2010 BCSECCOM 401

Andrew Gordon Walker, Dale Michael Paulson and Giuliano Angelo Tamburrino

***Securities Act*, RSBC 1996, c. 418**

Hearing

Panel	Brent W. Aitken	Vice Chair
	Bradley Doney	Commissioner
	Suzanne K. Wiltshire	Commissioner
Dates of Hearing	January 25–29 and April 13, 2010	
Date of Findings	July 12, 2010	

Appearing

Sean K. Boyle Karine Oldfield	For the Executive Director
L. John Alexander	For Andrew Gordon Walker
Ronald N. Pelletier Brigeeta Richdale	For Giuliano Angelo Tamburrino
Dale Michael Paulson	For himself

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I Introduction

¶ 1 This is the liability portion of a hearing under sections 161(1) and 162 of the *Securities Act*, RSBC 1996, c. 418.

¶ 2 In an amended notice of hearing dated January 26, 2009 (2009 BCSECCOM 36), the executive director alleges that Andrew Gordon Walker, Dale Michael Paulson and Giuliano Angelo Tamburrino contravened the Act by:

a) perpetrating a fraud against Panterra Resource Corp. by using over $86,000 of Panterra's funds to purchase Panterra common shares for their own account,

b) perpetrating a fraud against Panterra by issuing 200,000 common shares in payment of a $50,000 finder's fee to a person that had no involvement in the related transaction and by causing that person to transfer the shares to an individual to sell the shares and distribute the proceeds to the respondents, and

c) filing false and misleading information with the Commission by filing documents stating that the approximately $136,000 described in paragraphs a) and b) were spent on an oil and gas property.

¶ 3 Walker and Tamburrino were each represented by counsel at the hearing, both testified, and both attended most of the hearing. Paulson appeared on his own behalf, testified, and was present for parts of the hearing.

¶ 4 The evidence includes transcripts of compelled interviews by Commission staff of Walker and Paulson. Both were sworn and were represented by counsel.

II Background

A Panterra and the respondents

Panterra

¶ 5 Panterra is an Alberta corporation listed on the TSX Venture Exchange. During the relevant period, Tamburrino, Walker and Paulson were its operating mind and management.

Tamburrino

¶ 6 Tamburrino is a resident of Alberta. He was a director of Panterra from June 2004 to May 2006 and, during the relevant period, was its President.

¶ 7 Tamburrino played the leading role in Panterra. He negotiated its property acquisitions and, with Paulson, arranged private placements. According to Paulson, Tamburrino did "by far the majority of the work in Panterra".

¶ 8 Tamburrino had previous experience as a director of public companies. In 1997 he founded a company that went public in 1998. In his role as an officer of that company he was responsible for business development.

¶ 9 In 2001 Tamburrino became a shareholder of War Eagle Mining and was elected a director in 2002. He says his role with that company was "to help guide or assist the management team." He says he was not involved in management and his role was more focused on introducing the company to brokers.

¶ 10 In May 2002 Tamburrino became a director of the company that later became Panterra. His role was to introduce that company to brokers.

¶ 11 Tamburrino's private investment company has a portfolio in the high six figures invested in securities of public companies.

Walker

¶ 12 Walker is a resident of British Columbia and was a director of Panterra from June 2004 to April 2006. He held the office of Corporate Secretary. He was Panterra's legal counsel during the relevant period.

¶ 13 Walker prepared Panterra's resolutions and minutes and looked after its other corporate secretarial tasks. In his role as its corporate solicitor he reported to the Exchange and sought its approval for transactions. Walker also provided general advice to the board that he had acquired through his experience in advising public companies.

¶ 14 Walker was a lawyer whose practice focused on corporate, commercial, and securities law. He says at any given time his clients would include five or six

public companies. He provided an array of services to those clients, including corporate and commercial work, applications to the Exchange for approval of transactions, and other securities law compliance work. By 2005, he had been practicing in this field for about 15 years.

