THE MANITOBA
SECURITIES
COMMISSION

January 4, 2023

IN THE MATTER OF: **THE SECURITIES ACT**

- and -

IN THE MATTER OF: **JACK HIEBERT NEUFELD, GEOFFREY SCOTT EDGELOW AND THE JACK NEUFELD FAMILY CHARITABLE FOUNDATION**

REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION

Panel:

Panel Chair:	Mr. J.T. McJannet, K.C.
Member:	Mr. D.A. Huberdeau-Reid
Member:	Ms. L.A. Vincent

Appearances:

Ms. S. Hill	)	Counsel for Commission Staff
Mr. S. Gingera	)	
Mr. B. Barnes Trickett	)	Counsel on behalf of Jack Hiebert
Mr. A. Challis	)	NEUFELD and THE JACK
Mr. D. Giles	)	NEUFELD FAMILY CHARITABLE
Mr. D. Baker	)	FOUNDATION

Decision on the Merits

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Introduction

1. The hearing of this matter is bifurcated: first, a hearing on the merits of the allegations set out in the amended pleadings (the "Merits Hearing"); and second, if required, a hearing to address what, if any, orders for sanctions and costs ought to be made (the "Sanction Hearing").

2. This decision by the hearing panel (the "Panel") concludes the Merits Hearing. The Panel finds (as set out below) that all of the allegations set out in the amended pleadings have been proven to the requisite evidentiary standard, and that:

    a. The Respondents traded and distributed securities by issuing and/or offering to the Manitoba Investors (as defined below) promissory notes and/or shares in companies without having been registered and without a prospectus having been filed, in contravention of sections 6 and 37 of *The Securities Act* C.C.S.M. c.S50 (the "Act");

    b. The Respondents failed to deliver a prospectus to the Manitoba Investors, as required by the Act;

    c. The Respondents made misrepresentations to the Manitoba Investors that were, in material aspects, misleading or untrue, or did not state facts that were required to be stated or were necessary to make the statements not misleading, in contravention of section 74.1 of the Act; and

    d. The Respondents engaged in conduct contrary to the public interest.

3. Accordingly, this matter will move to the Sanction Hearing phase.

I Overview

1. This hearing concerned a purported investment in the central South American country of Bolivia. The central allegation is that investments were sold by the Respondents, Jack Neufeld (Neufeld) and a foundation he set up, the Jack Neufeld Family Charitable Foundation ("Foundation"), to Manitoba individuals and companies without Neufeld or the Foundation being registered and without a prospectus having been filed and a receipt issued. It is alleged that in return for the investment monies the Foundation issued promissory notes, a letter of acknowledgement and in one case a "profit sharing agreement" document.

2. It is alleged that Neufeld and the Foundation then attempted to have some of the investors consent to transferring the obligations of the Foundation under the Promissory Notes to shares/notes of another entity, variously referred to as 1443896 Alberta Ltd., Newklas Construction Company, New-Co and the "Union Project".

3. The events at issue all occurred from early 2005 to 2010 (the "Material Time").

4. There are two Respondents to this hearing: Neufeld and the Foundation. The third named Respondent on the pleadings, Geoffrey Scott Edgelow ("Edgelow") died before the hearing commenced. Staff Counsel confirmed that no application was made to court to proceed against the estate of Edgelow. Accordingly, the Panel has no jurisdiction over Edgelow or the estate of Edgelow and makes no orders with respect to same. Where the Decision references the Respondents, it includes Neufeld and the Foundation.

A. Standard of Proof

1. It is well established that standard of proof in this administrative hearing is the civil standard of "on a balance of probabilities". The Supreme Court of Canada in F.H. v. McDougall, 2008 SCC 53, held:

> *"[49]. In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred."*

2. In addition, the SCC held that the evidence must always "*...be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test."*

B. Hearsay Evidence

1. Section 5(1) (c) of the Act reads:

> *(c) at the hearing, the commission shall receive such evidence as is submitted that is relevant to the hearing, but it is not bound by the legal or technical rules of evidence and, in particular, it may accept and act upon evidence by affidavit or written affirmation or by the report of an expert appointed by it under this Act;*

2. Accordingly, at an administrative hearing before a hearing panel of the MSC, all relevant evidence is admissible, including hearsay evidence, provided that the rules of natural justice and procedural fairness are observed.

3. The Panel has determined the weight, if any, to give to the evidence before us, including the weight to be given to the transcript evidence tendered by Staff Counsel, by examining its content and considering indicators of its reliability, such as its consistency with other evidence before us.

4. Corroboration is an important factor in our reliance on hearsay evidence tendered. In particular, the Panel is mindful of the direction in Starson v. Swayze [2003] 1 S.C.R. 722 at para. 115, where the majority of the court commented that it is generally within a tribunal's discretion to determine the weight to be given to hearsay evidence. However, the court cautioned that the tribunal *"...must be careful to avoid placing undue emphasis on uncorroborated evidence that lacks sufficient indicia of reliability...".*

5. We further note the following in Gidda v The Taxicab Board 2014 MBCA 58 where the court held:

> *"[13]... it is well established that administrative tribunals may admit and rely on hearsay evidence "...unless its receipt would amount to a clear denial of natural justice" (International Brotherhood of Electrical Workers, Local 435 v. Manitoba Telecom Services Inc. et al., 2002 MBQB 284 at para 6, 169 Man.R. (2d) 290)."*

II Fact and Evidentiary Findings

A Respondents and ancillary companies

1. The Foundation was set up by Neufeld as a company on 2002/09/02 under the *Alberta Companies Act*. Upon incorporation Neufeld was designated as the President, Director, Secretary and Treasurer and there were no other officers or directors appointed. Neufeld was the controlling mind of the Foundation throughout the Material Time.

2. Neufeld testified that he had worked in the construction business for approximately 30 years, building commercial and housing projects throughout western Canada. In 2005 he operated a family business called "Worx" that manufactured environmental clearing products. He also testified that he had been active in various service and not-for-profit organizations.

3. At some point in late 2004 / early 2005 Edgelow joined the Foundation and was employed as its Managing Director. Edgelow had an office in the premises of the Foundation and was paid a bi-weekly salary in his personal capacity. Edgelow retained the position of Managing Director of the Foundation until late 2008. For a short period of time in 2008 Edgelow was named CEO, and during this time his e-mail signature block was amended to reflect that he was both Managing Director and CEO of the Foundation.

4. In 2005 the Foundation had two bank accounts at the Royal Bank of Canada, Riverbend branch in Calgary, Alberta. One account, ending ***945, was a US dollar account (the "USD RBC Account") and the other account, ending ***821, was a Canadian dollar account (the "CAD RBC Account").

5. In 2005, through and until November 2007, Neufeld was the sole signing authority on the USD RBC Account and the CAD RBC Account. In November 2007 Neufeld added Edgelow and Linda Larson ("Larson"), the Foundation's bookkeeper, as additional signatories to the bank accounts. Subsequently two signatures were required on these bank accounts, one of which was required to be Neufeld's signature.

6. The Foundation also had an account (the "Jameson Account") at Jameson International Foreign Exchange Corp. (now Jameson Bank).

7. On or about December 22, 2008, Neufeld directed that a numbered company, 1443896 Alberta Ltd. ("1443896 Alberta"), be incorporated as an Alberta corporation.

8. At some point subsequent to 2006 Neufeld and the Foundation, in verbal and in written communications, referenced other entities to the investors, including Newklas Construction Company" ("Newklas"), "New-Co" and "Union Project". No evidence was led that any of these entities existed.

B. Witnesses

9. Staff Counsel of the Manitoba Securities Commission (herein the "Commission" or the "MSC") brought forward evidence at the hearing pertaining to four entities. These entities and their representatives were called to provide evidence, as was the Commission investigator on the file, Leonard Terlinski ("Terlinski").

10. Harry Funk ('Funk") is an individual who has been involved in a number of businesses and in some religious and service organizations, as variously, an employee, a volunteer, and/or a board member. Throughout the Material Time he was a Manitoba resident.

11. Bernie Penner and Helena Penner, a married couple, ran a business in the Winkler, Manitoba area and lived in Manitoba throughout the Material Time. After retiring, in approximately 2004, Bernie Penner began to work on a part time basis at Avanti Polymers, a Manitoba company, where he met Funk and later Edgelow, Neufeld and the Foundation. Bernie Penner died in 2004.

12. Back to the Bible is the business name utilized by The Good News Broadcasting Corporation of Canada which was incorporated *under The Corporations Act (Manitoba)*. In 2005 its registered head office was at 189 Henderson Highway in Winnipeg, Manitoba. It conducted missionary work primarily through radio broadcasts.

13. Youth for Christ/Portage Inc. ("Youth for Christ"), was, during the Material Time, a charitable organization based in the town of Portage La Prairie Manitoba and incorporated under Manitoba laws. Its activities were focused on youth and teenagers. It ran a drop-in teen center, a group home for boys, and a year-round camp facility. Youth for Christ also offered counselling services to teenagers and families.

14. The Respondents called two witnesses: Neufeld and Larson.

15. Collectively, Bernie and Helena Penner, Back to the Bible, and Youth for Christ are referred to in this Decision as the "Manitoba Investors". For the reasons set out below, Funk is not included in the definition of "Manitoba Investors".

C. Bolivian Organizations

16. The Mutual Guapay Ahorro y Prestamo, also referred to in some documents as 'Asociacion Mutual De Ahorro Y Prestamo Guapay', ("Mutual Guapay") was a Bolivian savings and loan financial institution, headquartered in the city of Santa Cruz, Bolivia. It appears to have been a membership organization, with the right to vote at annual meetings provided to those who had deposits in the Mutual Guapay.

17. In 2005 the Mutual Guapay was undergoing issues relative to underfunded capital requirements, and was looking for financing, including the possibility of being subsumed by another financial institution registered in Bolivia.

18. The Corporation de Bienes Faices Y Servicios Da Vivienda S.R.L. (the "Da Vivienda") was a construction and housing development company in Santa Cruz, Bolivia, which had borrowed funds from the Mutual Guapay.

19. Collectively, Mutual Guapay and Da Vivienda are referred to herein as the "Bolivian Projects" and/or the "Bolivian Investment Opportunities".

D. Initial Investors and the Involvement of Funk

20. Funk, together with four other Manitobans originally from the Winkler Manitoba area, Isaac Neufeld Klassen ("Klassen") Jacob Frank Froese, Gierhard Alan Froese, and Andrew Paul Plett (collectively the "Initial Investors"), became aware of an opportunity to invest in, and/or

take over the operations of, the Mutual Guapay. In March 2005 some of the Initial Investors, including Funk, visited the Mutual Guapay in Santa Cruz,Bolivia.

21. On March 11, 2005 the Initial Investors signed a *Letter of Intent* ("Letter of Intent") to the Mutual Guapay. The Letter of Intent set out the agreement that the Initial Investors would invest up to $27.5 million USD to capitalize the Mutual Guapay through the formation of a form of Bolivian company known as a "Private Financial Fund". In addition, the Letter of Intent evidenced the agreement of the Initial Investors to invest an initial amount of USD $1 million dollars into the Mutual Guapay, deposit the sum of USD $600,000.00 in the Central Bank of Bolivia, and deposit a further USD $7 million dollars into the Private Financial Fund company which would then subsume the Mutual Guapay. The Letter of Intent was signed by Funk as "*Ex Member/Director Newton Enterprises, Representative of Neufeld Foundation, Calgary, Alberta, Canada.*"

22. On March 21, 2005, the Mutual Guapay sent a letter to the Initial Investors, acknowledging receipt of the Letter of Intent and outlining the initial financial requirements which included an initial deposit of USD $1 million dollars, the fixed term deposits, and a payment of $600,000.00 to the Central Bank of Bolivia.

23. On April 19, 2005 Klassen, on his own behalf and on behalf of the other four Initial Investors, including Funk, signed a "*Contract of Capitalization*" ("Contract of Capitalization") with the Mutual Guapay. The parties agreed to the terms set out in the Letter of Intent, including that after payment of the initial USD $1 million dollars, the full capitalization amount required from the Initial Investors was USD $27,500,000.00. The agreement further set out the obligation of the Initial Investors to set up a Private Financial Fund company which would absorb "*...all of the assets, liabilities, equity and operations of Mutual Guapay.*"

24. At this same time Da Vivienda was in financial difficulties and required additional financing. On September 29, 2005, Funk, in his capacity as President of Avanti Polymers Ltd. ("Avanti"), a Canadian company based in Manitoba, signed a "*Contract of Subordinated Money Loan to Investors*" ("Contract of Subordinated Money") in favour of Da Vivienda, which provided a loan of USD $135,000.00 to Da Vivienda.

E. The Respondents and the Bolivian Projects

25. At some point in early 2005, Neufeld met Funk at a symposium of charities in Calgary. Neufeld and Edgelow then attended a similar symposium in Winnipeg at which Funk was also present. At the Winnipeg symposium, Funk invited Neufeld to attend a breakfast meeting of businessmen in Winkler, Manitoba the next day. At this breakfast meeting at least one other of the Initial Investors was in attendance. A topic raised at the breakfast meeting was the potential for investing in the Bolivian Projects.

