per infraction were entirely in keeping with the OSC's mandate to regulate the capital markets where enormous sums of money are involved and where substantial penalties are necessary to remove economic incentives for non-compliance with market rules. The administrative penalty must not be viewed as a cost of doing business or a licence fee for unscrupulous market participants.[7]

[21] Weighing all the factors in Finkelstein's favour, namely: loss of position, young family, diminished earning power, modest net wealth, and restricted opportunity to re-offend, we determine that the appropriate sanctions that meet the objectives of future protection of the capital markets, specific personal deterrence and general deterrence, and which are not so excessive that they tilt toward being punitive include:

1. a 10-year ban on trading and acquisition of securities with appropriate carve-outs for his registered accounts, which can either be managed by him, subject to limitations on securities held, or can be managed by an independent third-party manager with full discretion, not subject to limitations on securities held;
2. a permanent ban on becoming an officer or director of a reporting issuer; and
3. administrative penalties of $450,000, representing $150,000 of a maximum $1 million per contravention. This amount can, at Finkelstein's option, be paid in three equal yearly instalments, the first instalment being due 60 days from the date of this decision. Failure to make a payment accelerates any remaining payments, such that the full amount becomes due and payable.

[22] In his submissions on sanctions, Finkelstein argued that an administrative penalty of $75,000 would be appropriate, representing $25,000 per charge and compared his actions to Agueci, who was given administrative penalties of $225,000 for 9 breaches of subsection 76(2) the *Act*. He argued that their position and actions were very similar in that they were both gatekeepers. However, in our view, their circumstances are quite different. Finkelstein was a lawyer and partner in his firm. He was a person in a position of trust to whom clients and the firm entrusted confidential information. While Finkelstein was instrumental in advising clients on legalities of transactions that affected the capital markets, Agueci had no direct participation other than having the occasion to read relevant transaction documents. Those in a position of trust, like Finkelstein, can have a significant impact on the markets and require suitable deterrence.

[7] *Rowan v. Ontario Securities Commission*, 2012 ONCA 208 ("*Rowan*") at para. 49.

B. Paul Azeff and Korin Bobrow

[23] Azeff and Bobrow are retail investment advisers who have worked together for many years. They shared a single trading code while working at CIBC Wood Gundy ("CIBC") and were, in every sense of the word, business partners, though not formally so. Both are in their mid-40s. By the time of these events, 2004 to 2007, they had built a substantial book of business with a large following of loyal customers. As registrants, both should have understood the prohibitions in the *Act* against trading on and tipping of MNPI. Additionally, Azeff had been, at one time, a branch manager of a brokerage firm and had the responsibility of supervising others to ensure compliance with securities regulations.

[24] After their termination of employment by CIBC, following upon the issue of the Notice of Hearing and Statement of Allegations, Azeff and Bobrow found employment with Euro Pacific Canada Inc. ("Euro Pacific") and applied to the Investment Industry Regulatory Organization of Canada ("IIROC") for approval to have their registration re-activated pending the decision of the OSC on the merits. IIROC, by decision rendered May 31, 2011 approved their registration subject to strict supervisory conditions. Eighteen specific monitoring conditions were required by the IIROC decision.

[25] For the past four years, Azeff and Bobrow have complied with all those conditions. The co-founder and CEO of Euro Pacific provided an affidavit, at the sanctions and costs hearing, attesting to his familiarity with the proceedings by the OSC and its decision on the merits of March 24, 2015. He further confirmed that Azeff and Bobrow "have been fully compliant with the conditions imposed upon them by IIROC and all governing securities laws for a period of over four (4) years" (para. 6). He concluded by stating that Azeff and Bobrow have been valued employees and that: "As CEO of Euro Pacific, it is my profound hope that the Respondents can continue their employment with our company under strict terms of supervision" (para. 8). We appreciate the sincerity of the offer. Azeff and Bobrow, in their submissions, requested that they be allowed to continue in their professions under close monitoring and strict supervision for 15 years. We can well understand that Azeff and Bobrow's loyal customers and their volume of trading is valuable to Euro Pacific.