¶ 15 The Law Society of British Columbia took disciplinary action against Walker in connection with his activities with Panterra. In October 2008 Walker entered into an agreed statement of facts with the Law Society in which he undertook not to practice law for 10 years starting November 28, 2008. The agreed statement of facts is part of the evidence in this hearing.

Paulson

¶ 16 Paulson is a resident of British Columbia. He was a director of Panterra from August 2004 to October 2005 and was its Vice President, Finance. In that role, Paulson says he obtained financing for the company, participated in discussions about potential oil and gas properties, and signed cheques.

¶ 17 Paulson had been a broker for, he says, "many years" with a large independent securities dealer.

B Option agreement with the Tam group

¶ 18 Paulson had provided financing for Panterra and had several clients who were shareholders. According to Tamburrino, Paulson's clients were Panterra's largest shareholder group.

¶ 19 Panterra came under the control of a group headed by Simon Tam. In early 2004 Paulson learned that the Tam group was planning a significant stock consolidation that Paulson believed would essentially destroy the investment that his clients had in Panterra. He decided to try to scuttle the Tam group's plans, and asked Tamburrino, a major Panterra shareholder, and Walker to assist.

¶ 20 Paulson told Tam that if the Tam group persisted with its plan, he would organize the dissident shareholders and remove Panterra's existing management at the company's next annual general meeting (expected in the summer of 2004). Negotiations ensued and resulted in an agreement in March 2004 under which the existing directors agreed not to stand for re-election at the annual general meeting, and not to oppose the appointment of Tamburrino, Walker, and Paul Cowley as directors. (Paulson was not nominated as a director because he was still employed as a broker and therefore not eligible to be a director under Exchange rules.)

¶ 21 At Panterra's annual general meeting on June 30, 2004, Tamburrino, Walker and Cowley were elected as directors. On July 29, 2004 Paulson left his employment as a broker and also became a director.

¶ 22 Cowley had no role in the matters before us. He was on the board because he was a mining geologist and at the time Panterra's only property was a mining resource property. He was never involved in the day-to-day affairs or management of Panterra during the relevant period. He resigned as a director in September 2005. During the relevant period, the respondents comprised Panterra's mind and management.

¶ 23 The respondents' plan for Panterra was to engage in oil and gas exploration and development. They intended to move its corporate office to Calgary.

¶ 24 In March 2005 Fred Rumak joined the board, having been invited to do so by the respondents. Tamburrino believed Rumak had the contacts and the credentials necessary to facilitate Panterra's entry into the oil and gas business.

¶ 25 In July 2005 Rumak became the President of Panterra, and in September 2005 he retained Ron Sparrow as its chief financial officer.

¶ 26 At the time of the respondents' March 2004 agreement with the Tam group, Panterra was about to complete a private placement. The respondents and the Tam group agreed that some of the proceeds from the private placement would be used to pay in cash a portion of expenses owed by Panterra to the Tam group. The remainder of the expenses, about $66,000 worth, would be settled by the issue of 1.3 million units under the private placement.

¶ 27 Panterra issued the 1.3 million units to Chun Ching and Fiona Lo, whom the respondents understood to be part of, or nominees for, the Tam group.

¶ 28 Under the March 2004 agreement the share portion of the units issued to Ching and Lo were subject to a purchase option in favour of the respondents under which the respondents had the right to purchase the shares when they became free-trading, at the same price Ching and Lo acquired them under the private placement.

¶ 29 When the Panterra private placement shares became free-trading, Ching and Lo asked the respondents to exercise the option. The respondents did not want to do so, but neither did they want Ching and Lo to sell the shares into the market, an event they thought likely to depress Panterra's stock price to the point that the company could become unfinanceable. They negotiated an extension to the option agreement in exchange for a higher option price.

¶ 30 After giving effect to the new option price and a stock consolidation, the aggregate option price for the Ching and Lo Panterra shares was $86,381.

