2007 BCSECCOM 262

Charles K. Dass
Investment Dealers Association of Canada

Section 28 of the *Securities Act*, RSBC 1996, c. 418

Hearing and Review

Panel	Brent W. Aitken	Vice Chair
	Kenneth G. Hanna	Commissioner
	David J. Smith	Commissioner
Date of Hearing	April 19, 2007	
Date of Decision	May 11, 2007	

Appearing

Robert Brush Abbas Sabur	For Charles K. Dass
Barbara G. Lohmann	For the Investment Dealers Association of Canada
Joyce M. Johner	For the Executive Director

Decision

I Background

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1. Synopsis

¶ 1 This is a hearing and review under section 28 of the *Securities Act*, RSBC 1996, c. 418 of a decision of a hearing panel of the Pacific District of the Investment Dealers Association of Canada.

¶ 2 The IDA panel's decision was to dismiss a motion by Dass for a declaration that the IDA does not have jurisdiction to discipline him. The basis for his motion was that he had resigned from the IDA before it notified him of the investigation into his conduct. He says the IDA By-law that purports to grant it jurisdiction over former members is invalid, because it conflicts with the Act.

¶ 3 When we refer to members or former members of the IDA in this decision, we mean that to include representatives of members, or former representatives of members, where the context requires it.

2. Facts

¶ 4 Dass became a registered representative in January 2002 when he started working for a securities dealer. In July 2004, he resigned from the dealer and left the industry. He says he has no intention of returning.

¶ 5 In January 2005 the IDA informed Dass that it was investigating the circumstances surrounding his resignation from the dealer, and in May 2006 the IDA issued a notice of hearing. The IDA and Dass agreed that the notice of hearing be sealed until the issue of jurisdiction is settled.

¶ 6 In June 2006, Dass brought a motion before the IDA panel for an order:

1. declaring that the IDA does not have jurisdiction to proceed against him because he is no longer a member of the IDA, and
2. dismissing the IDA proceeding for lack of jurisdiction.

¶ 7 In July 2006, the IDA panel dismissed Dass' motion.

3. Positions of Dass, the IDA, and the executive director

Dass

¶ 8 Dass says that:

- the IDA's recognition by the Commission under the Act is, in effect, an "attornment" of the IDA to the Commission's jurisdiction,
- the IDA's authority to regulate is limited by the Act,

- section 26(1) of the Act grants the IDA jurisdiction only over current members, not former members, and
- IDA By-law 20.7, which purports to grant the IDA jurisdiction over former members, is invalid because it conflicts with the limitation contained in section 26(1).

¶ 9 Dass has other arguments that address the IDA's contention that even if its powers are limited by section 26(1) as Dass says, it still has contractual jurisdiction over Dass. Due to our disposition of this matter, we need not consider these arguments.

IDA

¶ 10 The IDA says that:

- its authority to regulate is not limited by the Act, and
- IDA By-law 20.7 does not conflict with the Act, and is therefore valid.

Executive director

¶ 11 The executive director agrees with the IDA.

4. The IDA panel decision

¶ 12 This summarizes the reasons the IDA panel gave in dismissing Dass' motion:

1. The effect of recognition of the IDA under the Act is not an act of attornment by the IDA, but a recognition by the Commission of the IDA as a self-regulatory body. The IDA's powers therefore do not derive from the Act, but from its own constitution, regulations and by-laws, which are part of the contract between the IDA and its members.

2. Section 26(1) does not define or restrict the scope or effect of the IDA's by-laws, rules, or other regulatory instruments of the IDA.

3. The effect of IDA By-law 20.7 is to extend a member's period of membership for up to five years after resignation, and therefore, Dass is still a member.

II Analysis

1. Standard of review

¶ 13 On a hearing and review under section 28, the Commission may confirm or vary the decision under review, or make another decision it considers proper: section 165(4).