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

[27] However, in our view, a continuation of registration, even with supervision, may not be sufficient to protect investors and the capital markets and reflects neither personal deterrence nor general deterrence. Azeff and Bobrow violated the most fundamental aspect of the *Act*, insider trading and tipping, on seven occasions, five times for Azeff and twice for Bobrow. Both insider trading and tipping have been compared to a cancer that damages innocent investors and erodes public confidence in the capital markets.[8] Both types of violations are hard to uncover and the evidence to establish them is painstakingly tedious to assemble. Azeff, in particular, as a registrant, was a primary gatekeeper in the events. He received MNPI from his good friend, Finkelstein. He knew he should have disregarded the information, not used it to benefit himself, his family members,

[8] *M.C.J.C. Holdings, supra* at 1135.

clients and friends. But for his conduct and his activity, no harm would have been occasioned to the public market and to other investors. Azeff and Bobrow together bought Masonite International Corporation ("MHM") stock for about 150 accounts and on some days, their purchases represented a substantial percentage of the total volume of MHM shares traded on the TSX. They knew that the compliance department at CIBC would be alerted to this volume of trading prior to a takeover and would want to see their reasonable basis file. Azeff and his partner Bobrow set about gathering a file of analysts' and technical reports in an attempt to justify their accumulation of MHM shares. We have rejected, in our merits decision, the explanation by Azeff and Bobrow for purchasing large amounts of MHM stock. In addition, we note that when asked at the compelled examination about his relationship with Finkelstein, Azeff gave the impression that he did not know him well or that he worked at Davies. Both statements were far from the truth.

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

[29] Both Azeff and Bobrow should also forfeit the privilege of being able to trade freely in the market for 10 years. They will be afforded the same carve-out as Finkelstein, for their registered accounts which can either be managed by them, subject to limitations on securities held, or can be managed by an independent third-party manager with full discretion, not subject to limitations on securities held.

[30] Azeff profited from his illegal trading to the extent of $49,996 and Bobrow $10,217. These amounts are ordered to be disgorged respectively. The respondents Azeff and Bobrow do not oppose the disgorgement request of Staff.

[31] To reflect the aspects of personal and general deterrence, we are reminded that the legislature authorized a $1 million administrative penalty per breach of the *Act*, following the recommendation of a Five Year Review Committee as a necessary remedy to protect the integrity of the capital markets where the wealth and retirement funds of most Ontarians is invested, which employ thousands of people and which contribute enormously to Ontario's economy.[9] The administrative penalty must be set at an amount that is neither a license fee for the respondents for their misdeeds, nor a cost of doing business for others who are contemplating non-compliance.

[32] All the respondents urged that the administrative penalties should bear a multiple ratio of two to four times the profit earned by the miscreant. Past

[9] *Rowan, supra* at para. 49, citing *Five Year Review Committee Final Report: Reviewing the Securities Act (Ontario)* (Toronto: Queen's Printer, 2003), at p. 214.

decisions of securities commissions have either expressly or by implication been within that range. *Suman, supra* does not fall within that logic. Otherwise the respondents contend; the administrative penalty bears no connection to anything objective and is entirely arbitrary, in the discretion of the panel.

[33] We disagree with that submission. The proposed logic would fail in the circumstances where a transgressor makes no profit. It also fails the objectives of personal and general deterrence when a small profit is made by the violator but large profits are made by those he tipped or on whose behalf he traded. A panel of the commission should take the following non-exhaustive list of factors into consideration in arriving at the appropriate administrative penalty:

(a) the statutory maximum of $1 million per breach;

(b) the severity of the breach - not all breaches are as fundamental to the integrity of the capital markets as others;

(c) whether there were multiple and/or repeated breaches of the *Act*;

(d) the dollar damage to the market and the prejudice to innocent investors;

(e) the profit earned by the respondent;

(f) level of administrative penalties imposed in other cases; and

(g) the past and present circumstances of the respondent.[10]

[34] Applying these factors to Azeff and Bobrow, we have already noted that the breaches of s. 76(1) and (2), tipping and insider trading, are at the very high end of severity. Azeff was guilty of five breaches; Bobrow of two. The market impact of their breaches was approximately $2 million. On the other hand, the breaches occurred between eight and 11 years ago. Azeff and Bobrow have not suffered a permanent loss of employment over that period of time. They have continued to practice their profession apparently in compliance with the regulations. Both men have young families. In all the circumstances, Staff's request of administrative penalties of $2,250,000 for Azeff and $600,000 for Bobrow is too high. The appropriate and proper balance that reflects deterrence is an aggregate of administrative penalties totalling $750,000 for Azeff and $300,000 for Bobrow. Both can have the option of paying these penalties in two years, with half the amount to be paid 60 days from the date of this decision and the balance one year later. Failure to make a payment accelerates any remaining payments, such that the full amount becomes due and payable.