¶ 31 In February 2005 the respondents exercised their option to buy the Ching and Lo shares, using funds from Panterra to do so. On February 5, Tamburrino and Paulson authorized the transfer of $86,381 of Panterra's funds to Walker's trust account. Walker sent the funds to Ching and Lo to buy the shares and instructed Panterra's transfer agent to issue share certificates representing an equal number of Panterra shares (about 205,000) to each of Walker, Paulson, and Tamburrino's personal holding corporation.

C Respondents' use of Panterra funds

Nature of the transaction

¶ 32 The respondents say their original intention was to buy the Ching and Lo shares using their own funds. However, because Paulson did not then have the cash to fund his portion (about $29,000), they decided to use $86,381 of Panterra's funds to pay for the shares. They insist their taking Panterra's funds to make the purchase was a loan, and they intended to repay it as soon as Paulson had the means of funding his portion.

¶ 33 We refer to this as the $86,000 transaction.

¶ 34 If Panterra's funds were to be used to buy the Ching and Lo shares, the shares could have been returned to Panterra for cancellation. The respondents give two reasons why they did not do this.

¶ 35 First, they say the reason for issuing the Panterra shares for debt in the first place was to preserve Panterra's cash. They say using cash to purchase the shares for cancellation would have defeated that purpose. This might explain why the respondents decided to buy the Ching and Lo shares personally, but it does not explain the so-called loan – Panterra funds were still being used to buy the shares.

¶ 36 The second explanation sounds more likely. They say, in Paulson's words, "it gave us, you know, some compensation for, for what we did for the company," referring to their initiative in dealing with the Tam group.

¶ 37 There is no promissory note, loan agreement or any other documentation evidencing the $86,000 transaction as a loan. There are no minutes of a Panterra board of directors meeting, nor any directors' resolution of Panterra, authorizing it. There were no repayment terms and no interest was payable.

¶ 38 There is no correspondence among the respondents, or between any of the respondents and anyone else, describing the transaction as a loan (until June 2006 when the respondents replied to inquiries from the Exchange). There is no evidence of any conversations between the respondents and any third party in

which the respondents described the transaction as a loan. To the contrary, when Rumak, Sparrow, and the Exchange first started to ask questions about the $86,000 transaction, the respondents did not describe it as a loan. Instead, they gave misleading answers to those inquiries. We say more about this later.

¶ 39 The first document that refers to the $86,000 transaction as a loan is a statement of trust account transactions for Panterra that Walker sent to the Exchange in March 2006 in response to its inquiries. In that statement, the disbursements to Ching and Lo for the share purchases are described with the words "loan share purchase".

¶ 40 The first time the $86,000 transaction is unequivocally described as a loan is in a letter dated June 22, 2006 from Tamburrino to the Exchange. Earlier that June the Exchange sent letters to each of the respondents containing inquiries about various matters relating to Panterra's affairs, including the $86,000 transaction. In his response, Tamburrino said, "The funds in question were specifically intended to be a loan to the directors to facilitate the transaction with [Ching and Lo]."

¶ 41 Walker and Paulson sent similar replies. In his response dated July 31, 2006 to the Exchange, Walker said, "Mr. Walker wishes to emphasize that the transaction described above was regarded throughout as a loan by Messrs. Paulson, Tamburrino and himself, and that the monies from the Company were intended to be repaid and were repaid."

¶ 42 In his response dated July 17, 2006 to the Exchange, Paulson said, "The funds were to be borrowed by the directors from the Company to pay for the shares then the directors would paid [*sic*] back the Company the funds borrower [*sic*] to purchase the shares. This was done."

¶ 43 Whatever the respondents' intentions may have been, in our opinion their use of more than $86,000 of Panterra's funds was not a loan, and we so find. Looking at it from Panterra's perspective, where was the loan? How could Panterra possibly have enforced collection of this so-called debt when there was no evidence whatsoever of the debt, never mind any agreement as to repayment terms or interest?

Accounting treatment

¶ 44 Paulson says he suggested to Tamburrino and Walker that the $86,000 transaction be documented as a loan to the directors, but they overruled him. "[The] optics of directors' loans are negative," Walker said. "The Exchange wouldn't like it."