¶ 14 The Commission's standard for reviewing decisions of a self regulatory body like the IDA is set out in section 5.9(a) of BC Policy 15-601 as follows:

> 5.9(a) The Commission does not provide parties with a second opinion on a matter decided by an SRO. If the decision under review is reasonable and was made in accordance with the law, the evidence, and the public interest, the Commission is generally reluctant to interfere simply because it might have made a different decision in the circumstances. For this reason, generally, the person requesting the review presents a case for having the decision revoked or varied and the SRO responds to that case.
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> In these circumstances, the Commission generally confirms the decision of the SRO, unless
>
> - the SRO has made an error in law
> - the SRO has overlooked material evidence
> - new and compelling evidence is presented to the Commission or
> - the Commission's view of the public interest is different from the SRO's

¶ 15 Dass says that we should overturn the decision of the IDA panel on the basis that it erred in law by concluding that the IDA retains jurisdiction over former members. Specifically, Dass says that the IDA erred in law by:

1. concluding that the Act does not govern the affairs of the IDA in British Columbia;
2. distinguishing *Chalmers v. Toronto Stock Exchange* (1989) 70 OR (2d) 532;
3. concluding that there is nothing to limit the IDA's contractual jurisdiction; and
4. interpreting IDA By-law 20.7 as defining membership rather than extending jurisdiction.

2. The securities regulatory framework

¶ 16 The determination of the issues in this case turn primarily on the interpretation of section 26(1) and the other sections in Part 4 of the Act. In interpreting the nature and effect of those provisions, it is useful to consider what the courts have said about Canada's securities regulatory framework generally, and about the role of the IDA in that framework in particular.

¶ 17 In *Pezim v. British Columbia (Superintendent of Brokers)* [1994] 2 SCR 557, the Supreme Court of Canada described the securities regulatory framework in Canada as follows (at paragraph 59):

> 59 It is important to note from the outset that the Act is regulatory in nature. In fact, it is part of a much larger framework which regulates the securities industry throughout Canada. Its primary goal is the protection of the investor but other goals include capital market efficiency and ensuring public confidence in the system: David L. Johnston, Canadian Securities Regulation (1977), at p. 1.
>
> 60 Within this large framework of securities regulation, there are various government administrative agencies which are responsible for the securities legislation within their respective jurisdictions. The Commission is one such agency. Also within this large framework are self-regulatory organizations which possess the power to admit and discipline members and issuers. . . .

¶ 18 In *Ripley v. Investment Dealers Assn. (Business Conduct Committee)*, [1990] NSJ No 295 Action SH No 72667, the Nova Scotia Court of Appeal said this about the role of the IDA (pages 3 – 5):

> The IDA is one of a number of self-regulatory organizations (SROs) which operate within the securities industry in Canada. . . .
> . . .
> The [IDA] . . . is an unincorporated association which oversees the investment and brokerage business in Canada, serving as the professional organization of, and regulating, member brokerage houses and their employees. . . . The IDA establishes requirements for capitalization, procedures for purchase, sale and registration of securities for clients, audit procedures and other matters that govern the internal and external operations of national and local investment firms. The IDA also sets standards of qualifications for, and for the discipline of, persons engaged in the industry. Its authority does not extend to regulating the actual issuance of securities . . . [it] is the persons and the firms who sell the securities that are regulated by the IDA.

¶ 19 In *Morgis v Thompson Kernaghan & Co.* (2003) 65 OR (3d) 321, the Ontario Court of Appeal, after noting that the court below held that the IDA's obligation is to protect investors generally and the public in general, described the role of the IDA as follows (at paragraph 30):

> 30 I agree. The IDA, as recognized by the Commission, is organized for the purposes of regulating the standards of practice and business conduct of its member firms and their representatives to promote the protection of investors and the public interest. . . .
> . . .

3. Issues

¶ 20 These are the issues for us to decide:

1. Does section 26(1) limit the IDA's jurisdiction to current members?
2. Is IDA By-law 20.7, which purports to grant the IDA jurisdiction over former members, valid?

1. Does section 26(1) limit the IDA's jurisdiction to current members?

¶ 21 Dass says the IDA, once recognized, cannot conduct itself in a manner inconsistent with the Act. More specifically, he says that section 26(1) specifies who the IDA can regulate, that it does not include former members, and that therefore IDA By-law 20.7, which purports to grant jurisdiction over former members, is not valid.

IDA powers are contractual

¶ 22 The courts have considered whether the IDA's powers are statutory or derive from contract on several occasions, and have consistently found that the IDA's jurisdiction is founded on its contract with its members. For example, in *Ripley*, the court said (at page 5):

> It is not specifically empowered under any statute, although its existence is recognized in some securities legislation. It has its own constitution, by-laws and regulations to which its members bind themselves by contract to comply.