[35] Azeff and Bobrow also argued that their administrative penalties should be more reflective of the penalties assigned in the Agueci case, citing the penalty against another registrant whose penalty was roughly three times his profits. As earlier stated, the amount of profit garnered by the transgressor is but one factor in consideration of an administrative penalty. More important factors are the number and severity of the breaches and the wide spread nature of the

[10] *Re MRS Sciences Inc. et al.* (2014), 37 O.S.C.B. 5611 at para. 105, citing *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 at paras. 71 and 78.

violations. In Agueci, each of the respondents traded only for themselves and did not pass information on to other participants. In this case, Azeff and Bobrow traded for themselves and tipped others, which had a widespread impact on the markets and must be considered an aggravating factor for them.

C. Howard Miller and Francis Cheng

[36] Miller and Cheng were, respectively, a senior and more junior investment advisor at TD Securities ("TD") in the years 2004 to 2007. Miller was very experienced and mentored and assisted Cheng, who although he had several years of experience, was having difficulty in building his book of business.

[37] Miller and Cheng were undeniably culpable of insider trading and tipping as evidenced by the explicit content of the emails that they sent to clients. As registrants, they knew that they were utilizing MNPI, but must have felt that their trades and those of their clients in MHM would not attract attention and their improper conduct would not be discovered.

[38] Both Miller and Cheng were terminated by TD in 2010 and have not worked in the investment industry since. Neither one testified at the merits hearing, except through the transcripts of their compelled evidence. Neither has provided any explanation or expressed any remorse for their breaches or actions. We have no evidence or idea of their present circumstances or employment.

[39] Miller breached the provisions of the *Act* on three occasions and garnered for himself a profit of $24,485. He must disgorge that profit.

[40] Although Miller did not instigate the tipping scheme, having received the MNPI from LK, as a registrant, he should not have acted on it for his own benefit and passed it on to DW so that the latter could benefit. Miller's registration ban should be equal to that of Azeff, i.e., a period of 10 years. He should also have the same trading ban and carve-out as imposed on Finkelstein, Azeff and Bobrow. In addition, he must be banned for 10 years from being an officer or director of a reporting issuer.

[41] The appropriate administrative penalty for Miller for each breach of the Act should be in the same amount as payable by Finkelstein and Azeff: namely $150,000 per breach or $450,000 in aggregate. Miller has the option of paying the amount over two equal yearly instalments with the first $225,000 payable within 60 days of this decision. Failure to make a payment accelerates any remaining payments, such that the full amount becomes due and payable.

[42] Cheng, as a registrant, is equally culpable. His email to a disgruntled client investor demonstrates his eagerness to disregard the *Act*'s fundamental probity rules in order to assuage a client's complaint. He was found to have twice breached the provisions of the *Act*. To protect the public in the future, and the capital markets, he must have a registration ban for 10 years. We have determined that the degree of his culpability is slightly less than that of Miller. He is to be banned from trading for 10 years with the same carve-out as Finkelstein, Azeff, Bobrow and Miller. He is also to be prohibited from being an officer or director of a reporting issuer for 10 years.

[43] Staff argue that Cheng be ordered to disgorge $36,410 profit that he made by trading his brother's account. There is no question that Cheng had authority from his brother, who lives in China, to trade his account. Similarly, Cheng had

authority to trade his wife's RRSP account. The profit, however, garnered in both these accounts from the unlawful trades belongs to his brother and his wife respectively.

[44] Staff has traced four random payments, from February 2005 to August 2005, from the brother to Cheng, totalling $42,000, which Staff alleges is payment by the brother to Cheng for the $36,410 profit Cheng made for his brother. We do not accept Staff's submissions. The evidence is not clear, cogent and convincing on a balance of probabilities. It is hard to reconcile a $42,200 repayment of a $36,410 profit. The monies came in four varying amounts at random times. Staff stopped looking at the money transfers in September 2005. The evidence further revealed that the brother continued to transfer monies to Cheng thereafter, a further two transfers in 2005, all of which aggregated some $14,000. We dismiss Staff's request for a disgorgement order for Cheng.