¶ 45 "Well then, what do you suggest?" asked Paulson. "I'll think of something," replied Tamburrino. Paulson says they "just left it at that."

¶ 46 The transaction was therefore not documented in Panterra's accounting records as a loan. Instead, it was allocated to property expense for an oil and gas property it owned known as Redwater.

¶ 47 How that came to be raises the first of several issues of credibility in this hearing.

¶ 48 Panterra employed Michael Sweatman, an accountant, to prepare its financial statements. Tamburrino, Walker and Paulson all agree that one of them had to be the one who instructed Sweatman to charge the $86,000 transaction to Redwater as property expense. Each of them denies that he was the one who did so.

¶ 49 Walker says Paulson and Tamburrino were responsible for financial administration and records of the company. His role in providing information to the accountant was limited, he says, to information about capital changes arising from private placements, option grants, and exercises of options and warrants. Walker says he was not privy to any discussion about how the $86,000 transaction was to be booked.

¶ 50 Paulson says he paid bills and monitored the bank accounts. He says the accounting was done through Tamburrino, and Tamburrino sent most of the data to the accountant. Both he and Tamburrino signed most of the cheques, says Paulson.

¶ 51 Paulson says when the time came to prepare Panterra's 2005 first quarter financial statements, Tamburrino told him he had decided to "stick it with Redwater".

¶ 52 Tamburrino denies ever having met Sweatman, and says he does not recall having any discussions with him about the preparation of Panterra's 2005 first quarter financial statements.

¶ 53 However, Tamburrino did provide information to Sweatman for the 2005 second quarter financial statement preparation. On August 12, 2005, he sent a six-page fax to Sweatman. Only the cover sheet is in the evidence. On it, he hand-wrote this note:

> "Michael
>
> Following are the details for Panterra. April is misplaced and should be on your desk Monday.
>
> Giuliano".

¶ 54 Tamburrino acknowledges having sent this fax, but testified, when asked if he sent faxes in addition to that one, "I can only reference the ones I've seen" and "if there were others I don't recall at this time". We do not find it believable that Tamburrino would not have communicated regularly with Sweatman, and even less so that he could not recall the extent that he communicated with him.

¶ 55 That Tamburrino sent information to Sweatman about expenses incurred on Panterra's properties would hardly be surprising. It was Tamburrino who dealt with that aspect of Panterra's business and it is likely that he, not Walker or Paulson, would have the information about expenditures on the properties.

¶ 56 We find that it must have been Tamburrino who instructed Sweatman to book the $86,000 transaction as an expense against Redwater.

¶ 57 Both Tamburrino and Paulson admit signing the certificate stating that the 2005 first quarter financial statements were materially correct, even though they knew that this disclosure was incorrect (not only did the $86,000 transaction not belong as a Redwater expense, Panterra had not spent any money on that property in 2005).

¶ 58 Tamburrino was sanguine about the wrongful disclosure. He said:

> "I had looked at the statements again [and realized] that [the $86,000 transaction] was booked essentially as an asset, and it had no negative effect on the financials as it related to the money, because we had taken – having taken the money as a loan, we knew the loan was going to be paid back, and the number would be reversed at the time the money was brought back, and by the time the audit was completed for fiscal 2005, that entry would have been done."

¶ 59 Walker admits signing the 2005 first quarter financial statements. He says he would have reviewed them, his normal practice being to review them "more from the standpoint of grammar and spelling".

¶ 60 Walker, like Tamburrino and Paulson, says the $86,000 transaction was a loan. However, he also knew the three of them agreed that it would not be documented as a loan. He must have known that if the $86,000 transaction was not to be documented as a loan, it could not very well be recorded as one on Panterra's books.

¶ 61 We find it surprising that Walker, in reviewing Panterra's first financial statements since the $86,000 transaction, was apparently not curious about how that transaction would be recorded and disclosed.

