THE MANITOBA
SECURITIES
COMMISSION

April 17, 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 ON SANCTIONS & COSTS

THE MANITOBA SECURITIES COMMISSION

Panel:

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

Appearances:

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

Commissioner D.A. Huberdeau-Reid did not participate in these Reasons for Decision.

Decision on Sanctions and Costs

I. Overview

1) In a decision dated January 4, 2023 (the "Merits Decision") this Panel found that the respondents Jack Neufeld ("Neufeld") and the Jack Neufeld Family Charitable Foundation (the "Foundation") (collectively the "Respondents") had:

   a) Traded in securities to the Manitoba Investors without being registered and without having filed a prospectus, and that their activities included acts in furtherance of trades, all in contravention of *The Securities Act C.C.S.M. c.S50 (*the "Act");

   b) Failed to provide the Manitoba Investors with a prospectus, in contravention of the Act;

   c) Made material misrepresentations to the Manitoba Investors (as defined), in contravention of the Act;

   d) Acted in a manner that was contrary to the public interest;

   e) and further found that:

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

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

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

   i) 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;

2) The Panel directed the parties to submit written submissions as to the appropriate sanctions.

3) This decision (the "Decision") should be read with the Merits Decision. This Decision does not change any of the evidentiary findings in the Merits Decision. Defined terms have the same meaning in both documents.

4) The Panel's determinations as to sanctions and costs in this Decision reflects the evidentiary findings made and set out in the Merits Decision.

Background

5) The Respondents' contraventions, which took place from 2005 to 2010 (the "Material Time") involved a purported investment in a financial institution in the central South American country of Bolivia. Some of the investment monies were also used for a business that was indebted to the financial institution. The Respondents were found to have taken investment monies

from the Manitoba Investors without being registered under the Act and without having filed and been issued a receipt for a prospectus. In exchange for the investment monies the Respondents issued promissory notes, a letter of acknowledgement and a profit sharing agreement document to the Manitoba Investors. The Respondents also took steps to, and purported to, transfer the obligations of the Foundation to the Manitoba Investors, to other entities notwithstanding that the Manitoba individuals and companies consistently refused to agree to such transfers.

6) The Respondents were found to have provided the Manitoba Investors with voluminous written and oral communications over the Material Time that were false, misleading and inconsistent.

7) Neufeld was found to have misled Commission staff during the investigation into this matter by providing false and incomplete information.

8) Neufeld was found to have provided implausible evidence to the Panel during the Hearing.

9) Staff of the Manitoba Securities Commission ("Commission") asks that we impose sanctions on the Respondents that include market sanctions, financial sanctions and that we award compensation for the financial loss claims for certain investors, all as provided for under the Act.

II Analysis

Legal Framework

10) Under the Act, a hearing panel of the Commission may impose sanctions where if finds it to be in the public interest to do so. Any sanctions imposed must be consistent with the purposes of the Act, which include protecting investors from improper and unfair practices, and fostering fair and efficient capital markets and confidence in the capital markets.

11) The Panel notes that any sanctions imposed must be proportionate to the respondents' conduct. Sanctions are not be applied punitively.

12) There are numerous decisions of provincial securities commissions that outline the factors which are relevant to the determination of appropriate sanctions. These include, but are not limited to the following:

a) the seriousness of the offences,
b) whether the misconduct was isolated or recurring,
c) whether profits were made and how much,
d) past conduct of the respondents,
e) any mitigating or aggravating factors, and
f) decisions in other cases.

13) All of the sanctions requested require that the Panel find that it is in the public interest to order same. Any sanctions imposed should also address both general and specific deterrence, as part of the Commission's determination that sanctions imposed be in the public interest. Consideration of future risk is relevant to an assessment of the appropriate sanctions to be imposed. As was stated by the Supreme Court of Canada in *Cartaway Resources Corp (Re)* 2004 SCC 26 (CanLII) [2004] 1 SCR 672:

"Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see C.C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct." [para 52]

"In my view, nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in *Asbestos*, *supra*, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative. Ryan J.A. recognized this in her dissent: "The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others" (para. 125)." [para 60]