[45] At the merits hearing, Cheng's wife testified that Cheng had little or no investments in the period from 2004 to 2007 because his earnings were modest. We have not received any updated information regarding Cheng's employment, earnings or net worth in the past five years. Given his junior role at TD, his receipt of MNPI from his mentor, Miller, the undoubted signal from Miller that he could use the MNPI, and his inferred modest means, we determine that an administrative penalty of $100,000 per breach or a total of $200,000, rather than the $500,000 sought, serves as an appropriate balance between personal and general deterrence. Cheng may make the payment over two calendar years with the first $100,000 to be paid within 60 days of this decision and the balance within one year thereafter. Failure to make a payment accelerates any remaining payments, such that the full amount becomes due and payable.

IV. COSTS

[46] Staff requests costs in the aggregate amount of $1,000,000 for the time incurred in the investigation and in the 24-day hearing of the merits. Staff points out that its total docketed time, fees and disbursements amount to $3,313,629. The dockets provided support the figures and the respondents have not taken issue with any particular docket. Staff has discounted its overall costs by 70% to be conservative, reasonable and proportionate to the complexity and seriousness of the matters brought before the Commission".[11]

[47] The respondents all claim that $1 million for costs is too high and does not reflect the fact that some allegations were released before the merits hearing and that success at the merits hearing was very much divided. Three of six takeover transactions were found to involve insider trading or tipping, or both. In the other three takeover transactions, Staff did not establish the allegations. The payment of rewards by Azeff to Finkelstein, for the tips, which was a feature of Staff's case, was not proven.

[48] Insider trading and tipping is difficult to establish and requires, as in this case, extensive investigation and keen forensic skill. Staff, in our view, has been responsible, in its public duty, in being conservative in its costs request of $1 million. However, we do not feel that enough weight has been afforded to the

[11] Rule 18.2 of the OSC's *Rules of Procedure*, (2014) 37 O.S.C.B. 4168; *Re Ochnik* (2006), 29 O.S.C.B. 5917 at paras. 29 and 31.

divided success that resulted from the well-defended merits hearing. In our view, a global costs award of $500,000 would strike a reasonable balance.

[49] Not all respondents were involved in all the allegations. The volume of evidence adduced for each respondent varied significantly as did their cross-examinations and the time taken by their defences. The appropriate assessment of costs is:

(a) Finkelstein to pay $125,000;

(b) Azeff to pay $175,000;

(c) Bobrow to pay $125,000;

(d) Miller to pay $50,000; and

(e) Cheng to pay $25,000.

V. CONCLUSION

[50] We conclude that the following sanctions are appropriate and proportionate to the circumstances and conduct of each of the respondents and that it is in the public interest to make these orders:

1. With respect to Finkelstein:

   (a) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Finkelstein shall cease for 10 years;

   (b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Finkelstein is prohibited for 10 years;

   (c) as exceptions to the 10-year prohibitions in respect of trading and acquisition of securities ordered in subparagraphs 1(a) and 1(b) above, Finkelstein shall be permitted to:

      i. personally trade and/or acquire mutual funds, exchange-traded funds ("ETFs"), government bonds and/or guaranteed investment certificates ("GICs") for the account of any registered retirement savings plan ("RRSP"), registered retirement income fund ("RRIF"), registered education savings plan ("RESP") and tax free savings account ("TFSA"), as defined in the *Income Tax Act*, R.S.C. 1985, c.1, as amended (the "Income Tax Act"), in which Finkelstein and/or his children have sole legal and beneficial ownership, solely through a registered dealer in Ontario, to whom Finkelstein must have given a copy of the order; and

      ii. to retain the services of one or more independent, arms-length dealer/portfolio manager(s) who are registered in accordance with Ontario securities law, to trade and/or acquire securities in any RRSP, RRIF, RESP and TFSA, as defined in the Income Tax Act, on Finkelstein's behalf, provided that:

1. the respective registered dealer/portfolio manager(s) is provided with a copy of this order prior to trading or acquiring securities on Finkelstein's behalf;
2. the respective registered dealer/portfolio manager(s) has sole discretion over what trades and acquisitions may be made in the account and Finkelstein has no direction or control over the selection of specific securities;
3. Finkelstein is permitted to have annual discussions with the respective registered dealer/portfolio manager(s) for the sole purpose of Finkelstein providing information regarding general investment objectives, suitability and risk tolerance or as required under Ontario securities law; and
4. Finkelstein may change registered dealer/portfolio manager(s), subject to the conditions set out above, with notice to the Commission of any such change to be filed by Finkelstein within 30 days of making such change;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Finkelstein for 10 years;

(e) pursuant to clause 6 of subsection 127(1) of the Act, Finkelstein is reprimanded;

(f) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, Finkelstein shall resign from any position he may hold as a director or an officer of any reporting issuer, registrant or investment fund manager and/or any issuer that is a registrant, or that directly or indirectly holds more than a five percent interest in a registrant;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Finkelstein is permanently prohibited from becoming or acting as a director or an officer of any reporting issuer, registrant or investment fund manager;

(h) pursuant to clause 8.5 of subsection 127(1) of the Act, Finkelstein is prohibited for 10 years from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(i) pursuant to clause 9 of subsection 127(1) of the Act, Finkelstein shall pay administrative penalties in the total amount of $450,000 to the Commission, which shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act and is payable, at his option, over three equal yearly instalments with the first $150,000 payable within 60 days of this decision. A failure to make a payment accelerates any remaining payments, such that the full amount becomes due and payable; and

(j) pursuant to section 127.1 of the Act, Finkelstein shall pay the amount of $125,000 in respect of part of the costs of the Commission's investigation and hearing;

2. With respect to Azeff and Bobrow:

(a) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by each of Azeff and Bobrow shall cease for 10 years;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by each of Azeff and Bobrow is prohibited for 10 years;

(c) as exceptions to the 10-year prohibitions in respect of trading and acquisition of securities ordered in subparagraphs 2(a) and 2(b) above, each of Azeff and Bobrow shall be permitted to:

i. personally trade and/or acquire mutual funds, ETFs, government bonds and/or GICs for the account of any RRSP, RRIF, RESP and TFSA, as defined in the Income Tax Act, in which by each of Azeff and Bobrow and/or their children have sole legal and beneficial ownership, solely through a registered dealer in Ontario, to whom each must have given a copy of the order;

ii. to retain the services of one or more independent, arms-length dealer/portfolio manager(s) who are registered in accordance with Ontario securities law, to trade and/or acquire securities in any RRSP, RRIF, RESP and TFSA, as defined in the Income Tax Act, on behalf of each of Azeff and Bobrow's, provided that:

1. the respective registered dealer/portfolio manager(s) is provided with a copy of this order prior to trading or acquiring securities on each of Azeff and Bobrow's behalf;

2. the respective registered dealer/portfolio manager(s) has sole discretion over what trades and acquisitions may be made in the account and each of Azeff and Bobrow has no direction or control over the selection of specific securities;

3. Azeff and Bobrow are each permitted to have annual discussions with the respective registered dealer/portfolio manager(s) for the sole purpose of providing information regarding general investment objectives, suitability and risk tolerance or as required under Ontario securities law; and

4. Azeff and Bobrow may each change registered dealer/portfolio manager(s), subject to the conditions set out above, with notice to the Commission of any such change to be filed by each of Azeff and Bobrow within 30 days of making such change;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of Azeff and Bobrow for 10 years;

(e) pursuant to clause 6 of subsection 127(1) of the Act, each of Azeff and Bobrow is reprimanded;

(f) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, each of Azeff and Bobrow shall resign from any position he may hold as a director or an officer of any reporting issuer, registrant or investment fund manager and/or any issuer that is a registrant, or that directly or indirectly holds more than a five percent interest in a registrant;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, each of Azeff and Bobrow is permanently prohibited from becoming or acting as a director or an officer of any reporting issuer, registrant or investment fund manager;