¶ 23 Similarly, the court in *Morgis* said (at paragraphs 10, 31 and 32)

> 10 Membership in the IDA is voluntary. It is based on the contractual commitment of members to abide by the constitution, regulations, rules and by-laws of the association. The IDA is not created by and does not derive its authority from statute. Rather, it operates under the authority of its own constitution and is recognized under some securities legislation.
>
> 31 Second, I also agree with the motions judge's conclusion that: "Although the IDA is not statutory, it nevertheless is cloaked with a similar array of responsibilities as [other] regulators." Before this court the appellants emphasize that the IDA is a voluntary association not created by statute. Thus, the source of the IDA's duties are not determined by statute. The appellants therefore argue that recognition of the IDA by the Commission under the Act does not transform the IDA into a statutory tribunal or otherwise vest it with the status of a government actor . . .

> 32 While I agree with those submissions, it does not follow that the functions and responsibilities of the IDA are divorced from any statutory context. The IDA's relationship with the Commission and its recognition as a self-regulatory organization . . . link its activities to a statutory securities scheme which . . . is designed to provide protection to all investors in Canada from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. As well, at the time of the incidents relevant to this action, the conduct of the IDA's affairs and the nature of its regulatory functions were not exclusively self-selected. They were subject to the terms and conditions imposed by the Commission as a condition of recognition as a self regulatory organization under . . . the Act. In my view, those factors inform the analysis of the IDA's status and duties as a regulator, notwithstanding that its relationship with its members is contractual in nature.

Effect of recognition

¶ 24 These are the relevant excerpts from Part 4 of the Act, which deals, among other things, with the recognition of self-regulatory bodies.

> 23 A reference in sections 26 to 32 to a self regulatory body . . . means a . . . self regulatory body . . . [recognized] under section 24.
>
> 24 On application, the commission may recognize . . . a self regulatory body . . .
>
> . . .
>
> 26 (1) Subject to this Act, the regulations and any decision made by the commission, a self regulatory body . . . must regulate the operations, standards of practice and business conduct of its members . . ., and the representatives of its members . . . , in accordance with its bylaws, rules or other regulatory instruments.
>
> (2) A self regulatory body . . . must provide to the commission or to the executive director, at the request of the commission or the executive director,
>
> (a) a copy . . . of [its] charter . . . , or
>
> (b) any information or record in the possession of the self regulatory body . . . relating to
>
> (i) a registrant or former registrant,
>
> (ii) a client or former client of a registrant or of a former registrant,

. . .

(v) any of [its]

(A) bylaws, rules, other regulatory instruments or policies, or

(B) directions, decisions, orders or rulings that are made under any of its bylaws, rules, other regulatory instruments or policies,

. . .

27 (1) If the commission considers it to be in the public interest, the commission may make any decision respecting the following:

(a) a bylaw, rule or other regulatory instrument or policy, or a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy, of a self regulatory body . . .;

(b) the procedures or practices of a self regulatory body;

. . .

(2) A person affected by a decision made by the commission under subsection (1) must act in accordance with the decision.

28 (1) The executive director or a person directly affected by a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a self regulatory body . . . may apply . . . to the commission for a hearing and review of the matter . . . .

. . .

29 (1) The executive director may appoint in writing a person to review the business and conduct of a self regulatory body . . . for the purpose of determining whether [it] is

(a) complying, or has complied, with

(i) this Act and the regulations,

(ii) any decision made under this Act or the regulations, or

(iii) [its] charter . . . , or

(b) enforcing or administering its bylaws, rules, other regulatory instruments or policies.

. . .

31 (2) If the commission determines it is appropriate, a self-regulatory body must appoint an auditor.

> 32 (2) If the commission determines it is appropriate, a self regulatory body must appoint a panel of auditors . . .
>
> (3) Each member of a self regulatory body . . . must appoint an auditor from the panel appointed . . .
>
> (4) An auditor appointed under subsection (3) must
>
> (a) examine the financial affairs of the member . . .
> . . .
>
> 33 (1) If the commission considers that to do so would not be prejudicial to the public interest, it may order that . . . a self regulatory body . . . is exempt from one or more of the requirements of this Part . . .

¶ 25 Dass agrees that the IDA's powers derive from its contract with its members, but says the act of recognition imposes limits on those powers. He says that by obtaining recognition, the IDA linked itself into the statutory securities scheme described by the court in *Morgis*. It follows, he says, that in so doing the IDA gave up exclusive control over the conduct of its affairs and the nature of its regulatory functions.