"A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162 [of the BC Act]. The respective importance of general deterrence as a factor will vary according to the breach of the [BC Act] and the circumstances of the person charged with breaching the [BC Act]." [para 61]

"The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission. Protecting the public interest will require a different remedial emphasis according to the circumstances. Courts should review the order globally to determine whether it is reasonable. No one factor should be considered in isolation because to do so would skew the textured and nuanced evaluation conducted by the Commission in crafting an order in the public interest. Nevertheless, unreasonable weight given to a particular factor, including general deterrence, will render the order itself unreasonable. Iacobucci J. in *Pezim*, *supra*, at p. 607, suggested that an example of such unreasonableness would be the exercise of the Commission's discretion in a manner that was capricious or vexatious. [para 64]"

14) We note the following from *Marrone (Re)* 2023 ONCMT 9 (CanLII):

"Sanctions must be proportionate to the respondent's conduct in the circumstances. It is appropriate for the Tribunal, when making an order in the public interest that is both protective and preventive, to consider specific and general deterrence. It is important for respondents and other like-minded individuals to be deterred from engaging in similar conduct in the future through the imposition of appropriate sanctions. [para 7]"

15) The Panel also notes the following provision in the Ontario Securities Commission (OSC) decision in in *Money Gate Mortgage Investment Corporation (Re), 2021 ONSEC 10,* where the tribunal held that:

"Fashioning the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case. [para 11]"

16) In this case, Staff seek:

a) Financial loss claim payment orders pursuant to section 148 of the Act;

b) market sanction orders, restricting access by the Respondents to the use of exemptive relief in the Act, and a prohibition on Neufeld acting as an officer or director of an issuer; and

c) financial sanction orders, including a request for an administrative penalty and a contribution to the costs of the investigation and hearing.

17) We will address each of the sanction requests in turn.

Financial Loss Claims

18) There are three financial loss claim requests before us, each of which has been requested by the Director of the Commission:

a) Youth for Christ, for CAD $123,200.00,
b) Harry Funk (Funk), for CAD $138,000.00, and
c) Helena Penner (Penner) for CAD $772,325.00.

19) Section 148.2(3) of the Act reads:

> **Order by commission**
> 148.2(3)
> When so requested by the Director, the commission may order the person or company to pay the claimant compensation of not more than $250,000. for the claimant's financial loss, if after the hearing the commission
> (a) determines that the person or company has contravened or failed to comply with
> (i) a provision of this Act or the regulations,
> (ii) a direction, decision, order or ruling of the commission, or a rule made under subsection 149.1(1),
> (iii) a written undertaking made by the person or company to the commission or the Director, or
> (iv) a term or condition of the person or company's registration;
> (b) is able to determine the amount of the financial loss on the evidence; and
> (c) finds that the person or company's contravention or failure caused the financial loss in whole or in part.

20) Accordingly, in order to make an order for a financial loss in this matter, the Panel must, after a hearing, find:

a) That the Respondents have contravened a provision of the Act or regulation;
b) That the amount of the financial loss(es) can be determined on the evidence before us; and
c) That the Respondent's contravention or failure caused the financial loss in whole or in part.

21) We find that, as set out in the Merits Decision, the Respondents contravened provisions of the Act, including sections 6(1) and 37(1), which, as we note below, are the cornerstone provisions of the securities regulatory regime, being the need to be properly registered and the requirement to have filed and received a receipt for a prospectus.

22) The Respondents argue that the amount claimed by Youth for Christ should be offset by payments made by it during the Material Time. We do not agree. The payments made to Youth for Christ by the Respondents during the Material Time were on account of the interest that was owed by the Respondents under the terms and provisions of the Promissory Note issued by them to Youth for Christ. All parties treated these payments as interest payments. The Panel determined, in the Merits Decision, that none of the principal amount of the Promissory Note was paid by the Respondents to Youth for Christ.

23) The Panel found that Funk, though companies owned by he and his wife, had invested the sums of CAD$138,000 and USD$90,000.00 with the Respondents. There was no evidence that any of the principal amount had been repaid.