26. On March 21, 2005, Klassen sent a letter to the Foundation. It referenced a telephone call and noted that, in exchange for the Foundation providing the initial required amount of USD $1 million dollars, he would offer the Foundation the option for 51% of the shares of Mutual Guapay. He further noted that if the Foundation put up the USD $1 million dollars, it would buy time to raise the remaining US $13 Million required for the full capitalization. Klassen stated that he would be taking 9% of the shares "*...as my portion for putting this deal together.*"

27. On March 22, 2005, a letter was sent from the Foundation to Funk, signed by Edgelow as Managing Director of the Foundation and copied to Neufeld. The letter expressed gratitude

by the Foundation to Funk for his travel to and investigation of potential projects in Bolivia for the Foundation.

28. At some point in April 2005, Neufeld, Edgelow, Funk, and their wives visited Santa Cruz, Bolivia. In addition, a lawyer from the US, William Lee Andrews III ("Andrews") attended to assist in reviewing the investment opportunities.

29. After returning from Bolivia, Andrews prepared a document entitled "*Mutual Guapay Opportunity Executive Summary*" (the "Andrews Summary") which the Foundation provided to Back to the Bible and others as promotional material to convince them to invest in the Bolivian Projects. The Andrews Summary included the following statements:

> *"The Jack Neufeld Family Charitable Foundation has been granted the opportunity contractually, and in accord with the approving expectations of the Bolivian Superintendent of Banks, to infuse Guapay with a UK $1 Million Subordinate Credit before May 28th, 2005.*
>
> *The uniqueness of this project is that with a capital injection investors not only maintain their own amount of capital (via the form of a loan) but assume control of the entire institution, its portfolio, and its assets, which includes US $50 Million in receivables, US$6.3 Million in liquid assets, and US $4.8 Million in fixed assts*(sp)*. This also includes over US $50 Million worth of depositions (which of course is a balance sheet liability).*
>
> *The proposed project anticipates a US$14 Million infusion of capital into Guapay for a 51% share along with a commitment of US$13.5 Million in assets by the minority interests. Because Guapay is dealing with mortgage financings, inter alia, in one of the fastest growing cities in South America it is believed that this opportunity is secure, and it is recognized by both Canadian and Bolivian Governments.*

30. The visit to Bolivia in April 2005 included a meeting at the offices of the Mutual Guapay in which the Bolivian Projects were discussed.

31. On April 19, 2005, Neufeld, as "Creditor" signed a "*Contracto de Credito Subordinado de Capitalization*" (the "Subordinado de Capitalization") and designated Klassen to represent him in all matters pertaining to the Subordinado de Capitalization.

32. The Subordinado de Capitalization stipulated in Article 4 that $1 million US was to be paid by Neufeld to the Mutual Guapay on or before May 28, 2005 and, in Article 11, that Neufeld was to receive a commission equal to 0.5% of the total amount of the Credit paid under Article 4. It was a condition of the Subordinado de Capitalization that the monies to be paid by Neufeld were to be used by the Mutual Guapay for the maintenance of its minimum capital as required for such financial organizations under the laws of Bolivia.

33. At no point in the hearing was any evidence adduced by the Respondents as to how they intended to raise the additional USD $27,500,000.00 required to complete the capitalization and assume control of Mutual Guapay.

34. In April 2005 the Foundation did not have the financial wherewithal to fund its obligations under the Subordinado de Capitalization.

F. Funk's role in the Bolivian Projects

35. The Panel found that Funk was, during the Material Time, working with the Respondents to raise investment monies for the Foundation and that he was an active participant in promoting the securities to the Manitoba Investors.

36. The Panel found Funk to be an unreliable witness. Significant parts of his sworn testimony on direct examination were shown to be false and/or misleading during cross examination. Respondent's counsel put to Funk several documents that Funk had signed that evidenced his extensive knowledge of, and dealings in, the Bolivian Projects prior to the time that he had testified he had found out about the projects. The documentation and the questioning by Respondents' counsel evidenced that Funk had not testified honestly, and that he withheld significant and relevant information from the Panel during his testimony on direct.

37. Some examples of the false statements made by Funk included the following:

    a. He testified on direct that he had nothing to do with the Mutual Guapay or Da Vivienda prior to his involvement with the Foundation. In fact, documents evidenced that he had previously travelled to Bolivia with the Initial Investors, and that he was a party to contracts to capitalize the Mutual Guapay and loan monies to Da Vivienda.

    b. He testified that Avanti was a company he had done a little work for, acting as a "liaison" between Avanti and one of its potential customers. In fact, he was an officer and employee of Avanti, had signed documents as the President of Avanti, and had held himself out to a CBC reporter as the President of Avanti. In addition, he had signed the Contract of Subordinated Money as President for Avanti.

    c. He testified on direct that he had only done business in Bolivia as a "tag-along" with Neufeld. On cross examination it was shown that Funk had travelled to Bolivia to review the Bolivian Investment Opportunities with the Initial Investors, before he had travelled to Bolivia with Neufeld.

    d. When asked about his knowledge of the Initial Investors on cross examination, Funk first testified that he did not know them, and then testified that he might have heard of them. However, the documents evidenced that Funk knew the Initial Investors well; that he had travelled to Bolivia with them to discuss and explore the Bolivian investments, that he had signed the Letter of Intent and that he was party to the Contract of Capitalization in which the Initial Investors agreed to capitalize the Mutual Guapay. The latter was a contract requiring millions of dollars in investment monies by the Initial Investors. It was not believable for Funk to claim that he did not know or forgot who these individuals were.

38. The Panel finds that Funk was actively involved in the Bolivian Projects in early 2005 and was not introduced to them or induced to invest in them, by the Respondents.

G. Respondents raising Investment Monies

39. The evidence shows that the Foundation began to promote the Bolivian Investment Opportunities and took steps to raise investment funds to meet its initial obligations under the Subordinado de Capitalization starting in the month of April 2005.

40. Funk and his wife owned two companies: Mic-Jean Investments Ltd. ("Mic-Jean") and Don-Lea Investments Ltd. ("Don-Lea") These two entities each provided CAD $69,000.00 and USD $45,000.00 to the Foundation on April 12, 2005. These funds, totaling CAD $138,000.00 and CAD $111,672.00 were deposited to the CAD RBC Account. The funds were paid by bank drafts that were drawn from monies in accounts owned by Mic-Jean and Don-Lea in the Portage la Prairie Branch of the Canadian Imperial Bank of Canada.

41. The evidence shows that at the time the funds were deposited into the CAD RBC Account there was less than CAD $5,000.00 in that account. Over the next few months the Mic-Jean and Don-Lea deposits were used to pay various Foundation expenses, including Edgelow's salary, legal fees, and other operating expenses of the Foundation.

42. On May 26, 2005, Neufeld and his wife, Alvina Neufeld, in their personal capacities, borrowed the sum of USD $1 million from JSI Holdings Ltd, an Alberta Company. To secure this loan, JSI Holdings Ltd. obtained a Promissory Note signed by each of Neufeld and Alvina Neufeld. They agreed to pay interest at a rate of 6$^{1/2}$% per annum. Neufeld and Alvina Neufeld further agreed to pay JSI Holdings Ltd. the sum of USD $500,000.00 on or before May 31, 2006 and USD $500,000.00 on or before May 31, 2007.

43. On May 27, 2005, $999,990.00 (the "JSI Monies") was deposited to the USD RBC Account by JSI Holdings Ltd. At that time there was a zero balance in the USD RBC Account.

Investment by Youth for Christ

44. Staff Counsel called three witnesses from Youth for Christ;
    a. James Ritskes (Ritskes) who was the Assistant Executive Director from 2004 to 2006. On or about September 16, 2006 he became the Executive Director;
    b. Brian Charles Rushton ("Rushton") who was the Executive Director of Youth for Christ from September 1989 until September 2006; and
    c. Arthur Schroeder ("Schroeder") who became the Executive Director of Youth for Christ on March 17, 2016.

45. Rushton testified that Funk initially introduced Youth for Christ to the Foundation, Neufeld and Edgelow, in 2005. He was told by Funk that the Foundation was a Christian organization looking to do missionary work in Bolivia. He testified that he got on a phone call with Neufeld, Edgelow and Funk to discuss the Bolivian Investment Opportunities. He was told that the Foundation was looking to purchase a bank in Bolivia and in return for an investment of USD $100,000.00, the Foundation would guarantee the funds and pay a rate of return of 10% per annum for three years. After three years, the investment monies would be returned to Youth for Christ and Youth for Christ would also be provided with shares in the Bolivian bank which would provide Youth for Christ with an ongoing revenue stream.

46. Rushton testified that the matter was then brought to the Youth for Christ board at a meeting held on June 23, 2005. An excerpt from that board meeting, introduced into evidence, included the following: *"... $100,000 US needed from us and it will be guaranteed by the Foundation. This will turn into shares / stock options"*

47. Rushton was questioned several times, on direct and on cross-examination, as to whether the call with Neufeld, Edgelow and Funk took place before or after the investment monies were provided by Youth for Christ to the Foundation. His evidence was that the phone call with Neufeld, Funk and Edgelow, took place prior to the provision of the investment monies. He

stated that he recalled this because this was a *"...big deal for Youth for Christ"*. The Panel accepts this evidence of Rushton.

48. Rushton testified:

> *"Again, it was a trust relationship with the Foundation. You know, a Christian foundation with a Christian charity, we work with – I work with those different relationships all the time. There was no reason to doubt what was being promised or what was being said, and so we were acting as gentlemen."*

49. Rushton testified that the USD $100,000.00 investment was wired from the Youth for Christ bank account at the Portage Credit Union branch in Portage la Prairie, Manitoba, to the Jameson Account with the notation *"For further credit to the Neufeld Foundation by order of Youth for Christ Portage."* Edgelow directed that the funds were to be sent to the Jameson Account.

Investments by Back to the Bible

50. Staff called two witnesses from Back to the Bible:

    a. Robert Arthur Beasley ("Beasley") who was the CEO from 2004 until 2010. During this time, he was a member of the board of Back to the Bible; and

    b. John Albert Peneycad (Peneycad), who was a board member of Back to the Bible from 2003 until 2012 and was the Chairman of the Board from 2009 until 2012.

51. Staff also introduced into evidence the transcript (the "Reaume Transcript") of an interview conducted on July 20, 2011 by Terlinski of Byron Reaume ("Reaume"). Reaume was the CFO of Back to the Bible from 2003 to 2006 and died before the Hearing commenced.

52. Evidentiary findings made by the Panel with respect to the Reaume Transcript were supported by documentary evidence as well as other testimonial evidence.

53. Beasley testified that Funk had initially advised him of the Bolivian Investment Opportunities with the Foundation. At the time, Funk was the Chairman of the board of Back to the Bible.

54. Beasley testified to an email thread dated May 17, 2005 (the "May 17, 2005 Email") which was written by Edgelow, as Managing Director of the Foundation, to Reaume, and copied to Neufeld and Beasley. The email stated:

> *"As discussed, we are seeking a loan of one million ($1,000,000.00 USD) which would remain in a term deposit at the Royal Bank of Canada. A letter of credit will be drawn on these funds and placed in the Central Bank of Bolivia. Both interests payable less the cost of the letter of credit would go directly to the investors account. We are also prepared to offer Back to the bible an additional flow of funds for a period of ten years from the profits attributable to our percent of ownership which is fifty one percent (51%). The funds sought ($1,000,000.00 USD) will be used to satisfy a subordinate loan which provides assurance to the Superintendent of Banks for Bolivia of the sincerity to finance the Mutual Guapay, which is a mortgage financial institution established in Bolivia in 1967 with 27 branches."*

55. The May 17, 2005 Email attached a copy of the Andrews Summary and directed Back to the Bible to Andrew's website.

56. On May 25, 2005, Reaume replied to the May 17, 2005 Email, copying Neufeld. He asked about the proposed investment, including questions on the investment's risk, the changing political climate in Bolivia and whether the 10 year additional flow of funds was extendible.

57. On May 27, 2005 Back to the Bible directed its financial institution, the Steinbach Credit Union at the Steinbach, Manitoba branch, to transfer USD $100,000.00 from its accounts to the Foundation. The funds were deposited to the CAD RBC Account.

58. On June 28, 2005 Back to the Bible sent a second investment to the Foundation in the sum of USD $100,000.00. These monies were also drawn from funds in the Steinbach Credit Union account at the Steinbach, Manitoba branch. The funds were deposited to the Jameson Account.

59. On June 29, 2005 Reaume circulated an email to 3 individuals at Back to the Bible, including Beasley. It set out that the monies to be earned on the first USD$100,000.00 investment was to include interest at 2% US (from the GIC at the Royal bank), 3% from the bank of Bolivia and an additional 2% *"...from the Neufeld Foundation as a distribution of part of their 51% ownership in this project."*

60. On June 30, 2005 the Foundation issued two promissory notes (the "Promissory Notes") to Back to the Bible, with Back to the Bible as lender and the Foundation as borrower. The Promissory Notes were each dated June 30, 2005 and evidenced that the Lender had loaned the Foundation USD $100,000.00 for a three year period. The only difference between the two promissory notes was the rate of interest to be paid to Back to the Bible.