¶ 26 That is correct so far as it goes. As the court observed in *Morgis*, the functions and responsibilities of the IDA are not divorced from any statutory context. A recognition order can impose terms and conditions as a condition of recognition. Once a self regulatory body seeks and obtains recognition, the Act imposes requirements. The self regulatory body:

- has a duty to regulate and must provide information when required (section 26),
- must, when required, appoint an auditor, for itself or a member (sections 31 and 32), and
- is subject to compliance reviews (section 29).

¶ 27 In addition, the affairs of a self regulatory body are subject to review by the Commission (section 27) and self regulatory body decisions can be appealed to the Commission (section 28).

¶ 28 Fundamental to recognition is the self regulatory body's having a comprehensive scheme of regulation, including appropriate enforcement powers, to complement the roles of the Commission, other self regulatory bodies, and exchanges in the scheme of securities regulation described in *Pezim*. Recognition means that the

Commission acknowledges the self regulatory body to be an acceptable component of that regulatory scheme. In the case of the IDA, the role it plays as a result of its recognition is described by the courts in *Ripley* and *Morgis*.

¶ 29 The purpose of Part 4 is to protect the integrity of the parts of the regulatory system for which recognized self regulatory bodies are to be responsible. Section 26 (1) is a key part of this. Its purpose is to impose on recognized self regulatory bodies a duty to regulate their members. A recognized self regulatory body would not be a credible part of the regulatory scheme if it failed to regulate the conduct of its members. It is at the heart of what the Commission is getting in return for granting recognition.

¶ 30 Once the Commission grants recognition, the Commission may rely on the self regulatory body to undertake certain aspects of regulation. For example, in British Columbia the IDA administers the registration of individuals on behalf of the Commission.

¶ 31 Dass is right to the extent he is saying that a self regulatory body could not act in a manner that was contradictory or inconsistent with the Act. He says that the IDA is doing just that when it purports to exercise jurisdiction over former members, because that is inconsistent with section 26(1). This is the point we consider next.

Interpretation of section 26(1)

¶ 32 Dass says that the opening words in section 26(1) — "Subject to this Act" — confirm that the IDA's recognition has brought its activities under the Act. More specifically, he says that it means that the remainder of section 26(1) — "a self regulatory body . . . must regulate the operations, standards of practice and business conduct of its members" — does not merely impose a duty to regulate, but prescribes the scope of that duty.

¶ 33 The opening phrase of the section 26(1) has to be read in its entirety, and in light of the intent of the section.

¶ 34 Above we noted that the purpose and intent of Part 4 is to ensure the integrity of the part of the regulatory system that depends on the role of recognized self regulatory bodies.

¶ 35 With that context in mind, the phrase "Subject to this Act, the regulations and any decision made by the Commission" has no significance other than to identify other elements of the regulatory regime that could affect the self regulatory body's duty to regulate. The phrase simply means that if other provisions of the Act, or of the regulations, affect that duty, they must be observed. Similarly, the phrase means that any order that the Commission makes about that duty (for example, as part of

the recognition order itself, or an order under section 27) must be observed. In our opinion, that is all that phrase does.

¶ 36 Second, Dass says that because section 26(1) imposes a duty on a self regulatory body to regulate only its "members", there is no authority to for it to regulate "former members".

¶ 37 We do not agree. For that to be so, the effect of section 26(1) would have to be to authorize self regulatory bodies to regulate their members. However, that is not how the section reads. If the Legislature had intended that section 26(1) be the authority for self regulatory bodies to regulate their members, it could have used unequivocal language that did so.

¶ 38 In our opinion, the reason it did not do so is that the purpose of the section is not to authorize recognized self regulatory bodies to regulate, but to impose a duty on them to regulate. It is not necessary to authorize a self regulatory body to regulate, because recognition assumes the authority to regulate to be part of the self regulatory body's own regime. If it did not have that authority, the Commission would not recognize the self regulatory body in the first place.

¶ 39 Therefore, section 26(1) is not intended to, and does not, act as the enabling authority from which recognized self regulatory bodies such as the IDA derive their powers, and we so find.

¶ 40 So what do we make of the omission of "former members" from section 26(1)?

¶ 41 In our view, it is not significant. It is true that section 26(1) imposes on a self regulatory body a duty to regulate only in relation to its "members". The duty does not extend to "former members". However, we have found that section 26(1) imposes only a duty to regulate on a self regulatory body, rather than authorizing it to regulate. It follows that the section does not limit the self regulatory body's authority. Accordingly, although section 26(1) does not impose a duty to regulate former members, it does not limit the IDA's authority to do so.