24) The Panel found that Helena Penner and her husband, Bernie Penner, made two investments with the Respondents; one in the amount of CAD $677,260.00 evidenced by a Promissory Note and the other in the sum of CAD $95,000.00 evidenced by a Letter of Acknowledgement. The Panel determined, in the Merits Decision, that none of the principal amounts were paid by the Respondents to the Penners.

25) The Respondents and Staff both correctly submitted that the Panel is bound by the restriction in section 148.2(3) of the Act, which limits a claimant's financial loss award to an amount of not more than $250,000.00.

26) The Panel finds that the many contraventions of the Act by the Respondents as set out in the Merits Decision directly resulted in the loss of the investment monies by Youth for Christ and by the Penners.

27) The Panel found that Funk was not induced by the Respondents to invest, and that he had already invested monies in the Bolivian Projects through his connection to the Initial Investors. The Respondents' contraventions under the Act were not responsible for Funk's losses. Funk's claim for a financial loss payment fails.

28) Accordingly, having found that all requirements of section 148.2 (3) have been met, the Panel orders that the Respondents are jointly and severally liable to pay the following financial loss payments which are due and payable forthwith:

a) Youth for Christ, CAD $123,200.00; and
b) Helena Penner, CAD $250,000.00.

Market Sanction Orders

29) Staff submit that orders for a permanent ban pursuant to section 19(5) of the Act, to prohibit the Respondents from being entitled to utilize the exemptions under the Act and regulations to the Act and for a permanent ban on Neufeld from acting as an officer or director of an issuer pursuant to section s. 148.3(1) of the Act should be imposed.

30) Section 19(5) of the Act reads:

Removal of exemptions

19(5)

Notwithstanding subsections (1) and (2), the commission may, where in its opinion such action is in the public interest,

(a) order that subsection (1) does not, with respect to such of the trades referred to in that subsection as are specified in the order, apply to the person or company named in the order; and

(b) order that subsection (2) does not, with respect to such of the securities referred to in that subsection as are specified in the order, apply to the person or company named in the order.

31) Section 148.3(1) of the Act reads:

Orders respecting directors and officers
148.3(1)
If the commission considers it to be in the public interest, the commission may, after a hearing, make one or more of the following orders:

(a) an order that a person must resign as a director or officer of an issuer;

(b) an order that a person is prohibited from being a director or officer of an issuer;

(c) an order that a person be appointed as a director or officer of an issuer.

Order may be subject to conditions
148.3(2)
In making an order, the commission may impose any conditions that it considers appropriate.

32) The position of the Respondents is that no market sanctions are appropriate in this case. They argue, among other points, that they did not commit serious breaches of the Act, that they were not willful or intentional in breaching the Act, that the investors were organizations with board of directors or were businesspeople, that Neufeld also lost money, and that the contraventions were merely "discrete events".

33) The Panel finds that market sanctions are required for the following reasons:

a) The contraventions of the Act by the Respondents were very serious – by not being registered to trade and in not filing and issuing a prospectus the Respondents violated the critical rules by which securities regulators protect the investing public. As noted in the Merits Decision, the registration and prospectus requirements under the Act are the cornerstone provisions of the securities regulatory regime. Registration results in the persons selling investments having knowledge of and training in the securities industry, its products and regulatory requirements. Registrants are required to ensure that the investments they sell are suitable and the advice they provide is in the best interests of the investors. The requirement for a prospectus allows investors to make informed decisions by providing accurate reliable information about the issuer of the securities offered and the use of the investment monies. Misrepresentations made to the investing public and to regulators are equally serious offences. Failing to adhere to these requirements is a very serious offence.

b) The contraventions by the Respondents were not isolated events but rather extended over a significant period of time, lasting from 2005 to 2010. In this respect the contention by the Respondents in their written submissions that this matter occurred only from 2005 and 2006 directly contradicts the findings of this Panel in the Merits Decision.

c) The Respondents misled the investors over a period of many years through the provision of voluminous oral and written communications that provided false, misleading, and inconsistent information.

d) Following the initial investments made, the Respondents did not provide relevant or accurate information on what had happened with the investment monies to the investors. Instead, deliberate steps were taken, over several years, to mislead the investors and cover up what had happened.

e) The Respondents have made no attempt to compensate the Manitoba Investors.

f) The Respondents misled Staff during the investigation of the matter, providing false information. This is a serious offence.

g) Neufeld provided implausible evidence to the Panel during the Hearing.