61. In addition to the Promissory Notes issued to Back to the Bible on June 30, 2005, the Foundation also provided Back to the Bible a document headed Profit Sharing Agreement (the "PS Agreement") which was dated June 30, 2005. The PS Agreement states that the Foundation has a *"...controlling interest the capital of F.F.P. GUAPAY SRL., a financial institution under the laws of Bolivia".* It states that in exchange for Back to the Bible loaning it USD $100,000.00 the Foundation will grant it a share of the distributions received by the Foundation from Mutual Guapay.

Investments by Bernie Penner and Helena Penner

62. The evidence introduced by Staff Counsel included a transcript of an interview of Bernie Penner that had been conducted by Terlinski. The interview had taken place on June 7, 2011 in the offices of the MSC. Helena Penner was also present at the interview. It was not an under-oath interview. The interview was taped and then later typed up. It was entered into evidence as an exhibit to the Hearing.

63. With respect to the transcript, the Panel has determined the weight to be given to statements made in that transcript, and found the necessary support for the evidentiary findings by reference to other testimony and/or documents introduced into evidence at the Hearing.

64. Bernie Penner first heard of Neufeld while working at Avanti. He and Funk travelled to Calgary to meet Neufeld and Edgelow in the Foundation offices. Neufeld asked for investment monies and told Bernie Penner that he would pay him a 10% return on the monies. Bernie Penner

noted in the interview that the 10% return was not an unusual rate of return at the time, and that he had other investments that were paying a similar rate of return.

65. On June 27, 2005, CAD $677,360.00 was transferred from Bernie and Helena Penner's jointly owned account at the Altona, Manitoba branch of the Canadian Imperial Bank of Commerce to the Jameson Account.

66. In January 2006 the Foundation provided Bernie and Helena Penner with a Promissory Note dated June 30, 2005, evidencing their CAD $677,260.00 investment.

67. Bernie Penner said that in January 2006 Neufeld contacted him by phone, asked for an additional USD $95,000.00 and told him it would pay a rate of return of 10%. Bernie Penner agreed to make the additional investment.

68. On January 6, 2006 a payment order for USD $95,000.00 was wire transferred from the Penners' bank account at the Altona, Manitoba branch of the Canadian Imperial Bank of Commerce and deposited to the USD RBD Account.

69. The Foundation issued a letter to Bernie Penner dated August 8, 2006 (the "August 8, 2006 Letter") acknowledging the additional investment in the sum of USD $95,000.00 which had been provided to the Foundation in January 2006. The letter states:

> *"The proceeds from the loan will be used to establish the F.F.P which will absorb the Mutual Guapay. Many issues have been exposed and dealt with including the Akualand project and its many connections to the Mutual. We have progressed in presenting an acceptable resolution to the many issued surrounding the absorption process."* and *"As we agreed, we will pay a 10% interest on this loan with an option to participate in any future public companies."*

70. The Panel finds that the investment monies for the Bolivian Projects paid to the Foundation in 2005 and 2006 from Bernie Penner and Helena Penner, Back to the Bible, and Youth for Christ were promoted and solicited by Neufeld. He attended meetings with the Manitoba Investors, he spoke to them by phone, and he provided materials prepared at his direction promoting the Bolivian Investment Opportunities.

71. Excluding the JSI Monies, the following monies were deposited to the USD RBC Account, the CAD RBC Account, and the Jameson Account on or before June 30, 2005:

Date	Payee	Amount	Deposited To
April 12, 2005	Mic-Dean Investments Ltd.	CAD $69,000	CAD RBC Account
April 12, 2005	Don-Lea Investments Ltd.	CAD $69,000	CAD RBC Account
April 12, 2005	Mic-Dean Investments Ltd.	USD $45,000	USD RBC Account
April 12, 2005	Don-Lea Investments Ltd.	USD $45,000	USD RBC Account
May 27, 2005	Back to the Bible	CAD $125,590	CAD RBC Account
June 27, 2005	Bernie & Helena Penner	CAD $677,325	Jameson Account
June 28, 2005	Youth for Christ	CAD $123,200	Jameson Account
June 29, 2005	Back to the Bible	CAD $123,200	Jameson Account
Jan 6, 2006	Bernie & Helena Penner	CAD $ 95,000	CAD RBC Account

72. The Foundation issued the following Promissory Notes, evidencing the obligations of the Foundation to repay the investors:

Date of Promissory Note	Borrower	Lender	Principal Amount	Note Term	Interest
April 14, 2005	Foundation	Mic-Jen Investments Ltd*.	CAD $69,000	36 months	10% per annum
April 14, 2005	Foundation	Don Lea Investments Ltd.*	CAD $69,000	36 months	10% per annum
April 14, 2005	Foundation	Mic Jen Investments Ltd*.	USD $45,000	36 months	10% per annum
April 14, 2005	Foundation	Don Lea Investments Ltd.*	USD $45,000	36 months	10% per annum
June 28, 2005	Foundation	Youth for Christ Portage Inc.	USD $100,000	36 months	10% per annum
June 30, 2005	Foundation	Back to the Bible	CDN $125,590	10 years	Between 5% to 7% **
June 30, 2005	Foundation	Back to the Bible	CDN $125,590	36 months	10% per annum
June 30, 2005	Foundation	Bernie & Helena Penner	USD $550,000	36 months	10% per annum

*the corporate names on these Promissory Notes issued by the Foundation were incorrect.

** interest rate depended on the rate of interest per annum quoted by the Banco Central De Bolivia as its reference rate for demand loans

73. The Promissory Notes were each signed by Edgelow. The Panel finds that Edgelow, as the Managing Director of the Foundation, had actual authority in his position at the Foundation to issue the Promissory Notes, the PS Agreement and the August 8, 2006 Letter. The Panel finds that the issuance of these documents by Edgelow was within his remit and that the issuance of these documents was made with the knowledge of Neufeld. Given the

documentary evidence on which Neufeld was included and/or copied, together with the testimonial evidence of the Manitoba Investors, the Panel does not accept Neufeld's position that he was unaware of the issuance of the Promissory Notes, the PS Agreement and the August 8, 2006 Letter to the Manitoba Investors.

74. The Panel does not accept Neufeld's position that these documents were not properly issued and/or that the Foundation was not bound by the terms of the Promissory Notes, the PS Agreement and the August 8, 2006 Penner Letter.

H. Dispersal of the Investment Monies from RBC

75. On May 26, 2005 an Irrevocable Standby Letter of Credit ("Letter of Credit") was issued by the Royal Bank of Canada in the amount of USD $1 million. The Application for the Letter of Credit was made by the Foundation and the listed Beneficiary was the Mutual Guapay. The purpose of the Letter of Credit was stated to be "*Satisfy Contracto de Credito Suborinato De Capitalization April 19, 2005*". The Letter of Credit was signed by Neufeld on behalf of the Foundation. The Expiry Date of the Letter of Credit was June 30, 2005, and it was to be automatically extended monthly until otherwise advised.

76. In support of the Letter of Credit, the Foundation deposited the sum of USD $1 million dollars to the Royal Bank of Canada. The monies to support the Letter of Credit came from the USD RBC Account.

77. The Mutual Guapay, as Beneficiary, called for the monies under the Letter of Credit on May 27, 2005 at 6:11 pm (Calgary time). In accordance with the terms of the Letter of Credit, the Royal Bank of Canada wired the funds through a New York City intermediary bank to an account in the name of Mutual Guapay in a bank in Bolivia.

78. The Panel finds that Neufeld was aware that the Mutual Guapay had called on the Letter of Credit and that the USD $1 million dollars had been transferred to a Bolivian bank to the credit of the Mutual Guapay, shortly after the call date of May 27, 2005.

79. At various times after the May 27, 2006 call for the monies under the Letter of Credit, Neufeld represented to the Manitoba Investors that the Letter of Credit was not supposed to have been called without notice to him or the right of a veto on the part of the Foundation. However, the Letter of Credit is clear on its face that there was no notice requirement, or any other conditions attached to the calling of the monies by the Mutual Guapay.

I. Dispersal of the Investment Monies from the Jameson Account

80. On June 30, 2005, the Jameson Account contained the investment monies provided by Youth for Christ (USD $100,000.00), Back to the Bible (one of its investments of CAD $123,200.00) and the first investment of Bernie and Helena Penner (CAD $677,325.00). These investment monies had been deposited to the Jameson Account on the direction of Edgelow. All these funds had been wired to the Jameson Account from the accounts of the Manitoba Investors from Manitoba based financial institutions.

81. In addition to the investment monies set out above, the Jameson Account contained a deposit of CAD $61,165.00 from an unidentified person made on June 28, 2005 and two deposits made on July 3, 2005 from "The Jack Neufeld Family, Canada" in the amounts of USD $150,000.00 and CAD $ 61,165.00.

82. The funds from "The Jack Neufeld Family, Canada", had been transferred to the Jameson Account pursuant to an internal Foundation email dated June 28, 2005 (the "June 28, 2005 Email"). The June 28, 2005 Email was copied to Neufeld. The details are as follows:

    1. at 1:30 pm, Edgelow sent an email to Larson, which was copied to Neufeld. It said:

    "Please find attached info to wire monies to an account we have set up with Jameson for foreign exchange services. Feel free to contact Jodi for information on wiring US funds. We require $200k USD to be wired to Jameson from our Foundation accounts. You might consider sending $95K USD and the balance needed form the CAD account. We need to do this asap. Thank you.

    2. At 2:30 pm Larson responded, copying Neufeld, as follows:

    "I need to have some info on what this money is for so that I can post it to the Foundation accounting program. I will prepare the wire authorization form for Jack to sign."

    3. At 4:27 pm Edgelow responded, coping Neufeld, as follows:

    "This will be a demand loan to DaVivienda S.R.L., Bolivia."

83. On July 4, 2005 the Foundation transferred the sums of USD $150,000.00 and CAD $61,650.00 from the RBC accounts to the Jameson Account on the direction of Neufeld.

84. On June 30, 2005, all funds in the Jameson Account were converted to US dollars and the sum of USD $800,000.00 was wired to the Mutual Guapay in Bolivia. These monies were directed to the credit of Da Vivienda, which at the time, owed monies to the Mutual Guapay.

85. On July 5, 2005 the balance of the funds remaining in the Jameson Account, totaling USD $199,175.00, were transferred from the Jameson Account to the Foundation's bank account.

86. Neufeld testified that he knew nothing about the Jameson Account. The Panel does not accept this testimony. The documents filed as exhibits to the Hearing by Staff Counsel evidenced that the Jameson Account was owned by the Foundation. Neufeld did not call any evidence to refute that the Jameson Account had been properly set up and that it was a Foundation owned account.

87. Neufeld testified that he knew nothing about the loan of $800,000.00 from the Foundation to Da Vivienda. The Panel does not accept this testimony. Neufeld knew that Back to the Bible, Youth for Christ and Bernie and Helena Penner had invested monies with the Foundation. Those monies were not in the Foundation's RBC bank accounts and were not used to support the Letter of Credit.

88. Neufeld did not explain why he did not question either the existence of the Jameson Account or the requested payment to the Jameson Account when he received the June 28, 2005 Email. That email was clear that there was an account at Jameson in the name of the Foundation and that a payment to Da Vivienda was going to be made from that account. Neufeld approved the transfer of monies from the Foundation's RBC Accounts to the Jameson Account.

89. Neufeld's testimony that he did not know why he was transferring monies from the Foundation's RBC Accounts to the Jameson Account was not believable. He said he was "busy" when he approved the transaction. There was no evidence that the Foundation was involved in anything other than the Bolivian Projects. The only funds in any of the Foundation bank accounts at this time related to the Bolivian Projects. The sums that Neufeld agreed to transfer; USD $150,000.00 and CAD $ 61,165.00 were, at the time, very significant for Neufeld and for the Foundation. It is not credible that a request to wire transfer these funds would not have been looked at carefully and followed up on immediately by Neufeld.

90. Neufeld's testified that he knew nothing about the Jameson Account and that all monies going into and out of that account were done by Edgelow alone, without his knowledge and consent. He testified that he kept Edgelow on as the Managing Director for another three years as a "strategy. He hoped that Edgelow would work to get the investment monies back from Bolivia. The Panel found this testimony to be implausible.

J. Activities Subsequent to the Dispersal of the Investment Monies

91. The Panel finds that Neufeld was aware very shortly after the call was made that the Mutual Guapay had called on the Letter of Credit and that the USD $1 million dollars had been transferred from RBC in Calgary to a Bolivian bank to the credit of the Mutual Guapay. The Panel also finds that Neufeld was aware of the USD $800,000.00 payment from the Jameson Account made to Mutual Guapay to the credit of Da Vivienda, pursuant to the June 28, 2005 Email.

92. Neufeld did not advise any of the Manitoba Investors as to what had happened to their monies. Indeed, after this point, Neufeld took an additional investment of USD $95,000.00 from Bernie Penner in January 2006, without disclosing to Bernie Penner what had happened with his first investment.

93. Neufeld testified that there had been promissory notes issued by two of the main principals in Da Vivienda to the credit of the Foundation. These documents were not produced at the hearing. Neufeld further testified that he had retained a legal professional in Bolivia, a "Dr. Murillo", to attempt to collect the monies owed to the Foundation by Da Vivienda and the two principals who had provided the promissory notes. However, "Dr. Murillo" had advised Neufeld that the notes were not legally enforceable in Bolivia. The Respondents did not call "Dr. Murillo" or introduce any plausible evidence to support this testimony.