¶ 42 We find that the IDA panel did not err in law when it concluded that the Act does not govern the affairs of the IDA in British Columbia in the sense argued by Dass.

The *Chalmers* and *MacBain* cases

¶ 43 Dass cites the decision of the Ontario Court of Appeal in *Chalmers v. Toronto Stock Exchange* (1989) 70 OR (2d) 532 in support of his position that the IDA does not have authority over former members.

¶ 44 As the court noted in its decision, the TSE, originally formed by its members, was later incorporated by a special act of the Ontario Legislature. At the time of the *Chalmers* decision, the TSE operated under the statutory authority of the Toronto Stock Exchange Act, 1982, as a self-governing, non-profit organization incorporated without share capital.

¶ 45 The TSE had a by-law that purported to give it jurisdiction over former members. The TSE Act did not authorize the regulation of persons who were former members.

¶ 46 Chalmers was a registered representative of a member firm of the TSE. In facts very similar to those in this case, the TSE issued a notice of hearing about his conduct as a registered representative about a year after Chalmers ceased to be a member of the TSE. Chalmers challenged the TSE's jurisdiction.

¶ 47 The court considered section 10(1) of the TSE Act:

> 10 (1) For the purposes of the object of the Corporation, the board of directors has the power to govern and regulate,
> . . .
> (c) the business conduct of members and other persons authorized to trade on the exchange and of their employees and agents and other persons associated with them in the conduct of business,

¶ 48 The court, in finding that the TSE did not have jurisdiction over former members, said this:

> On a straight reading of s. 10(1) of the Act, it appears that the appellant must succeed. The statute gives the Exchange jurisdiction over members and employees, not former members and employees. The impugned subsection of the By-law baldly states that the Exchange "continues to retain jurisdiction over any person that has ceased to be under [its] jurisdiction ...". This regulatory reach is not compatible with the Exchange's enabling statute and it appears on the face of it that the By-law is *ultra vires* and of no force and effect.

¶ 49 In our opinion, *Chalmers* is of no assistance to Dass. First, in contrast to section 26(1) of the Act, section 10(1) of the TSE Act is an authorizing section. It granted the TSE the power to regulate its members. Second, the TSE derived its powers from the TSE Act. The IDA, as stated by the courts in *Ripley* and *Morgis*, derives its authority from its contract with its members. *Chalmers* is therefore not applicable to this application.

¶ 50 We find the IDA panel did not err in law when it distinguished *Chalmers.*

¶ 51 Dass also cited Wade Douglas MacBain, Karl Edward Neufeld and Frederick Henry Smith and the Investment Dealers Association, a decision dated February 6, 2006 of the Saskatchewan Financial Services Commission.

¶ 52 *MacBain* was an appeal to the SFSC of a decision of an IDA hearing panel in Saskatchewan that the IDA had jurisdiction to hold a disciplinary hearing against a former member. In considering this question, the SFSC applied *Chalmers*, and concluded that the IDA had no statutory jurisdiction over former members. Having made that finding, it had to consider the secondary question of whether the IDA nevertheless had jurisdiction under contract. It concluded it did not. (In light of our findings in relation to the interpretation of section 26(1), we do not have to deal with this issue.)

¶ 53 The IDA panel did not follow *MacBain* because it relied on *Chalmers,* which the panel distinguished. Section 64(4) of the *Securities Act (Saskatchewan)* imposes a duty to regulate on essentially the same terms as section 26(1) of the Act. In our view, the IDA panel was correct in not following *MacBain.*

Relevance of Alberta legislation and proposed Saskatchewan legislation

¶ 54 Sections 64(4) and (5) of the Alberta *Securities Act* say:

> 64 (4) A recognized self-regulatory organization shall regulate the operations and the standards of practice and business conduct of its members and their representatives in accordance with the bylaws, rules, regulations, policies, procedures, interpretations and practices of the self-regulatory organization.
>
> (5) The authority of a self-regulatory organization to regulate the operations and the standards of practice and business conduct of its members and their representatives under subsection (4) extends to
>
> (a) any former member,
>
> (b) any former representative of a member, and
>
> (c) any former representative of a former member,
>
> with respect to that person's operations and conduct while a member of the self-regulatory organization or a representative of a member of the self-regulatory organization.