¶ 62 Curious or not, Walker signed those financial statements with knowledge that he participated in a transaction purported to be a loan, but, as agreed among him, Tamburrino and Paulson, would not be documented as one. He had to have known, in those circumstances, it would be a challenge to record the transaction in Panterra's financial statements in compliance with generally accepted accounting principles, and with securities regulatory requirements.

¶ 63 Walker's signing of the financial statements in those circumstances puts him in no more favourable a position than Tamburrino and Paulson. They knew the statements were wrong; he knew that the risk that the statements would be wrong was high, but made no inquiries in the exercise of reasonable diligence to find out.

¶ 64 Walker and Paulson admit signing Panterra's 2005 second quarter financial statements, which continued the wrongful disclosure, and Tamburrino and Paulson admit signing the certificates stating that they were materially correct.

¶ 65 As a result of the wrongful disclosure, Panterra's 2005 first and second quarter financial statements were false and misleading in a material respect. They materially overstated the value of the Redwater property. The respondents say that at the time they considered the $86,000 transaction to be a loan. If so, the statements failed to disclose a material receivable. If the $86,000 was money held in trust for Panterra, as Walker later told Rumak and Sparrow, the statements materially understated cash.

Inquiries by Panterra

¶ 66 When Sparrow joined Panterra in September 2005 he began to assemble the documentation that would be necessary for the year-end audit. The $86,000 charge to Redwater caught his attention because he could not find invoices to support it. He and Rumak started asking questions.

¶ 67 Sparrow says that when he asked Tamburrino about it, Tamburrino said, "Well, that was a payment to sort of get us into the oil and gas business". Sparrow says he remembers Tamburrino using those words because it struck him as a strange explanation for why the amount was recorded as property and equipment for Redwater. We find that Tamburrino's explanation was misleading.

¶ 68 Rumak also asked Tamburrino for particulars about the charge to Redwater. Tamburrino told him it was an "accounting error" and would be rectified in time for the audit. Tamburrino was correct about that. What he left out was that the

error was intentional. Asked at the hearing why he did not tell Rumak that the $86,000 was a loan he testified, fatuously, "because he didn't ask". We find Tamburrino's response to Rumak was misleading.

¶ 69 Walker says that Rumak first asked him about the $86,000 transaction in September or October of 2005. Tamburrino and Paulson were present. Walker told Rumak that the funds would be paid back.

¶ 70 In November, Sparrow finally discovered that the $86,000 was not spent on Redwater but instead was sent to Walker's trust account. On November 18 he sent an email to Walker asking for "some kind of accounting for the funds." On November 24 Walker replied by fax:

> "In respect of the $86,000.00, we advise that it should be treated in the same manner as previously – in that the monies in question remain trust monies."

¶ 71 Rumak and Sparrow took that to mean that the funds were then in Walker's trust account and on the same day Rumak emailed Walker asking him to send the funds to Sparrow. Of course Walker did not have the funds – they had long since been used to buy the Ching and Lo shares.

¶ 72 In his interview, Walker was asked why he said "the monies remain trust monies" when they were not in his trust account. Walker said that his statement was "clearly" an error and if given the opportunity to say it again, would have said, "We will pay the loan monies back."

¶ 73 In his testimony at the hearing, Walker took a different position. He defended the language in the fax as accurate and attempted a tortuous explanation of the difference between "trust monies" and money in a trust account. In later testimony in the hearing, he was asked if he could explain the discrepancy between his earlier hearing testimony and his interview evidence, in which he said he wished he had just said they would pay the loan back. He testified:

> "I would have loved to have said that to Mr Sparrow, in retrospect. . . . what I was concerned about was telling him that the monies were trust monies and that we would get them back to him. When I look at this, you know, I wish that that's not what had come out of my mouth. That's all I can say to you."

¶ 74 In our opinion, the interpretation Rumak and Sparrow took from Walker's statement in his fax was a common sense interpretation that is consistent with what appears to be the plain meaning of Walker's words – that when he sent the

fax he was holding the funds in trust for Panterra. We find Walker's response was misleading.