94. The Panel finds that in the months and years following the initial investments of the Manitoba Investors, the Respondents provided misleading and incorrect information to the Manitoba Investors and withheld relevant information from them. The Manitoba Investors did not receive the same information from the Respondents.

95. Then, beginning in late 2007/early 2008 through to 2010, Neufeld approached Back to the Bible and Youth for Christ to urge them to transfer their investments in the Foundation to a different, third party company, called by various names in different documents; "Newklas", "1443895 Alberta Inc.", the "Union Project" and/or "New-co". In support of these requests, Neufeld and the Foundation provided documentation including future projected financial statements, that purported to show that the Manitoba Investors could make significant profits if they agreed to transfer their investments from the Foundation to another entity.

96. Given the volume of the communications by Neufeld and the Foundation to the Manitoba Investors subsequent to the initial investments made in 2005 and 2006, the relevant evidence by reference to each Manitoba Investor is set out separately.

Youth for Christ

97. Ritskes testified that on May 28, 2007, in response to a written request for information from Youth for Christ dated May 22, 2007, Neufeld provided a letter on Foundation letterhead. The letter stated that the Bolivian housing project was proceeding, although slowly. The letter further stated that the Foundation had a commitment to repay the investment of Youth for Christ, together with interest at 10% per year.

98. In March 2008, in an email Neufeld, advised that he would be travelling to Bolivia, meeting with the Canadian Ambassador to Peru and Bolivia and meeting with the Foundation's Bolivian attorneys. Neufeld advised that his focus would be preparing for negotiations and the legal strategies on *"...how to protect the several million dollars that has been invested."* He further advised that he was scheduled to meet with Government and banking officials in Bolivia for "*extensive negotiations for several days.*"

99. The March 2008 email from Neufeld contained the following statement: "*Please pray for Scott Edgelow our CEO as he quarterbacks all of the activities as well as the Financial requirements for the project and the Foundation.*"

100. In April 2008, the Foundation sent a "Report" to Youth for Christ, written by Neufeld, that provided the following information:

a. That the Foundation had invested $2,000,000.00 in Bolivia;
b. That the Foundation was negotiating with many Bolivian entities, including the Fondesif, the Superintendent of Banks, the receiver of the Mutual Guapay, and the MISA bank for a 2,500 lot subdivision to be transferred to the Foundation, free and clear;
c. That as soon as the Foundation had control of the subdivision it would sell off the "*200 homes that are 95% complete for a net revenue of approximately $2,500,000.00*";
d. That the Foundation was negotiating with a "*Canadian Joint Venture parent to participate in the development of the project in Bolivia*"; and
e. That the Government of Peru was identifying land to be subdivided.

101. On June 4, 2008 Neufeld wrote a letter (the "June 4, 2008 Youth for Christ Letter") on Foundation letterhead, to Youth for Christ. The letter was copied to Edgelow. In the June 4, 2008 Youth for Christ Letter the Respondents claimed that:

a. The $1 million Letter of Credit had "*disappeared*" and that the USD $800,000.00 that had been paid to the Mutual Guapay to the benefit of Da Vivienda had also been "*lost*".

b. The Mutual Guapay had closed, and *"The closure of Mutual Guapay also impacted the project in which the other million dollars was loaned to a Bolivian corporation named DaVivienda, facilitated by the Foundation."*

c. The Foundation had met with the "President of Bolivia" and the "Chairman of the Congress of the Government in power at the time" and they had "*...pledged to support*

the initiative of the Foundation....and support the process of converting the Mutual Guapay into a private bank...

d. The Foundation had discovered "*...serious internal corruption issued in the Mutual which included the promoters of the Capitalization process. These issues were confronted and dealt with to the satisfaction of the Superintendent of Banks. After several years of struggle of his nature we finally were approved to absorb the Mutual Guapay and we had all the funding in place to capitalize the bank.*"

e. The Foundation was working on a strategy. In this respect:

i. *"The Foundation has strong support from the Canadian Embassy to Bolivia who is assisting the Foundation by attending some of our meetings and by lobbying the Government at high levels, in support of the Foundation.*"

ii. *"The Foundation has the support of a Government Agency called the Fondesif, which is directed by four ministers. The Fondesif is seriously considering approving the Foundation as the vehicle though [sic] which their housing fund of $100,000,000.00 for poor people can be used for low income projects."*

iii. *"The Superintendent of Banks has participated in the meetings with the Government and is supportive of a global solution of this nature to try and avoid a Legal action."*

102. The Respondents did not call any witnesses or enter any documentary evidence to support the claims in the June 4, 2008 Youth for Christ Letter. Neufeld was not questioned under oath about the statements made in the June 4, 2008 Youth for Christ Letter, including his claims that he had met with the President of Bolivia and/or had any contact on this matter with representatives from the Canadian Embassy. None of the persons or agencies referenced in the June 4, 2008 Youth for Christ Letter were called as witnesses to the Hearing.

103. In the June 4, 2008 Youth for Christ Letter the Respondents:

a. requested that Youth for Christ grant an extension of time for repaying the outstanding loan under the Promissory Note dated June 28, 2005 and

b. requested that Youth for Christ advise the Foundation's auditors that the due date on the Promissory Note was "flexible" and could be extended.

104. Youth for Christ did not agree to either of these requests.

105. On June 26, 2008 the Respondents issued another letter to Youth for Christ. In this letter, the Respondents claimed that the Foundation was merely a "*go between*" the investors and the Da Vivienda project and claimed that it had no legal responsibility for the matter.

106. On September 1, 2008 the Foundation provided Youth for Christ with a lengthy document headed "*Interim Summary – June to September 2008*" (the "Interim Summary"). The Foundation proposed that it would enter into an agreement with a new entity whereby the Foundation would put up its obligations to the investors under the Promissory Notes and Da Vivienda would put up land in Bolivia.

107. Attached to the Interim Summary were projected financial statements that purported to show that after 6 years the investors would have recouped their initial investments and would also share in an additional $5.5 million dollars of profit. These projected financial statements were not prepared by auditors, included no written assumptions or relevant statements of fact, and included none of the disclaimers that are typically provided with projected financial statements. Neufeld did not address the Interim Summary in his testimony.

108. On September 4, 2008 Neufeld met in Manitoba with Ritskes and Youth for Christ board members seeking support to transfer the obligations the Foundation had under the Promissory Notes to Youth for Christ, to a different company as provided for in the Interim Summary.

109. Youth for Christ advised the Respondents, by letter dated September 24, 2008 that it would not agree to the transfer of the obligations under their Promissory Notes from the Foundation to a third party entity.

110. On October 1, 2008, Neufeld emailed Ritskes, advising that the Foundation was going ahead with what he called a "fund recovery plan" which would involve:

a. Land in Bolivia would be transferred to a Bolivian Trust Company;
b. A new Canadian company would be incorporated to own the interest in a new Bolivian Trust Company to be set up;
c. The new Canadian Company would be owned by the investors, and for each $1 USD that had been invested in the Foundation, One Class A Common Share of the new Canadian Company would be issued.
d. Once the restructuring was completed Youth for Christ could transfer/sell their shares to new investors to recover their investment monies.

111. Further communications throughout October 2008 to December 2008 ensued, with Neufeld asking Youth for Christ to agree to his "fund recovery plan" proposal and Youth for Christ consistently refusing to transfer any of the Foundation's obligations under the Promissory Note to a different entity.

112. Notwithstanding the consistent refusals of Youth for Christ to agree to any transfer of the Promissory Notes, Neufeld presented Youth for Christ with a new promissory note, signed by him (Neufeld) on behalf of 1443896 Alberta in the sum of CAD $129,539.00 and dated December 23, 2008. This promissory note provided that interest would be paid at the rate of 10% per annum and that the holder had the right to convert some or all of the principal amount into Class A Common Shares of 1443896 Alberta.

113. Youth for Christ refused to accept this unilateral attempt to transfer the Foundation's obligation to a third party.

114. On February 16, 2009, on 1443896 Alberta Letterhead, Neufeld sent a letter to Youth for Christ advising that shares in 1443896 Alberta had been issued to Youth for Christ and that the promissory notes issued by the Foundation had been "*retired*". The letter further stated that 1443896 Alberta now had an obligation to repay Youth for Christ the sum of $105,000.00.

115. Neufeld's testimony at the hearing with respect to his unilateral attempt to transfer the obligations of the Foundation to Youth for Christ to the 1443896 Alberta company was that he thought Youth for Christ was "interested" in the proposed transfer. This testimony was not plausible or believable.

116. The Panel finds that the information provided by Neufeld and the Foundation to Youth for Christ both before and subsequent to its investment in 2005 to have been deliberately misleading. The Panel finds that Neufeld mislead Youth for Christ knowing that Youth for Christ was a donor-funded service organization that was relying upon the investments to fund its ongoing work.

117. Neufeld made many efforts, including attending meetings with the board of Youth for Christ to convince Youth for Christ to transfer its investment in the Foundation to a new, third party entity. He had prepared, and circulated information that purported to show that a significant profit could be obtained from this new investment entity.

118. Notwithstanding that Youth for Christ consistently refused to agree to a transfer, Neufeld issued a new promissory note from 1443896 Alberta and took the position, in writing, that the Youth for Christ Promissory Notes had been "retired".

119. Schroeder testified that Youth for Christ has never received any monies to pay the principal of the Youth for Christ investment in the Foundation.

Back to the Bible

120. On April 28, 2006 Edgelow sent an email to Reaume, which was copied to Beasley, Funk and Neufeld. Back to the Bible was invited, by the Respondents, to an "Advisory Board Meeting" of the Foundation to be held on September 27, 2006 in Calgary The email also stated, in part:

> "*The Foundation is presently on course to establish an F.F.P. which will absorb the Mutual Guapay, We have been told this time schedule is June, 2006. We are also working with the principals of Da Vivienda who are developing the Akualand project.*

121. On September 18, 2006 the Foundation signed a letter to the auditors of Back to the Bible, confirming that, as of June 30, 2006, the Foundation owed Back to the Bible a) the sum of USD $100,000.00 with an interest rate of 10% per annum and unpaid interest as at June 30, 2006 of US $10,000.00 and; b) the sum of USD $100,000.00 with an interest rate of 5% per annum and with unpaid interest as at June 30, 2006 of US $5,000.00. The Foundation did not disclose that there were any problems with the investments.

122. In October 2006 Rueame wrote to the Respondents asking for specific information on each of the two investments made by Back to the Bible, going into considerable detail as to what information was required and advising that it was for the auditors of Back to the Bible. Neufeld responded to that request by email on October 16, 2006 confirming that he would send the required information to the auditors. He did not advise of any problems with the investments, notwithstanding that he was aware that the information was to be used by auditors for financial statement purposes.

123. In an internal email dated August 6, 2007 from Edgelow to Neufeld, referencing an email from Beasley that had requested information on the investments, Edgelow noted that he and Neufeld were both aware that Jose Ernesto had "*gone AWOL*" and that Alfredo had "*filed bankruptcy*". Edgelow also stated to Neufeld that "*We offered [Back to the Bible] some shares in a public company for a similar amount of the investment IF we proceeded to take a company public.*"

124. The Respondents did not advise Back to the Bible of any issues or problems with the investments at this time.

125. On August 20, 2007 Neufeld sent Back to the Bible a lengthy letter (the "August 20, 2007 Letter") which included the following statements:

> *"The second $100,000.00 invested by Back to the Bible was part of another $1,000,000.00 loan by the Foundation to a company called Davivenda, to assist in the completion of a 2500 unit housing project that had been started. As stated earlier it is important for the future of the Mutual that the Aukaland Housing Project is completed.*
>
> *Where did the funds go?*
> *"We confirm that Back to the Bible advanced funds by wire transfer in the amount of $100,000.00 which was received in the Neufeld Foundation Royal Bank bank account on or about May 27, 05. The Funds became part of the $1,000,00.00 US subordinated loan in favour of the Mutual Guapay.*
>
> *"The $1,000,000.00 US was initially held as a term deposit in the Royal Bank of Canada in support of a letter of credit in favour of the Mutual Guapay in the same account. The Superintendent of Banks required the funds be held in an interest bearing account by the Central Bank of Bolivia."*
>
> *"The $1,000,000.00 was deposited into an interest bearing account in the National Bank. The account is in the name of the Mutual Guapay and required joint signatures before the funds can be released. Withdrawal of funds requires one signature from the Foundation and one signature from the Mutual Guapay. Our Attorney advices [sic] us that the National Bank is obligated to keep these funds in their account and cannot release them without the signature of the Foundation*
>
> The August 20, 2007 Letter also included the following:
>
> *""...the "Bolivian Group" which included the promoters and several key Directors in the Mutual Guapay demanded that the Foundation fund a secret $6,000,000.00 illegal payment (corrupt greasing the palm) engineered by the Bolivian Group and certain Directors of the Mutual, designed to defraud a public institution and the Foundation for private gain. The Foundation faced extreme pressure to acknowledge and pay the 6m black mail under the table payment as part of the capitalization process. Our resistance and refusal to go along with this scheme resulted in the Bolivian group resorting to acts of manipulation, intimidation, various tactics, death threats as well as other maneuvers, including pressure through a net work of the Masons positioned in high place [sic] of Bolivian Society, all in the hopes that the delay tactics and threats, would discourage the Foundation and cause us to capitulate to their schemes. Understandably all of this delayed the absorption process, but we couldn't see ourselves participating in these kinds of corrupt activities and we found no way to negotiate an acceptable solution that would protect the assets. On or about August of 2006, upon the advise of our attorneys and other key Bolivian advisors the Foundation reported the entire matter to the Superintendent of Banks."*

126. There was no evidence adduced at the Hearing by the Respondents to support any of the statements in the August 20, 2007 Letter. Neufeld did not testify to any of these matters.