34) The misconduct of the Respondents, and the contraventions of the Act by both Respondents, was directly responsible for the loss of the investment monies of the Manitoba Investors.

35) It is concerning to the Panel that the Respondents, after having had an opportunity to read the Merits Decision, still do not appreciate how their conduct in this matter breached the requirements of the Act and harmed the Manitoba Investors. Their submissions lead us to conclude that the Respondents do not appreciate the requirements of the Act and regulations to the Act, and do not yet understand how their actions directly contravened those requirements.

36) The exemptive relief in the Act must be utilized with significant attention taken to ensuring that all the obligations of those exemptions are met. The conduct of the Respondents in this matter disclose that they are not appropriate entities to utilize the exemptive relief under the Act.

37) There are numerous operational, legal, and ethical obligations required of persons appointed as officers and directors of issuers. Neufeld's conduct in this matter, including his testimony at the hearing of this matter, leads the Panel to the conclusion that he is not an individual who has the necessary knowledge, skills, and integrity to be an officer and/or director of an issuer.

38) Accordingly, the Panel finds that it is in the public interest to order that:

a) Pursuant to section 19(5) of the Act the Respondents are prohibited from the use of the exemptive relief in the Act and regulations to the Act, for a period of no less than minimum of ten (10) years, however, this prohibition will remain in force and effect thereafter until the financial loss payments and the cost and administrative penalty orders set out in this Decision have been satisfied in full; and

b) Pursuant to section 148.3(1) of the Act, Neufeld is prohibited from being an officer and/or a director of an issuer for a period of no less than ten (10) years, however the prohibition will remain in force and effect thereafter until the financial loss payments and the cost and administrative penalty orders set out in the Decision have been satisfied in full.

39) In providing that these market sanction orders expire only after payment in full of the financial loss payments and the cost and administrative penalty orders set out in this Decision, the Panel finds that it would be entirely unacceptable for persons to be entitled to use the

exemptive relief under the Act, or act as a director and/or officer of an issuer while not having fully adhered to the obligations of an order of the Commission.

Financial Sanctions

Costs of Investigation and Hearing

40) Staff submitted that a hearing panel of the Commission can make orders for the payment of the costs related to an investigation and hearing pursuant to sections 28(1) and section 154 of the Act. These sections read as follows:

Costs of an investigation
28(1)
Where the conduct of a registrant has been the subject of an investigation under this Part and, as a result of the information obtained in the investigation,

(a) the registrant is convicted of any offence against this Act or the regulations or of any other offence mentioned in subsection 22(1);
(b) the commission does one or more of the following:
  (i) reprimands the registrant,
  (ii) imposes terms and conditions on the registration,
  (iii) suspends or cancels the registration,
  (iv) orders the registrant to pay an administrative penalty under subsection 148.1(1); or
(c) the commission is satisfied that the registrant has not adequately discharged his or her responsibilities to the commission, his or her customers or the public;

(2) the commission may order the registrant to pay the whole or part of the costs of the investigation and any hearing convened as a result thereof, calculated on the basis of the fees prescribed in the regulations.

Costs
154(1)
The costs of and incidental to any proceeding before the commission are in the discretion of the commission, and may be fixed in any case at a sum certain or may, on order of the commission, be taxed.

Order for payment of costs
154(2)
The commission may order by whom and to whom any costs are to be paid, and by whom the costs are to be taxed and allowed.

41) Regulation 491/88 to the Act, at Schedule A provides as follows:

1(2) The fee that shall be paid to the commission
...

i) (r) where the commission so directs, upon any hearing, audit or investigation made by the commission, its representative or any person appointed by it, the fees shall be based upon the time spent upon such hearing, audit or investigation calculated as follows:

(1) $600. for the commission itself (irrespective of the number of members sitting) for each half day or part thereof,
(2) (ii) $400. per day for any counsel, auditor or other person on the commission staff, and

(3) (iii) for any counsel, auditor or other person not on the commission's staff engaged by contract, the contract rates at which they are engaged,

ii) plus any travelling expenses, witness fees, conduct money paid to witnesses examined, and any other expense incurred by the commission or any persons appointed or retained by it;

42) The Panel notes that as neither of the Respondents were proven to be registrants as defined under the Act, section 28(1) is not relevant, and it is proceeding with reference to section 154 of the Act only.