(h) pursuant to clause 8.5 of subsection 127(1) of the Act, each of Azeff and Bobrow is prohibited for 10 years from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(i) pursuant to clause 9 of subsection 127(1) of the Act, Azeff shall pay $750,000 and Bobrow shall pay $300,000 to the Commission as administrative penalties, which shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act and each amount is payable, at their option, over two equal yearly instalments with the first half payable within 60 days of this decision. A failure to make a payment accelerates any remaining payments, such that the full amount becomes due and payable;

(j) pursuant to clause 10 of subsection 127(1) of the Act, Azeff shall disgorge $49,996 and Bobrow shall disgorge $10,217 to the Commission, which shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(k) pursuant to section 127.1 of the Act, Azeff shall $175,000 and Bobrow shall pay $125,000 in respect of part of the costs of the Commission's investigation and hearing;

3. With respect to Miller and Cheng:

(a) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by each of Miller and Cheng shall cease for 10 years;

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by each of Miller and Cheng is prohibited for 10 years;

(c) as exceptions to the 10-year prohibitions in respect of trading and acquisition of securities ordered in subparagraphs 3(a) and 3(b) above, each of Miller and Cheng shall be permitted to:

i. personally trade and/or acquire mutual funds, ETFs, government bonds and/or GICs for the account of any RRSP, RRIF, RESP and TFSA, as defined in the Income Tax Act, in

which by each of Miller and Cheng and/or their children have sole legal and beneficial ownership, solely through a registered dealer in Ontario, to whom each must have given a copy of the order;

ii. to retain the services of one or more independent, arms-length dealer/portfolio manager(s) who are registered in accordance with Ontario securities law, to trade and/or acquire securities in any RRSP, RRIF, RESP and TFSA, as defined in the Income Tax Act, on behalf of each of Miller and Cheng, provided that:

1. the respective registered dealer/portfolio manager(s) is provided with a copy of this order prior to trading or acquiring securities on each of Miller and Cheng's behalf;
2. the respective registered dealer/portfolio manager(s) has sole discretion over what trades and acquisitions may be made in the account and each of Miller and Cheng has no direction or control over the selection of specific securities;
3. Miller and Cheng are each permitted to have annual discussions with the respective registered dealer/portfolio manager(s) for the sole purpose of providing information regarding general investment objectives, suitability and risk tolerance or as required under Ontario securities law; and
4. Miller and Cheng may each change registered dealer/portfolio manager(s), subject to the conditions set out above, with notice to the Commission of any such change to be filed by each of Miller and Cheng within 30 days of making such change;

(d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of Miller and Cheng for 10 years;

(e) pursuant to clause 6 of subsection 127(1) of the Act, each of Miller and Cheng is reprimanded;

(f) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, each of Miller and Cheng shall resign from any position he may hold as a director or an officer of any reporting issuer, registrant or investment fund manager and/or any issuer that is a registrant, or that directly or indirectly holds more than a five percent interest in a registrant;

(g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, each of Miller and Cheng is prohibited for 10 years from becoming or acting as a director or an officer of any reporting issuer, registrant or investment fund manager;

(h) pursuant to clause 8.5 of subsection 127(1) of the Act, each of Miller and Cheng is prohibited for 10 years from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(i) pursuant to clause 9 of subsection 127(1) of the Act, Miller shall pay $450,000 as administrative penalties, which shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act, and is payable over two equal yearly instalments with the first $225,000 payable, at his option, within 60 days of this decision and the balance within one year. A failure to make a payment accelerates any remaining payments, such that the full amount becomes due and payable;

(j) pursuant to clause 9 of subsection 127(1) of the Act, Cheng shall pay $200,000 to the Commission as administrative penalties, which shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act, and is payable over two equal yearly instalments with the first $100,000 payable, at his option, within 60 days of this decision and the balance within one year. A failure to make a payment accelerates any remaining payments, such that the full amount becomes due and payable;

(k) pursuant to clause 10 of subsection 127(1) of the Act, Miller shall disgorge $24,485 to the Commission, which shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

(l) pursuant to section 127.1 of the Act, Miller shall pay $50,000 and Cheng shall pay $25,000 in respect of part of the costs of the Commission's investigation and hearing.

[51] We will issue a separate order giving effect to our decision on sanctions and costs.

Dated at Toronto this 24th day of August, 2015.

"*Alan J. Lenczner*"	"*AnneMarie Ryan*"
_____	_____
Alan J. Lenczner	AnneMarie Ryan