127. On October 14, 2008, Reaume emailed Neufeld to advise that the auditors of Back to the Bible were asking for information and documentation on the investments made to the Foundation. He listed the required information and documentation. Neither Neufeld, or anyone else at the Foundation, provided the information and/or documentation requested.

128. On December 9, 2008, Neufeld sent an email headed "Memo" to Back to the Bible. Neufeld stated that the assets, the *"land deal"* are *"...being transferred to New-Co, the corresponding Promissory notes have been assigned to a Canadian corporation, which is being set up as a provide Corporation and possibly as a Private Equity Fund."* He further stated that the attorneys and accountants were working to finalize the transaction. He concluded by stating *"Byron I see no other way that we can address this. It is my hope and prayer that you and your Board will find a way to work with us to make this plan work. I will be pleased to meet with you and representatives from your Board to discuss these matters with you in more detail."*

129. Back to the Bible did not agree to have the obligations under its Promissory Notes transferred from the Foundation to the proposed new entity.

130. On February 16, 2009 Neufeld sent a letter on behalf of 1443896 Alberta to Back to the Bible. That letter advised that it had transferred the *"Bolivian assets as outlined in the December 9th letter from Catalyst"* to 1143896 Alberta. It noted that 1443896 Alberta had obligations under promissory notes to Back to the Bible in the sum of USD $207,000.00 outstanding.

131. Back to the Bible did not agree to the transfer of the obligations from the Foundation and on July 15, 2009 a law firm acting for Back to the Bible sent a letter to Neufeld and the Foundation advising that Back to the Bible held the Foundation accountable for the full amount of the promissory notes as well as the interest payments that remained outstanding.

132. On October 23, 2009 Neufeld attended a board meeting of Back to the Bible to discuss the board's concerns about its investments with the Foundation.

133. Back to the Bible refused to agree to transfer the obligations owed to it by the Foundation to a third party entity.

134. On October 31, 2009, Neufeld sent an email to Reaume, copied to Funk and Beasley, asking Back to the Bible to agree to transfer the investments with the Foundation to a new entity which he said was a third party limited partnership totally unrelated to any investments made by Back to the Bible and Youth for Christ. He advised:

> *"My colleagues and I have worked tirelessly to create this project (Union Project) on its own merit. The participants as well as the project itself has no present or previous relationship with the issues and or project that BTB and YFC participated in. this group of committed Christian business people, have graciously, as a good will gesture agree to work with us to include $300,000 US as a cost, added to the cost of the land for the project, for the purpose of purchasing BTBs and YFC interest in New Co outlined in the restructuring documents dated December 9, 2008 prepared by Catalyst, vetted by Carter and Associates, documented and legalized by Mr. Chris Mozer, legal counsel.*

135. The Respondents did not provide any evidence to the support the statements made in the October 31, 2009 email. Neufeld did not testify to this matter.

136. Back to the Bible did not agree to the transfer of the obligations of the Foundation to any third party and did not agree to become part of the 'New Co" venture.

137. Back to the Bible did not receive repayment of the principal amounts of the investments its made to the Foundation.

138. Neufeld did not testify to any of the written communications he made to Back to the Bible over the Material Time and did not address Back to the Bible's evidence that it did not agree to the transfer of the Promissory Notes from the Foundation to any third party entity.

139. The Panel finds that Neufeld attempted to convince Back to the Bible to permit transfer of the Promissory Notes from the Foundation to 1443896 Alberta. When the request was refused, Neufeld purported to unilaterally cancel the Promissory Notes issued by the Foundation and provide new promissory notes in 1443896 Alberta.

Bernie Penner and Helena Penner

140. Helena Penner testified at the Hearing. She readily admitted to not having knowledge of many matters that would have been in her interests to have recalled. For example, she admitted that she had no knowledge of, and was unable to testify to, anything prior to June 2005 when the initial investment monies were provided to the Respondents. She testified about a trip to Calgary in December 2005 to attend the Foundation's Christmas Gala but said she did not participate in any meetings about the investments. She testified that she had travelled to Bolivia with her husband, Neufeld and his wife, Edgelow and his wife and Funk and his wife, but stated she was not involved in any meetings and did not have anything relevant to advise as to the discussions with the Bolivian organizations.

141. On August 8, 2006 the Foundation sent a letter to Bernie Penner respecting the USD $95,000 investment. The letter advised that:

a. The proceeds "*...will be used to establish the F.F.P. which will absorb the Mutual Guapay.*"
b. "*We have progressed in presenting an acceptable resolution to the many issues surrounding the absorption process.*"
c. 'As agreed, we will pay a 10% interest on this loan with an option to participate in any futures public companies."

142. On October 21, 2006, Edgelow, on Foundation letterhead, wrote to Bernie Penner apologizing for not providing information on the Penners' first investment at any earlier date. The letter stated that the Penners' investment funds "*...went to projects in Bolivia.*" and further stated "*...we are presently selling the building we occupy and anticipate proceeds with sixty days. From these proceeds interest payments, including arrear, will be made to bring you current.*"

143. Helena Penner testified that no funds were received subsequent to the October 21, 2006 letter.

144. On June 4, 2008 Neufeld wrote a letter (the June 4, 2008 Penner Letter") on Foundation letterhead to Bernie Penner. The letter was copied to Edgelow. The following statements were made in the June 4, Penner 2008 Letter:

a. the $1 million Letter of Credit had "*disappeared*" and that the USD $800,000 that had been paid to the Mutual Guapay to the benefit of Da Vivienda had also been *"lost"*.

b. Mutual Guapay had closed, and *"The closure of Mutual Guapay also impacted the project in which the other million dollars was loaned to a Bolivian corporation named DaVivienda, facilitated by the Foundation."*

c. The Foundation had met with the President of Bolivia and the Chairman of the Congress of the Government in power at the time and they had "*...pledged to support the initiative of the Foundation....and support the process of converting the Mutual Guapay into a private bank...*

d. The Foundation had discovered "*...serious internal corruption issued in the Mutual which included the promoters of the Capitalization process. These issues were confronted and dealt with to the satisfaction of the Superintendent of Banks. After several years of struggle of this nature we finally were approved to absorb the Mutual Guapay and we had all the funding in place to capitalize the bank."*

e. The Foundation was working on a strategy. In this respect:

i. *"The Foundation has strong support from the Canadian Embassy to Bolivia who is assisting the Foundation by attending some of our meetings and by lobbying the Government at high levels, in support of the Foundation."*

ii. *"The Foundation has the support of a Government Agency called the Fondesif, which is directed by four ministers. The Fondesif is seriously considering approving the Foundation as the vehicle though [sic] which their housing fund of $100,000,000.00 for poor people can be used for low income projects."*

iii. *"The Superintendent of Banks has participated in the meetings with the Government and is supportive of a global solution of this nature to try and avoid a Legal action."*

f. Neufeld requested that the Penners approve extending the terms of the promissory note and work with it on the "*timing of the interest payments*".

g. Neufeld told the Penners that they would need to have "*your auditors approve the financial statements.*" It went on to ask them to "*convince the auditors that the Promissory Note itself gives flexibility and if the you [sic] approve extending the term of the Note as well as the flexibility built into the Note then in our view the Auditor would be hard pressed to reject it."*

145. The Respondents called no evidence to support any of the statements made in the June 4, 2008 Penner Letter. Neufeld did not testify to the matter.

146. Helena Penner testified that in September 2008 Neufeld travelled to the Penners' home in Manitoba. Although she was not present in the meeting, which was held in Bernie Penner's

home office, Helena Penner testified that she knew that the meeting was to discuss the investments they had made with the Respondents and when they would be repaid. At the end of the meeting Helena Penner testified that she heard Neufeld say words to the effect of "*Bernie I won't leave you with this debt. I will repay it.*"

147. Helena Penner testified that neither she or her husband ever received any interest payments or the repayment of any of the principal amounts owing to them by the Respondents.

148. The Panel found Helena Penner to be a reliable witness. She responded directly to all questions put to her. She readily admitted to not knowing many relevant details concerning the investments made in the Foundation. She did not embellish her testimony. Where her testimony differed from that of Neufeld the Panel accepts Helena Penner's testimony.

K. Neufeld's Testimony

149. The Panel found the testimony of Neufeld to be unreliable and implausible. In addition to the evidentiary findings made previously, the Panel notes that Neufeld contradicted his own testimony during his direct examination at points in the Hearing and contradicted the documentary evidence.

150. Neufeld testified that the Bolivian government was prepared to allow the Foundation to absorb the Mutual Guapay without putting any money into it, that all they had to do was "*create a capitalization plan.*" The documentation he signed and documentation the Respondents entered into evidence at the Hearing clearly shows that significant funds, totalling USD $27,500,000.00m were going to be required to fully capitalize the Mutual Guapay.

151. Neufeld testified that the Mutual Guapay could generate income for the investors. He provided no evidence to support this statement.

152. Neufeld testified that with respect to the Mutual Guapay, "*...we had the majority of the board. I was chairman so the way it was structured, we could control what would happen to it.*" No evidence was tendered to support this statement and it was contradicted directly by the documents in evidence.

153. At several points during his testimony Neufeld referred to the Bolivian Projects having received the approval of the Bolivian government and the Bolivian Superintendent of Banks. He did not provide any evidence to support these statements.

154. Neufeld testified extensively that he relied on things he had been told by, and documents and advice he had received from, numerous people. He did not provide any evidence to support this testimony. He did not call as witnesses any of the individuals he testified that he had relied upon, including;

a. The numerous professionals he said he had retained to do work for the Foundation in Canada, Bolivia and the United States, including lawyers, advisors and accountants;
b. Board members of the Foundation;
c. The Initial Investors, particularly Klassen who Neufeld claimed had a veto over any board decisions made at the Mutual Guapay;
d. Embassy staff at the Canadian embassy in Peru or Bolivia;
e. Representatives from the Canadian government, the Bolivian government, or the government of Brazil, all of which Neufeld represented in his communications with the

Manitoba Investors had been directly involved with, encouraging of, and helping, the Foundation in the Bolivian Projects; and

f. Representatives from the Bolivian Superintendent of Banks, the BISA bank or the Fondesif.

155. In reviewing the totality of the evidence presented at the Hearing, including the documentation, the Panel assessed Neufeld's testimony to be implausible.

L. Neufeld's Communications with Commission Staff Investigator

156. On October 18, 2010, Terlinski wrote a letter (the "Commission Enquiry Letter") to the Respondents seeking information on the investment made by Youth for Christ in the Foundation. The Commission Enquiry Letter also requested a list of all investors from Manitoba, including names, contact information, the amounts invested and the dates the investments were made.

157. In reply, Neufeld signed a letter on Foundation letterhead dated November 1, 2010 (the "Response to Enquiry Letter").

158. The Response to Enquiry Letter included the following statements:

a. The Youth for Christ investment was a private loan.
b. The Youth for Christ investment was a "*fully-informed transaction*" made between "*equally informed parties*".
c. The Youth for Christ funds were appropriated by an employee who was "*summarily dismissed*" for cause, in part for appropriating the funds.
d. The transaction with Youth for Christ was the "*only transaction of this nature that the foundation has ever entered into.*"

159. Neufeld testified that he relied upon his counsel's advice for making the statements in the Response to Enquiry Letter. He claimed the lawyer, who worked for a large Canadian law firm, was an acknowledged expert in securities law matters. He did not call this individual, or any other evidence, to support his testimony in this respect.

160. The Panel finds the responses given by Neufeld in the Response to Enquiry Letter to be false and incomplete. The Panel finds that Neufeld mislead the MSC investigation in the Response to the Enquiry Letter.

III. Analysis

A. Limitation of Actions Act

1. The actions giving rise to this hearing occurred from 2005 to 2010. The investigation by the MSC commenced in October 2010 when a representative of one of the Manitoba Investors provided documents that founded allegations to be investigated. A Notice of Hearing and Statement of Allegations were issued on March 6, 2015 and an Amended Statement of Allegations and Notice of Hearing were issued June 10, 2016.

2. The Respondents submit that the claims for compensation under section 148.2 of the Act are barred by operation of *The Limitation of Actions Act*, C.C.S.M. c. L150 (the "LAA").

3. The Respondents directed us to section 1, definition of "action" and section 2(1) (a) (b) (i) and (n) of the LAA which read:

> **Definitions**
> 1
> In this Act,
> **"action"** means any civil proceeding but does not include any proceeding whether for the recovery of money or for any other purpose that is commenced by way of information or complaint or the procedure for which is governed by *The Provincial Offences Act*; (« action »)
>
> **Limitations**
> 2(1)
> The following actions shall be commenced within and not after the times respectively hereinafter mentioned:
> (a) actions for penalties imposed by any statute brought by an informer suing for himself alone or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose;
>
> (b) actions for penalties, damages, or sums of money in the nature of penalties, given by any statute to the person aggrieved, within two years after the cause of action arose;
>
> (i) actions for the recovery of money (except in respect of a debt charged upon land), whether recoverable as a debt or damages or otherwise, and whether a recognizance, bond, covenant, or other specialty, or on a simple contract, express or implied, and actions for an account or not accounting, within six years after the cause of action arose;
>
> (n) any other action for which provision is not specifically made in this Act, within six years after the cause of action arose.