43) As with all sanctions, cost awards are not to be punitive nor are they to be used to penalize respondents. Rather, as was noted by a hearing panel of the ASC in *Re Kilimanjaro Capital Ltd.* 2021 ABASC 131 (CanLII) at para 78, an award of costs is "*...a means of recovering from a respondent certain investigation and hearing costs that would otherwise be borne by market participants who fund the [regulator's] operation.*"

44) The criteria used by provincial securities commissions' hearing panels to determine the appropriateness of a costs award include, but are not limited to, the seriousness of the charges, the conduct of the parties to the hearing, the reasonableness of the costs sought by Staff, the complexity of the matter at issue, the success of the parties and the ability of a respondent to pay.

45) We note and agree with the following provisions from the decision of a hearing panel of the ASC in *Re Homerun International Inc.*, 2016 ABASC 95 (CanLII):

> "[49] Accordingly, the relevant costs will be those related to the investigation into the misconduct found, and the hearing in which that misconduct was proved. It would be inappropriate to assess costs attributable to allegations ultimately withdrawn or dismissed. A panel will therefore be mindful of which allegations were proved and which were withdrawn by Staff or dismissed by the panel.... "
>
> "[50] In assessing the reasonableness of claimed costs, the panel also considers aspects such as time spent by Staff on a matter; indications of duplicated effort for which some reduction might be warranted; the nature and scale of claimed disbursements; and any prior recovery of costs arising from the same matter (for example, through settlement with another respondent). Through that process the panel determines the amount of costs prima facie recoverable."
>
> "[52] ....the panel then considers the efficiency (or inefficiency) that each party brought to the proceeding as a whole, and the associated contribution to the broader public interest objectives of our regulatory system. This factor may argue for moderation – sometimes substantial – in the extent of cost recovery to be ordered against a particular respondent (and therefore may result in less than full recovery of the prima facie aggregate amount). "
>
> "[53] Finally, there may be concern that a cost-recovery order could diminish prospects of recovery for investor victims. This, too, may warrant moderating the amounts of cost recovery ordered against certain respondents, or wholly foregoing cost recovery in a particular case."

46) Staff seek a total cost award of $71,160.45 broken down as follows:

i)	Investigation Costs	$12,000.00
ii)	Legal Costs	
	(i) Prior to hearing	$10,000.00
	(ii) Hearing (including the preparation of	

(iii) of written submissions)	$11,600.00
iii) Hearing Costs of Panel	$17,400.00
iv) Disbursements	
(i) Court reporter	$17,884.00
(ii) Conduct monies	$2,246.45
(iii) Documents/searches	$30.00

47) The Respondents argue that these costs are excessive and unfair. They raise numerous concerns, including that one of the cancellation costs of the court reporter was not due to any fault on their part, that many of the half day appearances before the hearing panel were not requested by them, that the investigation was not appropriately conducted, that the number of hearing days was excessive and that the costs for counsel in preparing for and attending the hearing should be reduced since "the general rule of thumb is one day of preparation for every hearing day." They suggest a more reasonable cost award would be $10,000.00.

48) The Panel finds that the costs claimed by Staff are reasonable in the circumstances of this matter. In particular:

a) As noted in the Merits Decision, we found that the Respondents provided false and incomplete information to Staff in the course of the investigation. The Respondents cannot claim that an investigation took longer than was necessary or did not uncover the relevant information when they themselves misled Staff.

b) The Respondents changed counsel three (3) times during the course of this matter. That is their right, but they cannot later claim that too much time was taken by Staff, including in appearances before the hearing panels, many of which were necessitated by their change of counsel.