¶ 55 Dass says this demonstrates that the IDA does not have this authority in British Columbia because our Act does not have similar language.

¶ 56 We disagree. For the reasons we have stated, section 26(1) does not authorize the IDA to regulate, it only imposes a duty to regulate. We would interpret section 64(4) of the Alberta Act the same way. We are not inclined to speculate why the Alberta Act includes section 64(5), other than to note that it was added to the legislation in connection with the establishment of the TSX Venture Exchange (formerly CDNX), and a similar provision was found in the Alberta Stock Exchange Act (one of the predecessor exchanges to CDNX). In our opinion, this provision in the Alberta legislation is not relevant to the interpretation of Part 4 of the British Columbia Act.

¶ 57 Dass made a similar argument about proposed legislation in Saskatchewan that also addresses the extension of jurisdiction to former members. This legislation, introduced after *MacBain*, is not relevant as it is not law.

Finding

¶ 58 We therefore find that the IDA panel did not err in law by concluding that section 26(1) does not limit the IDA's contractual jurisdiction over former members.

2. Is IDA By-law 20.7, which purports to grant the IDA jurisdiction over former members, valid?

¶ 59 IDA By-law 20.7 says:

> 1. For the purposes of bylaw 19 and bylaw 20, any member and any approved person shall remain subject to the jurisdiction of the Association for a period of 5 years from the date on which such member or approved person ceased to be a member or an approved person of the association subject to (2);
>
> 2. An enforcement hearing under part 10 of the this bylaw may be brought against a former approved person who reapplies for approval under part 7 of this bylaw notwithstanding expiry of the time set out in (1);
>
> 3. An approved person whose approval is suspended or revoked or a member who is expelled from membership or whose rights or privileges are suspended or terminated shall remain liable to the Association for all amounts owing to the Association.

¶ 60 IDA By-law 20.7 came into force in October 2004, after Dass resigned and before the IDA told him he was under investigation. Prior to October 2004, IDA By-law 20.21 was in force, which read:

> 20.21 For the purposes of bylaws 19 and 20, any member and person who has been approved pursuant to bylaws 4, 7 and 18 shall remain subject to the jurisdiction of the Association notwithstanding that such member has ceased to be a member or that the person is no longer approved under the said bylaws. No proceedings shall be commenced pursuant to bylaw 20.11 against a former member or person no later than 5 years from the date upon which such member or person ceased to be a member or approved respectively.

¶ 61 Dass, the IDA, and the executive director all agree that we do not have to find which of the two By-laws is applicable, because our decision about IDA By-law 20.7 will affect the validity of By-law 20.21 identically.

¶ 62 The IDA panel found that By-law 20.7 was valid, because it defined membership to include former members.

¶ 63 We disagree with this aspect of the IDA panel's decision. In our opinion, on an ordinary reading of By-law 20.7, it does not define "member". The language clearly speaks to jurisdiction. The By-law does not define membership; it extends the IDA's jurisdiction over former members.

¶ 64 We find that the IDA panel erred in law in interpreting IDA By-law 20.7 as defining membership rather than extending jurisdiction. However, this error is of no significance, because the IDA panel's fundamental finding, that By-law 20.7 is valid, is correct. As explained above, it is valid because section 26(1) does not limit the IDA's jurisdiction under By-law 20.7.

¶ 65 We find that IDA By-law 20.7 is valid.

3. IDA jurisdiction to refuse to apply by-laws

¶ 66 The IDA also asks us to find that IDA hearing panels do not have the jurisdiction to refuse to apply IDA by-laws, and therefore the IDA panel did not have jurisdiction to hear the motion in the first place. Dass took no position on the merits of this issue but supported the IDA's request that we consider the issue. Dass and the IDA acknowledge the issue is largely academic in the circumstances, but argue that it would be an opportunity for us to provide "valuable guidance".

¶ 67 We agree that this issue is not relevant to our disposition of this hearing and review. We therefore did not consider it.

III Decision

¶ 68 We find that the IDA panel did not err in law by concluding that the IDA retains jurisdiction over former members. We find that the IDA panel erred in law in

interpreting IDA By-law 20.7 as defining membership rather than extending jurisdiction, although that error was not significant to the IDA panel's decision.

¶ 69 We therefore confirm the IDA panel's decision.

¶ 70 May 11, 2007

¶ 71 **For the Commission**

Brent W. Aitken
Vice Chair

Kenneth G. Hanna
Commissioner

David J. Smith
Commissioner