3. Staff Counsel argue that administrative proceedings of the MSC are not actions within the meaning of the LAA but that even if they are, the MSC is the Crown and is therefore exempt from the provisions of the LAA due to section 49 of *The Interpretation Act* C.C.S.M. cI80 (the "IA") which reads:

> **Crown not bound unless expressly stated**
>
> 49 An Act does not bind Her Majesty or affect Her Majesty's rights or prerogatives unless it expressly states that Her Majesty is bound.

4. The following questions arise:

   a. Are administrative proceedings of the MSC "actions" within the meaning of the LAA; and
   b. Is the MSC the "Crown" such that it is entitled to claim the benefit of section 49 of the IA?

5. The Respondents argue that the claims against the Respondents under s.148.2 of the Act provide for a civil recovery by the Manitoba Investors and that this action is substantively, no different than a civil court proceeding with the same ultimate result; a judgement filed in the Court of Queen's Bench.

6. The Respondents directed us to the leading case in Manitoba, *Hupe* v *Manitoba (Director of Residential Tenancies Branch)* 2009 MBCA 27 and argue that it is on point with the facts in this matter. In that case the Director of the Residential Tenancies Branch was carrying out a

rent collection inquiry pursuant to section 140 of *The Residential Tenancies Act* C.C.S.M. c.R119 (the "RTA") and sought the repayment of rent monies from rent increases that had been improperly assessed and collected. The respondents in *Hupe* argued that the Director was statute barred due to the provision of the LAA.

7. The court reviewed two issues: First, whether the rent collection inquiry proceeding by the Director was an "action" under the definition in the LAA; and second, whether the Director was the "Crown" such that section 49 of the IA applied to his actions and the LAA did not have effect.

8. The Court of Appeal held that the proceeding was an action, but that as the Director was the Crown it had the benefit of section 49 of the IA.

9. The Court of Appeal reviewed the Supreme Court of Canada decision *in Markevich* v *Canada* [2003] 1 S.C.R. 94.

> *"29 For present purposes, the decision is relevant ... for the clear analysis by Major J. on the interpretation of "proceeding" (at paras. 24-25):*
>
> > *Interpreted in their grammatical and ordinary sense, these words [proceedings by or against the Crown in respect of a cause of action] clearly encompass the statutory collection procedures in the [Income Tax Act]. Although the word "proceeding" is often used in the context of an action in court, its definition is more expansive. The Manitoba Court of Appeal stated in Royce v. MacDonald (Municipality) (1909), 12 W.L.R. 347, at p. 350, that the "word 'proceeding' has a very wide meaning, and includes steps or measures which are not in any way connected with actions or suits". In Black's Law Dictionary (6th ed. 1990), at p. 1204, the definition of "proceeding" includes, inter alia, "an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right".*
> >
> > *The statutory collection procedures closely resemble various proceedings in court. The registration of a certificate in Federal Court is deemed by s. 223(3) to be a judgment of that court. As Rothstein J.A. notes at para. 35:*
> >
> > > *A requirement to pay under section 224 (as am. by S.C. 1994, c. 21, s. 101) is analogous to a garnishing order issued by a court .... Seizure and sale of chattels under subsection 225(1) is a provision closely parallel to a writ of execution issued by a court.*
> >
> > *By granting the power to effect the collection of tax debts in this manner, Parliament has provided the Minister with an efficient and expeditious alternative to bringing a court action. However, the court and non-court collection procedures are identical in purpose. Both are mechanisms by which the Minister is able to enforce the collection of tax debts and thereby carry into effect the legal rights of the Crown. It is evident that both kinds of procedures are appropriately characterized as legal proceedings."*

The court in *Hupe* further noted:

> *"33 The governing principle of statutory interpretation is not disputed: "... [t]he words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (Ruth Sullivan, Sullivan on the Construction of Statutes, 5th ed. (Markham: LexisNexis Canada Inc., 2008) at 1). The proper interpretation (which, pursuant to s.6 of the IA, is to be a fair, large and liberal one) of the word "action" and the phrase "civil proceeding" is informed by the decisions*

in Markevich and Winters. I agree with the judge that the inquiry process commenced by the Director under s. 140 of the RTA is a "civil proceeding," and thus an "action" for LAA purposes, even though not an action in court."

10. The Panel has considered the arguments of Staff Counsel, including that the Manitoba legislature made an error in not including the word "court" before "action" as is the case in other similar provincial acts. Staff argued that because the wording in the LAA is unique to that of other provincial acts, together with section 60 of the LAA, the Panel should find that the legislature made a mistake and we should effectively read in the word "court" to section 1 of the LAA. The Panel declines to make such a finding.

11. Staff Counsel also referred us to the SCC decision in Brosseau v Alberta Securities Commission *[1989] 1 S.C.R. 301*, where the court held that due to the purpose of provincial securities legislation being to regulate the markets and protect the investing public, securities commissions have a "*special character*". The court noted that securities acts are aimed at regulating the market and protecting the public and that:

> *"This protective role, common to all securities commission, gives a special character to such bodies which must be recognized when assessing the way in which their functions are carried out under their Acts."*

12. In the Panel's view, Brosseau cannot be used to support the position that provincial securities commissions are not subject to validly enacted legislation. The "special character" argument cannot be employed as broadly as Staff Counsel argues.

13. The Panel finds that administrative proceedings under the Act are "actions" within the meaning of the LAA. However, that does not fully determine this issue.

14. On the second part of the argument, whether the MSC is the "Crown", the Panel finds that it is and that it falls within section 49 of the IA.

15. The Panel was not persuaded by the arguments of the Respondents that the Commission is a separate entity from that of the Crown.

16. Staff Counsel argued that the Commission is a Special Operating Agency ("SOA"). SOA designations fall under the provisions of *The Special Operating Agencies Financing Authority Act* C.C.S.M. c S185. (the "SOAFA")

17. Regulation 79/2006 to the SOAFA reads:

> Designation of SOA 1 The departments, divisions, branches and programs of the government set out in Column 2 of the Schedule are designated as special operating agencies for the purposes of The Special Operating Agencies Financing Authority Act, operating under the names set out opposite them in Column 1 of the Schedule.
>
> The Manitoba Financial Services Agency is designated as a special operating agency with the Manitoba Securities Commission noted as the name it is operating under.

18. The Panel agrees with the position of Staff Counsel that the SOAFA and Regulation 79/2006 establish that the MSC is a *"department, division or branch of the government"*, that is, part of the provincial government.

19. Accordingly, given that the MSC is the Crown, and section 49 of the IA holds that unless a provision specifically includes the Crown it is not binding upon the Crown, the Panel finds that the LAA does not apply to this hearing.

B. Allegations

The Amended Statement of Allegations, dated June 10, 2016, alleged that;

1. The Respondents traded and distributed securities by issuing and/or offering to the Investors promissory notes and/or shares in companies without having been registered and without having filed a prospectus in violation of sections 6 and 37 of the Act.

   During the Material Time, the relevant provisions of the Act read:

   Registration required

   6(1) Notwithstanding subsection (4), no person or company shall trade in a security unless that person or company is registered as a broker, investment dealer, broker-dealer, sub-broker-dealer or security issuer, or as a salesperson of a registered broker, investment dealer, broker-dealer or security issuer.

   Prohibition as to trading

   37(1) No person or company shall trade in a security, either on his own account or on behalf of any other person or company, where the trade would be in the course of primary distribution to the public of the security, until there have been filed with the commission both a preliminary prospectus and a prospectus in respect of the offering of the security and receipts therefor obtained from the Director.

2. The Respondents did not deliver a prospectus to the investors.

3. The Respondents made misrepresentations to investors that were, in material aspects, misleading or untrue, or did not state facts that required to be stated or were necessary to make the statements not misleading, in contravention of section 74.1 of the Act. At the Material time the relevant provision of the Act reads:

   Certain misrepresentations prohibited

   74.1

   A person or company shall not make a statement about something that a reasonable investor would consider important in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

4. The Respondents acted in a manner that was contrary to the public interest.

C. Allegation 1

1. Section 6(1) of the Act provides that "*...no person or company shall trade in a security...unless the person is registered*" and section 37(1) of the Act requires that "*...No*

person or company shall trade in a security until there have been filed with the commission both a preliminary prospectus and a prospectus..."

2. The Panel notes the following statements in the decision of a hearing panel of the Alberta Securities Commission (ASC) in *Bartel, Re*, 2008 ABASC 141:

> *"[103] The registration and prospectus requirements are the core investor protection elements of the Act. Registration of persons is intended to ensure that those who are entitled to trade with or on behalf of the public are honest, ethical and properly qualified, having met certain proficiency requirements. Registrants perform an important protective role by ensuring that a purchaser of securities is offered only those investments in securities that are suitable for that purchaser. The requirement to provide a prospectus is for the protection of those who are contemplating a purchase of securities by giving such prospective investors and their advisors information they need to enable them to make an informed investment decision, which includes an assessment of the investment's risks."*

3. A Certified Statement of the Director, was entered into evidence in this hearing which stated:

   a. That no preliminary prospectus or prospectus had been filed by the Foundation,
   b. that none of the Respondents, Edgelow, 1443896 Alberta, and Newklas Construction Company had ever been registered in any capacity under the Act;
   c. that none of the Respondents, Edgelow, 1443896 Alberta and/or Newklas had applied for or been granted an exemption under section 20 from any exemption under the Act, and
   d. that none of the Respondents, Edgelow, 1443896 Alberta and/or Newklas had filed any reports under Clause 7 of the Regulation to the Act, or any notice required with respect to any trades under section 19 of the Act or clauses 90 or 91 of the Regulation or reports of exempt distributions pursuant to National Instrument NI 45-106.

4. The Respondents did not lead any evidence contradicting the Certified Statement of the Director during the hearing.

5. The Promissory Notes are securities within the meaning of the Act. The Act, in section 1(1) defines security as follows:

> **"security"** includes
> (a) any document, instrument, or writing commonly known as a security,
> (b) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,
> (e) any bond, debenture, share, stock, note, unit, unit certificate, participation certificate, certificate of share or interest, pre-organization certificate or subscription,
> (h) any profit-sharing agreement or certificate,
> (m) any investment contract, including an investment contract as defined in Part XVI, and
> whether any of the foregoing relate to a person, proposed company or company, as the case may be;

6. The term "investment contract" is not defined in the Act but the similar provision in the Ontario statute has been interpreted in *Pacific Coast Coin Exchange v Ontario Securities Commission* [1978] 2 S.C.R. 112. The SCC held that an investment contract consists of four elements; an investment of money; in a common enterprise; with an expectation of profit; which is derived from the efforts of others.

7. The Panel finds that Staff Counsel has proven each of the four elements. The Manitoba Investors provided monies for investment in the Foundation. They were aware that there were others involved in the project. They expected profits. The efforts involved in obtaining those profits were that of others.

8. The issue of where the monies from the Manitoba Investors went was raised at the hearing. That is not an element that needs to be proven by Staff Counsel. We note the comments of the Nova Scotia Securities Commission in *Matter of Wesley William Robinson and DDR900306 NS Ltd. (Re), 2021 NSSEC 1 (CanLII),* where a panel held:

> *[86] ...Tiffin confirms that the legislative intent of securities regulation means that there is no requirement to look at the intent behind the promissory note, and thus the underlying transaction. The evidence of the indebtedness is itself the test."*

9. The Panel finds that the Promissory Notes are securities within the meaning of section 1.1 (h) of the Act.

10. The Panel find that the "Profit Sharing Agreement" document dated June 30, 2005 issued by the Foundation to Back to the Bible constitutes a security under the Act, under the definition of security in section 1.1 of the Act at both sub-sections (h) and (m).

11. The evidence establishes that during 2005 and 2006 Neufeld solicited prospective investors to purchase securities to invest in the Bolivian Projects. He provided information he attended meeting and he spoke to the Manitoba Investors, urging them to invest monies in the Foundation.

12. The Panel finds that considering the totality of the evidentiary findings, Neufeld engaged in trades in securities while he was not registered and engaged in a primary distribution of securities for which a prospectus had not been filed and a receipt had not been issued, all in contravention of the Act.

Acts in Furtherance of a Trade

13. The Panel finds that Neufeld acted in furtherance of a trade by the steps he took, verbally and in writing to have Youth for Christ and Back to the Bible transfer of the promissory note obligations of the Foundation to 1344896 Alberta and/or other entities.

14. The Panel accepts the following reasoning from Re Kustom Design Financial Services Inc. 2010 ABASC 179 at paragraphs 159-160, where a hearing panel of the ASC held;

> "In analyzing whether an act in furtherance of a trade has occurred, we take guidance from the reasoning of the Ontario Securities Commission . . . in Re Costello (2003), 26 O.S.C.B. 1617 (at para. 47):
>
> > *There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.*

> Thus, it is a question of fact whether a particular act is in furtherance of a trade. We consider the totality of the conduct and the context in which the acts occurred, including the effect on investors. The [ASC] has found that acts such as accepting investor money, depositing investor money into bank accounts, preparing and providing forms of agreements for signature by investors, meeting with individual investors, conducting or holding information sessions with investors, preparation and dissemination of advertisements, newsletters and other promotional material and hiring of salespersons to sell securities may constitute acts in furtherance of a trade in a security."