c) Over the course of this file, Staff had two counsel involved. Mr. Gingera conducted the legal work on this matter prior to the hearing and Ms. Hill then took conduct of the file and conducted the hearing alone. In administrative hearing matters there is legal work required well before the commencement of a hearing. We do not see that the costs requested include any duplication of legal work. We find further that Mr. Gingera conducted the legal work he was responsible for in a cost effective manner.

d) We note that Staff did not claim any costs for work involving the interim motion that was brought by the Respondents and argued at the Manitoba Court of Appeal. Staff were entirely successful on that motion.

e) We find that the time claimed by Staff counsel in preparing for and conducting the hearing is very reasonable. We do not accept the statement of the Respondents that *"the general rule of thumb is one day of preparation for every hearing day."* There is no such rule. Anyone who has acted as counsel at a hearing is well aware that considerable time is required to prepare for a hearing, which includes but is not limited to, reviewing transcripts, meetings with witnesses, preparing documents, reviewing the law, and preparing for the examination and cross examination of witnesses.

f) We note that while there was only one counsel for Staff present throughout the hearing, the Respondents had at least two senior counsel throughout the hearing, and on some hearing days as many as four counsel. We note that this was a complex matter with numerous witnesses and considerable volumes of documentation involved. We find that

Ms. Hill conducted the hearing and the legal work she was responsible for in an expeditious and cost effective manner.

g) The Respondents further argued that the delay in proceeding with this matter from investigation to hearing was excessive and unfair and that a reduction should be made in the costs award due to the delay. In this respect:

   i) The Panel heard from both parties on August 11, 2022 and asked them to speak to the issue of delay. Unfortunately, the Panel was not, and has not, been provided with clear evidence as to all relevant dates, appearances, who sought delays for what reasons.

   ii) The investigation commenced in October 2010 and the initial pleadings, a Notice of Hearing and Statement of Allegations, were filed on March 6, 2015. An Amended Notice of Hearing and Amended Statement of Allegations were filed and issued on June 10, 2016. We find that this period of time constitutes, prima facie, excessive and unreasonable delay.

   iii) This delay could be explained if the facts of the matter had been very complex and/or there was a very significant number of documents and witnesses. While all securities cases are somewhat complex, this situation was not so complex that the delay was acceptable.

   iv) We are aware that the Respondents changed counsel and advanced a motion to the Manitoba Court of Appeal subsequent to 2016. Some delay was attributable to the Respondents on these facts, but we have no ability from the evidence before us to determine how much.

   v) At the August 11, 2022 hearing Staff counsel noted that while he had attempted to move the matter forward following the issuance of the amended pleadings, they were stymied by decisions of prior hearing panels that agreed to delay matters against their arguments and that there were ongoing problems with constituting hearing panels due to the lack of resources at the Commission. These statements made by Staff at the hearing were made without reference to any filed evidence. We accept the statements of Staff and accept that they were acting in good faith to move the matter forward expeditiously, but as was held in the recent SCC decision in *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 (CanLII), a lack of resources at an administrative tribunal may never be an excuse for delay.

   vi) The Panel finds that there was excessive delay in moving the matter to the finalization of pleadings, but subsequent to 2016, there is no evidence that the delay was due primarily to Staff. As the Supreme Court of Canada held in *Abrametz;*

> "[78] Addressing delay is an obligation on all parties. As soon as delay becomes a concern, the affected party should seek to use all available procedures to move matters forward. The tribunal may often have internal procedures for dealing with delay; the party complaining of delay should avail itself of these. Even if there are no such procedures, the affected party should raise the issue of delay on the record, by means such as correspondence or oral submissions."

vii) We find, from the evidence before us, that there was delay on both sides subsequent to the filing of the pleadings in 2016.

viii) The Panel further notes that there was no evidence led as to any significant prejudice suffered by the Respondents.

h) Notwithstanding the above, the Panel finds that it is appropriate, in all of the circumstances, to reduce the costs award requested by a significant amount and thereby make clear that a delay of five and a half years from the initiation of an investigation to the filing and issuance of the pleadings is unacceptable.

49) Taking everything into consideration, the Panel finds that it is reasonable to order that the costs requested by Staff should be reduced by fifty percent (50%).