15. The evidence established that Neufeld created promotional materials and information on 1443896 Alberta (and other entities) and provided those materials to Back to the Bible and Youth for Christ. He retained accounting and legal experts to effectuate a transition of the Promissory Notes held by Back to the Bible and Youth for Christ that had been issued by the Foundation to 1443896 Alberta, and he solicited the Manitoba Investors to accept a primary distribution of securities in 144896 Alberta. The Panel finds that each of these actions by Neufeld was an act in furtherance of a trade.

D. Allegation 2

1. Each of the Manitoba Investors testified that they did not receive a prospectus from the Respondents.

2. The Respondents led no evidence that it had provided a prospectus. The Certificate of the Director was evidence that no prospectus was filed. The Panel accepts that no prospectus was filed.

3. The Panel finds that this allegation has been proven.

After finding that the Respondents breached the first two allegations concerning trading without registration and without a prospectus, we turn to whether the Respondents are entitled to any of the exemptive relief in the legislation.

E. Defences Raised by the Respondents

1. The Respondents argued that several exemptions were available to them under the Act and the Regulations to the Act, and that they were entitled to rely on those exemptions. The Respondents also raised the issue of whether the MSC has jurisdiction in these matters.

2. We start by noting that the Act provides for exemptions from the registration and prospectus requirements in circumstances where the protections afforded by the requirements are unnecessary. It is well established that it is incumbent upon the entity alleging that an exemption exists to prove that it meets each of the requirements of the said exemption.

3. In this respect we note and adopt the following from the decision of a hearing panel of the ASC in *Arbour Energy Inc. Re.* 2012 ABASC 131 at paragraphs 736 and 737:

> *"[736] These exemptions have been crafted to eliminate some of the investment's risk by stipulating terms that address attributes of the individual investor (such as investor sophistication, financial resources or relationship to the issuer), address the nature of the security itself, or provide*

alternative sufficient information about the offering and the issuer to enable eligible investors to make informed investment decisions.

[737] Because the exemptions relieve compliance from two of the fundamental requirements of the Act, the issuer or a person seeking to rely on an exemption to trade and distribute securities is responsible for ensuring that the exemption is available for each particular trade or distribution at the time of the trade or distribution, and ensuring strict compliance with all of the requirements, conditions and restrictions associated with the relied-on exemption." (emphasis added)

The Panel notes further similar findings in *Re Lydia Diamond Exploration of Canada* (2003) 26 O.S.C.B. 2511, *Ronald James Aiktens, Re.* 2018 CanLII 153722 (SK FCAA) and *Re Euston Capital Group* 2007 ABASC 75.

Section 19(3) Exemption

1. In their written argument the Respondents argued that Back to the Bible's investments were exempt from the registration and prospectus requirements of the Act due to subsection 19(3) of the Act. They argued that the required written report was not necessary because none of the conditions in section 7(1) (a) to (d) of the Act were triggered.

2. The Panel does not agree with the position of the Respondents. Back to the Bible was incorporated under the Corporations Act of Manitoba. The principal offices of Back to the Bible were in Manitoba during part of the Material Time. The bank accounts from which the investment monies were sent to the Foundation were in branches of financial institutions located in Manitoba. The Panel finds that there was a sufficient connection to make a finding that the Respondents were required to file a report with the Commission pursuant to 7(1) (c) of the Act.

3. The Respondents did not file the required report.

4. The Panel finds that the exemption under section 19(3) does not apply in this matter.

Charitable Foundation Status Exemption

1. The Respondents submit that by virtue of sections 19(2) (f) and 58(3) (a) of the Act as it read in 2005 and section 2.38(1) of National Instrument 45-105, the Foundation falls outside of the legal registration and prospectus requirements, as it is a charitable foundation.

2. Section 19(2) (f) read:

   19(2) Subject to the regulations, registration is not required to trade in the following securities;

   (f) Securities issued by a person or company organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit, where no part of the net earnings of such person or company enure to the benefit of any security holder and no commission or other remuneration is paid in connection with the sale thereof.

3. Section 2.38(1) of National Instrument 45-105 read:

   2.38(1) The dealer registration requirement does not apply in respect of a trade by an issuer that is organized exclusively for educational, benevolent, fraternal, charitable, religious or recreational purposes and not for profit in a security of its own issue if:

(a) no party of the net earnings benefit any security holder of the issuer, and
(b) no commission or other renumeration is paid in connection with the sale of the security.

4. The Respondents did not enter evidence sufficient for the Panel to make a finding that the Foundation was a charitable organization within the meaning of the Act.

5. The Respondents entered a copy of an incorporation filing with the Alberta Companies Branch where the Foundation names itself a charitable organization. This is not determinative of anything. Calling a company "charitable" does not make it so for the purposes of the Act and the Regulations to the Act.

6. The Respondents called Neufeld and Larson as witnesses. Larsen did not testify as to anything that was substantive or helpful on this issue. She had no documentary evidence to support her general statements. Neufeld's testimony on this point was general, vague, and also unsubstantiated by any relevant documentation.

7. The Respondents did not call any persons with relevant information and knowledge, such as directors or officers of the Foundation, or the accountants that prepared the financial statements for the Foundation during the Material time.

8. There was no relevant documentary evidence submitted. No financial statements, minutes of Foundation board meetings, annual reports, or tax filings were submitted to prove that the Foundation had conducted any charitable activities.

9. The Foundation's dealings with and payments to the Mutual Guapay and Da Vivienda did not constitute charitable activities as they were, in the Panel's opinion, profit driven, and the Subordinado de Capitalization evidenced that Neufeld was to collect a commission for raising monies for the Mutual Guapay.

10. There was no evidence called to satisfy the second part of the requirement in section 19(2)(f), that there was "*...no part of the net earnings of such person or company enure to the benefit of any security holder and no commission or other remuneration is paid in connection with the sale thereof.*" The commission to be paid to Neufeld was evidence that this exemptive provision was not available to the Respondents.

11. Accordingly, the Panel finds that the Respondents did not prove that they met the requirements of the charitable organization exemption.

Manitoba Investors – are they "the Public"

1. The Respondents argue that the Manitoba Investors were not members of "the public" in 2005 and 2006 and were not members of "the public" in 2008.

2. There is no single definition of what constitutes "the public". The two best known tests used by securities commissions to define "the public" are the "common bonds test" and the "need to know" test.

3. The common bonds test is based on the relationship between the issuer and the buyer being sufficiently close such that the issuer would not be tempted to use unfair, abusive or fraudulent practices towards a buyer and the buyer having access to information and

knowledge that would allow him or her to properly assess the integrity of the seller or persons associated with the issuer.

4. The need to know test is based on the concept that persons who are able to ascertain for themselves, or who already have access to the information that a prospectus would otherwise provide them with, do not need the protection afforded by securities legislation to make an informed investment decision.

5. The Panel notes the following guidance in the Companion Policy to NI 45-106;

> *Whether or not a person is a member of the public must be determined on the facts of each particular case. The courts have interpreted "the public" very broadly in the context of securities trading. Whether a person is a part of the public will be determined on the particular facts of each case, based on the tests that have developed under the relevant case law.*

6. The Panel considered the factors listed in Part 2.7 of the Companion Policy as to what constitutes a close personal friend, which include:

   a. the length of time the individual has known the director, executive officer, founder or control person,
   b. the nature of the relationship between the individual and the director, executive officer, founder or control person including such matters as the frequency of contacts between them and the level of trust and reliance in the other circumstances, and
   c. the number of "close personal friends" of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

7. The Panel also reviewed the factors listed in Part 2.8 of the Companion Policy as to what constitutes a close business associate, which include:

   a. the length of time the individual has known the director, executive officer, founder or control person,
   b. the nature of any specific business relationships between the individual and the director, executive officer, founder or control person, including, for each relationship, when it began, the frequency of contact between them and when it terminated if it is not ongoing, and the level of trust and reliance in the other circumstances,
   c. the nature and number of any business dealings between the individual and the director, executive officer, founder or control person, the length of the period during which they occurred, and the nature and date of the most recent business dealing, and
   d. the number of "close business associates" of the director, executive officer, founder or control person to whom securities have been distributed in reliance on the private issuer exemption or the family, friends and business associates exemption.

8. The Panel finds that there was no evidence that any of the Manitoba Investors met the criteria of either a close personal friend or of a close business associate to the Respondents or to 1443896 Alberta.

9. None of the Manitoba Investors were friends with Neufeld or had any close or significant ties to the issuers (the Foundation and 1443896 Alberta) such that they did not need the benefit of the information that a prospectus would provide.

10. The Manitoba Investors all testified to their lack of knowledge of the Foundation until the Bolivian Investment Opportunities were brought to them by Neufeld and others.

11. At the time that Neufeld incorporated 1443896 Alberta and distributed securities of it to the Manitoba Investors, it had been in existence for a very short period of time. The information provided about 1443896 Alberta to Youth for Christ and Back to the Bible was not reliable. Youth for Christ and Back to the Bible had no knowledge of 1443896 Alberta and no close links to it.

12. With regard to Back to the Bible, the Respondents argued that it was settled law that the knowledge of Funk must be imputed to Back to the Bible and therefore that Back to the Bible could not be a member of the public. The Respondents did not provide any caselaw or refer to any legal doctrine in support of this argument.

13. If the argument was alluding to the doctrine known as the "corporate identification doctrine" or the "corporate attribution doctrine", which can apply to corporate entities, there is no automatic deemed knowledge of one director to that of an organization, particularly when that one director withholds information and acts in a manner that is directly detrimental to the organization. The evidence in this hearing did not come close to meeting the tests set out in *Canadian Dredge & Dock Co. v. The Queen*, [1985] 1 S.C.R. 662 and the caselaw that follows that decision.

14. The Panel finds that the Manitoba Investors were each "members of the public".

Jurisdiction of the Commission

1. The Respondents argue that the MSC did not have jurisdiction in this matter because Back to the Bible's headquarters was in Ontario, the Respondents were in Alberta and, they allege, no trading activity took place in Manitoba.

2. It is settled law in Canada that the test of whether a provincial securities commission has jurisdiction in a matter is whether there is a *"...real and substantial connection"* to the province at issue.

3. In *R.* v. *W. McKenzie Securities Ltd.* (1966), 56 D.L.R. (2d) 56 (Man. C.A.), the accused were charged with unlawfully trading in securities contrary to the provisions of the securities legislation of Manitoba. The accused were not registered with the MSC in Manitoba. They solicited investors in Manitoba by promoting and selling securities from Toronto through telephone and letter communications. The accused argued that the MSC did not have jurisdiction.

4. The MBCA disagreed. It noted:

> *"The sole point to be determined is whether the accused Dubros and the accused West, both of whom were unlicenced here, traded in securities in Manitoba That they did not physically enter*

the borders of the Province is not conclusive of the matter. A person may, from outside the borders of a Province, do certain acts within the Province so as to make himself liable to the provisions of this statute. Williamson, op. cit., at p. 204 says:

> *There seems to be no reason why a person cannot become subject to a licensing statute of a province without ever entering the province, constitutional questions aside.*

Although offences are local, the nature of some offences is such that they can properly be described as occurring in more than one place. This is peculiarly the case where a transaction is carried on by mail from one territorial jurisdiction to another, or indeed by telephone from one such jurisdiction to another. This has been recognized by the common law for centuries."

5. In *McCabe v BCSC* 2016 BCCA 7, the Respondent was appealing a decision of the British Columbia Securities Commission (BCSC) on the basis of jurisdiction. McCabe argued that the BBSC had no jurisdiction because the impugned conduct took place outside of the province of British Columbia.

6. The BCSC argued that the applicable test for determining jurisdiction is the "real and substantial connection" test and accepted that although the investors were outside the province, the fact that McCabe was in BC and sent materials from BC was a sufficiently real and substantial connection. The court agreed.

> *[35] The question is whether there is a real and substantial connection, not whether a particular connection is the most real and substantial. This question is to be answered with reference to the regulatory regime at issue, the particular provision being applied, the impugned conduct, and the individual or entity who is subject to the regulatory body.*
>
> *[36] In the context of securities regulation, the Commission's jurisdiction depends on whether the impugned conduct has a sufficient connection to British Columbia, or, as recently expressed by this Court, there is "a state of facts demonstrating circumstances in which it would be appropriate for a tribunal to take jurisdiction over a legal issue or controversy": Torudag v. British Columbia (Securities Commission), 2011 BCCA 458 at para 19. Whether this connection is termed a "meaningful" one or a "real and substantial" one, the concept is the same: Torudag at para. 19.*
>
> *[37] The analysis of whether a real and substantial connection exists must reflect the realities of modern securities regulation. For instance, conduct involving securities will often be transnational in nature, crossing provincial and state borders.*

7. The Panel notes that the *McKenzie Securities Limited* continued to be referenced in cases on jurisdiction and recently cited with approval in the recent Quebec case *Autorité des marchés financiers v Martel*, 2021 QCCQ 8738 (CanLII).