50) Accordingly, the Panel orders that the Respondents are jointly and severally liable to pay a contribution to the costs of the investigation and hearing to the Commission in the amount of $35,500.00. These costs are to be paid forthwith.

Administrative Penalty

51) Staff seek an administrative penalty against the Respondents in the sum of $50,000.00. They provided several decisions of this Commission to support their request that this is a reasonable amount.

52) The relevant section of the Act is s. 148.1(1) which reads:

Administrative penalties

148.1(1)

The commission may order a person or company to pay an administrative penalty of not more than $100,000. in the case of an individual, or not more than $500,000. in the case of any other person or company, if after a hearing

(a) it determines that the person or company has contravened or failed to comply with

(i) a provision of this Act or the regulations,

(ii) a direction, decision, order or ruling of the commission, or a rule made under subsection 149.1(1),

(iii) a written undertaking made by the person or company to the commission or the Director, or

(iv) a term or condition of the person or company's registration; and

(b) it considers the penalty to be in the public interest.

53) The Respondents submit that the amount sought is excessive, but further argue that, in any event, the Panel does not have the jurisdiction to order the amounts sought since the relevant sections of the Act did not come into force until November 8, 2007.

54) The Respondents argue that statues should not be construed as having retroactive application unless there is language in the statute that provides for retroactive application. In support of this position they referenced *Ciecierski v Fenning* (2005) MBCA 52, and *AG of Canada v*

RCMP Complaints Commissioner [1991] 1 F.C. 529 (Fed CA) as well as excerpts from the text *Sullivan on the Construction of Statutes* (Fifth ed.)

55) Staff chose not to address this issue. Its initial submission was silent on the matter and it chose not to file any Reply to the Respondents' submission on sanctions, notwithstanding that the Panel had provided it with the opportunity to file a Reply brief.

56) The Panel finds the argument of the Respondent persuasive with respect to contraventions of the Act up to November 8, 2007, the date section 148.1(1) came into force.

57) However, the Merits Decision included findings that the Respondents breached many provisions of the Act subsequent to November 8, 2007. These included the numerous misrepresentations made, and misleading information provided, to the investors in contravention of section 74.1 of the Act, the numerous acts in furtherance of a trade including the steps taken to transfer the obligations of the Foundation to third party entities made in contravention of sections 6(1) and 37(1) of the Act and misleading Staff during the course of the investigation into this matter which we found to be conduct contrary to the public interest.

58) The Panel finds that given that some of the contraventions took place before November 8, 2007 and given the finding on the delay in this matter, which is addressed above, it is reasonable that the administrative penalty requested by Staff be reduced.

59) The Panel finds that it is in the public interest to order that the Respondents are jointly and severally liable to pay an administrative penalty of $25,000.00 which amount is due and payable forthwith.

III Conclusion

60) For the reasons set out above, the Panel determines that it is in the public interest to order that:

a) Pursuant to section 148.2(3) of the Act, the Respondents are jointly and severally liable to pay to the following financial loss payments, which are due and payable forthwith:

   i) Youth for Christ/Portage Inc. ("Youth for Christ"), CAD $123,200.00, and
   ii) Helena Penner, CAD $250,000.00.

b) Pursuant to section 154 of the Act, the Respondents are jointly and severally liable to pay to the Commission a contribution to the costs of the investigation and hearing of this matter in the sum of $35,500.00, which monies are due and payable forthwith.

c) Pursuant to section 148.1(1) of the Act, the Respondents are jointly and severally liable to pay an administrative penalty in the sum of $25,000.00 which monies are due and payable forthwith.

d) Pursuant to section 19(5) of the Act, the Respondents are prohibited from the use of the exemptive relief in the Act and regulations to the Act, for a period of no less than 10 years, however, the prohibition will remain in force and effect thereafter until the financial loss payments and the cost and administrative penalty orders set out in this Decision have been satisfied in full; and

e) Pursuant to section 148.3(1) of the Act, Neufeld is prohibited from being an officer and/or director of an issuer for a period of not less than 10 years, however, the prohibition will remain in force and effect thereafter until the financial loss payments and the cost and administrative penalty orders set out in this Decision have been satisfied in full.

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

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