8. Martel was an Ontario based real estate agent. He put together a limited partnership to sell shares in a real estate project based in Phoenix Arizona. Martel conducted on-line courses and three Quebec residents became aware of the Phoenix limited partnership project throught such a course and invested online. It was agreed that Martel had not entered Quebec and that the only contact he had with the Quebec residents was online.

9. Martel argued that the Quebec Autorite Marches de Financier (AMF) had no jurisdiction over him. He argued that the AMF's regulatory authority was confined to the province of Quebec.

10. In reviewing the AMF's decision, the Quebec court concluded that the AMF did have jurisdiction, noting:

[18] The offence with which the defendant is charged is of a regulatory nature. However, the contractual election of domicile does not exempt the parties to this contract from complying with the regulatory legislation of a province other than Ontario in the event that they act in such another province. In other words, regardless of the law of which province the parties have chosen to subject their contractual relationship to, they cannot contractually limit their liability to the regulatory regime. If their activities or conduct in another province in regards of this contract contravene its penal regulations, the provincial agency responsible for enforcing those regulations has the power to intervene and such a contravention will be governed by the penal regulatory legislation of the province where it occurred.

[23] As early as 1961, the Supreme Court of Canada recognized that the Securities Commission had jurisdiction over the activities of a company that had its head office in Montreal and solicited investment in Quebec mines from Montreal, but that only addressed investors outside of Quebec. The purpose of the legislation to ensure that people dealing in securities within Quebec are honest, justified, in the Court's view, an expanded jurisdiction to protect the public in Quebec and elsewhere from unlawful activity emanating from Quebec.

[24] This principle has been applied repeatedly by courts across the country. The Manitoba Court of Appeal in W. Mckenzie Securities Ltd. held, on the other hand, that the activities of an Ontario broker who solicited potential investors' residing in Manitoba by mail and telephone were subject to Manitoba securities regulation because the purpose of the Act was to protect the public.

11. In the matter before us, during the Material Time, the Panel finds there were substantial connections with the Province of Manitoba including the following;

    a. Neufeld and Edgelow travelled to Manitoba, attending meetings and speaking in person with the Manitoba Investors about the Bolivian Investment Opportunities;
    b. Neufeld and Edgelow communicated by letter and email with the Manitoba Investors who were located in Manitoba about the Bolivian Investment Opportunities;
    c. The Manitoba Investors lived and/or worked and/or attended board meetings in Manitoba;
    d. Investment monies were sent to the Foundation from the Manitoba Investors from Manitoba based bank accounts to the RBC Accounts and to the Jameson Account, as directed by the Respondents; and
    e. The Respondents sent the Promissory Notes and other documents to the Manitoba Investors to their addresses in Manitoba.

12. The Panel finds that there is a real and substantial connection between the activities of the Respondents in this matter and the Province of Manitoba, and, based on the totality of the evidentiary findings, holds that the MSC has jurisdiction in this matter.

Having found that none of the exemptive relief is available to the Respondents, and that the other defences raised were not substantiated, we turn to the final two allegations.

F. Allegation 3

1. Staff alleged that the Respondents contravened section 74.1 of the Act, which reads:

Certain misrepresentations prohibited
s.74.1 A person or company shall not make a statement about something that a reasonable investor

would consider important in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to prevent the statement from being false or misleading in the circumstances in which it is made.

2. The Andrews Summary was provided by the Respondents to Back to the Bible prior to its investments in the Bolivian Projects.

3. The Andrews Summary does not provide any legal review or detailed analysis of the statements made. There is no reference to the relevant laws or regulations of Bolivia in the banking and financial industry, no reference to any due diligence conducted as to the purported assets of the Mutual Guapay (it did not even include a review of its financial statements) and nothing to back up the statement that the opportunity is "*believed to be secure*". It does not explain what is meant by the Canadian government recognizing Mutual Guapay. It does not reference the Initial Investors and that the Foundation's share of the Mutual Guapay would be 51%, not the "entire institution". It does not explain that an additional USD $27,500,000.00 was going to be required to complete the capitalization and assume control of the Mutual Guapay.

4. The Panel finds that the Andrews Summary was a written statement that contained misrepresentations, as it omitted information necessary to prevent the statement from being false or misleading.

5. The Report, written by Neufeld, was provided by the Respondents to Youth for Christ in April 2008.

6. The Report does not provide any specific information; there were no names of any persons provided (including the government agency representatives or the name of the "Canadian Joint Venture Partner") no dates of meetings, and no or times or places of meetings were included. There was nothing to substantiate the statement that the subdivision would provide a net revenue to the Foundation of $2.5 million dollars. There was no explanation as to what the discussion on the government of Peru had to do with anything relative to the Bolivian Projects and the investment monies.

7. The Panel finds that the Report was a written statement containing misrepresentations as it omitted information necessary to prevent the statement from being false or misleading.

8. On September 1, 2008 the Respondents provided Youth for Christ with the Interim Summary. Attached to the Interim Summary were projected financial statements that purported to show that after 6 years, if Youth for Christ agreed to invest, it would have recouped its initial investments and would also share in an additional $5.5 million dollars of profit. These projected financial statements were not prepared by auditors, included no written assumptions or relevant statements of fact, and included none of the disclaimers that are typically provided with proposed financial statements. There were no specifics included in the Interim Summary that would be required in order for an investor to make an informed decision.

9. The Panel finds that the Interim Summary was a written statement containing misrepresentations as it omitted information necessary to prevent the statement from being false or misleading.

10. On December 9, 2008, Neufeld sent an email headed "Memo" to Back to the Bible. Neufeld states that the assets, the *"land deal"* are *"...being transferred to New-Co, the corresponding*

Promissory notes have been assigned to a Canadian corporation, which is being set up as a provide Corporation and possibly as a Private Equity Fund." He further stated that the attorneys and accountants were working to finalize the transaction. He concluded by stating "*Byron I see no other way that we can address this. It is my hope and prayer that you and your Board will find a way to work with us to make this plan work. I will be pleased to meet with you and representatives from your Board to discuss these matters with you in more detail.*"

11. The Memo did not contain information on what the new Canadian corporation was, what land was being transferred, what was meant by a "private equity fund", or any details on the work that the attorneys and accountants were conducting. It was general and extremely vague, and omitted relevant details, all of which were required to ensure that the statements made were not false or misleading.

12. The Panel finds that the Memo was a written statement that contained misrepresentations as it omitted information necessary to prevent the statements made from being false or misleading.

13. On October 31, 2009 (the "October 31, 2009 Email"), Neufeld sent an email to Back to the Bible urging it to agree to transfer the investments with the Foundation to a new entity which he said was a third party limited partnership totally unrelated to any investments made by Back to the Bible and Youth for Christ.

14. The October 31, 2009 Email included the following:

"My colleagues and I have worked tirelessly to create this project (Union Project) on its own merit. The participants as well as the project itself has no present or previous relationship with the issues and or project that BTB and YFC participated in. This group of committed Christian business people, have graciously, as a good will gesture agreed to work with us to include $300,000 US as a cost, added to the cost of the land for the project, for the purpose of purchasing BTBs and YFC interest in New Co outlined in the restructuring documents dated December 9, 2008 prepared by Catalyst, vetted by Carter and Associates, documented and legalized by Mr. Chris Mozer, legal counsel.

15. The October 31, 2009 Email lacks detail as to many relevant matters. There is no information as to what the entity "Union Project" is, there is no information on who the "committed Christian business people" are, or why they made a goodwill gesture of $300,000 US, or what land is being referred to and how and when this group will re-purchase the interests of the Manitoba Investors. Reference is made to Catalyst and to a legal counsel, but none of the referenced documentation is included.

16. The Panel finds that the October 31, 2009 Email was a written statement that contained misrepresentations as it omitted information necessary to prevent the statements made from being false or misleading.

17. The Panel notes that there is no definition of reasonable investor. We adopt the position of the hearing panel in the Ontario Securities Commission in *Biovail* Corporation et.al., 2010 ONSEC 21, at paragraph 80:

"[80] The reasonable investor standard is an objective test and applying it is ultimately a matter of judgement to be exercised in light of all of the relevant circumstances. The assessment of the

materiality of a statement is a question of mixed fact and law that falls squarely within the Commission's specialized expertise and does not require the opinion or evidence of expert witnesses or of investors (Re Donnini, supra, at para. 123). Such opinion or evidence may be relevant or useful but is not necessary."

18. The Panel finds that any reasonable investor would have found that the written statements set out above included material misrepresentations that, in light of the totality of the circumstances, would be relevant and important to them in making investment decisions.

19. Additionally, we note that there is no requirement on Staff counsel to prove that an investor relied upon any of the misstatements in making an investment decision or maintaining a trading relationship. As was held in *Arbour*:

> *" [768] Securities regulation does not focus on what the market or investors do with mandated information provided to them. Rather, the objective of securities regulation is to oblige those who seek money from public investors and the capital market to provide current, truthful and accurate information in prescribed formats, which can then be used by those in the capital market as a basis for making reasonably informed investment decisions. That a particular investor or investors may not read or rely on such information in making investment decisions does not relieve an issuer of its obligations to provide accurate and reliable information, and to comply with Alberta securities laws when soliciting money from the public." (emphasis added)*

20. The Panel finds the statements made by the Respondents to Youth for Christ and to Back to the Bible in the written statements outlined above, to have contravened section 74.1 of the Act.

G. Allegation 4

1. What can constitute "conduct contrary to the public interest" is broad. In *Bartel*, the ASC found that:

> *"Conduct contrary to the public interest may or may not involve a contravention of Alberta securities laws, but is conduct that has endangered investors or the reputation of the Alberta capital market. We invoke our public interest jurisdiction to protect investors and prevent likely future harm to the Alberta capital market".*

2. The Panel has found that the Respondents did not meet the registration and prospectus requirements of the Act and that no statutory exemptions or other defences were available to them. As noted previously, the registration and prospectus requirements are the most fundamental protections for investors in the Act and are crucial to the Commission's mandate to protect the public. As the ASC noted in *Arbour*:

> *"[1034] Investors who do not receive the fundamental protections afforded by a registered salesperson's involvement and a prospectus (and are not otherwise protected and therefore able to invest under an exemption) are at risk of the harm that may result from ill-informed and unsuitable securities investments. Such a result harms not only those particular investors, but also the confidence of those and other investors in our capital market. Abuses of the exempt market system also may make it more difficult and expensive for issuers legitimately using exemptions to find investors, thus causing further harm to our capital market and confidence in that market."*

3. The Respondents' conduct throughout the Material Time denied the Manitoba Investors the protections they were entitled to in the Act. In so doing the Panel finds that the Respondents acted contrary to the public interest.

4. The Respondents' conduct in its response to the Commission Staff Investigator in the written Response to the Commission Enquiry was deliberately misleading and contained false information. The Panel finds that this was also conduct contrary to the public interest.

IV Findings and Next Steps

The Panel, having reviewed the evidence above and the relevant caselaw, makes the following findings;

1. The Respondents traded in securities to the Manitoba Investors without being registered and without having filed a prospectus, all in contravention of the Act;

2. The Respondents' trading in securities included acts in furtherance of trades, in contravention of the Act;

3. The Respondents did not provide the Manitoba Investors with a prospectus, in contravention of the Act;

4. Subsection 19(1) of the Act did not, with respect to such of the trades referred to in that subsection, apply to the Respondents;

5. Subsection 19(2) of the Act did not, with respect to such of the securities referred to in that subsection, apply to the Respondents;

6. Subsection 19(3) of the Act did not, with respect to such of the securities referred to in that subsection, apply to the Respondents;

7. None of the statutory exemptions in the Act and Regulations to the Act were proven to have been applicable to any of the trades made by the Respondents to the Manitoba Investors;

8. The Panel did not accept any of the defences raised by the Respondents;

9. The Respondents made material misrepresentations to the Manitoba Investors, contrary to the Act; and

10. The actions of the Respondents in this matter were contrary to the public interest.

Next Steps

This matter will now proceed to the Sanctions Hearing.

The Panel directs that counsel provide written submissions on the issues relative to the Sanctions Hearing, namely whether:

a) the Respondents should be required to pay compensation for financial loss to the Manitoba Investors, and if so, in what amounts, pursuant to section 148.1 (3) of the Act;
b) the Respondents should pay an administrative penalty pursuant to section 148.1 of the Act and if so, in what amount(s);
c) Neufeld should be prohibited from being a director or officer of an issuer and if so for what period of time;
d) the Respondents should be prohibited from participation in the exempt markets, and if so, for what period of time; and
e) the Respondents should pay the costs of the investigation and hearing in this matter and if so, in what amount(s).

The Panel directs that the written submissions are to be filed and to be served on all parties as follows:

1. Staff Counsel to provide its written submission on these matters within four (4) weeks of the date of service on it of this Decision on the Merits;

2. Counsel for the Respondents will have three (3) weeks after service of Staff Counsel's written submission to provide its written submission on these matters (Reply); and

3. Staff Counsel will then have two (2) weeks after service of the Reply to provide any further written submission. This final written submission by Staff Counsel is to address only new matters or arguments arising out of the Reply.

"J.T. McJannet, K.C."
J.T. McJannet, K.C., Hearing Chair

"D.A. Huberdeau-Reid"
D.A. Huberdeau-Reid, Member

"L.A. Vincent"
L.A. Vincent, Member