Repayment

¶ 75 In his interview, Walker testified that the respondents did not pay the loan back earlier, because "there was no sense of urgency to do so." Paulson's continued inability to come up with his portion was also a factor, the three of them having agreed, for whatever reason, that until Paulson could pay, none of them would.

¶ 76 Walker felt pressure from Rumak's repeated demands for payment. He said:

> "It became apparent that the people in Calgary were becoming more insistent about the money . . . so the three, we three respondents were in contact constantly, and we had discussions about the repayment of these monies. And my position was that we needed to repay this money, we need to do it as soon as we can, uhm, because the Calgary group is becoming more insistent and I want this off my plate. I have been saying this for months."

¶ 77 Rumak asked Walker to send the funds a few more times in late 2005. On January 16, 2006, he sent another email to Walker asking for the funds.

¶ 78 Finally, on January 20, 2006 – almost one year after the respondents took the money from Panterra's bank account – Rumak travelled to Vancouver and went to Walker's office to collect the funds.

¶ 79 Walker gave Rumak the cheque. The memo line on the cheque read "return of trust monies". In the covering letter, Walker said:

> "As requested, we have now enclosed a cheque for $86,455.97, made payable to 'Panterra Resource Corp.' which monies represent all monies of the Company remaining in our trust account."

¶ 80 Walker used his own funds to fund the repayment from his trust account. He later collected Tamburrino's share from him, and some money from Paulson (the evidence is ambiguous as to whether Paulson ever paid his portion in full).

¶ 81 The evidence includes three statements prepared by Walker showing the transactions in his trust account for Panterra.

¶ 82 The first of the statements appeared on February 6, 2006. Walker sent it to Panterra with a copy to its auditors. It describes the purchase of the Ching and Lo

shares as "share purchase". According to this statement, Walker put $86,455.97 into his trust account on December 31, 2005, a Saturday, to fund the repayment to Panterra, and the repayment to Panterra was made on January 20, 2006.

¶ 83 The second statement Walker gave to Sparrow, also in early February 2006. It describes the purchase of the Ching and Lo shares as "share purchase". This statement shows Walker's funds going into the account on January 20, the same day that Rumak showed up to collect the funds. This statement records the debit for the repayment to Panterra before the credit for Walker's deposit.

¶ 84 The third statement we referred to earlier, being the one Walker sent to the Exchange on March 19, 2006 in response to its inquiries. It is dated January 16, 2006, the date of Rumak's last demand for payment. It is the only statement that describes the purchase of the Ching and Lo shares as "loan share purchase". The covering letter says the statement shows all transactions from January 1, 2004 "to date", but it shows no transactions after December 5, 2005. It does not record Walker's deposit or the repayment to Panterra.

¶ 85 Walker says he has no memory of making the change to the description of the Ching and Lo share purchases, or having it made, and cannot explain the discrepancy, "except for the fact that as time went on it became more, more, apparent that we needed to discuss this as a loan".

¶ 86 In our opinion, the second statement is more representative of what happened.

¶ 87 Walker says that by the end of 2005 he was feeling urgency about paying back the money. The first statement suggests that Walker went to the trouble to deposit funds in his trust account on a New Year's Eve Saturday. If he did so, why would he not pay Panterra as soon as possible thereafter, to get Rumak off his back? Why wait to make the repayment until Rumak showed up at his door three weeks later?

¶ 88 It is far more likely that Walker, not expecting Rumak to appear in person on January 20, gave him the cheque and then made a deposit later that day to cover it. The second statement is consistent with that scenario.

D Finder's fees paid to Vistanova Capital Inc.

¶ 89 Tamburrino negotiated a series of property deals between Panterra and Eastland Resources Ltd. that were finalized in late 2004 and early 2005. Neither Walker nor Paulson were involved in the negotiations. The properties that Panterra acquired as a result of the negotiations included Redwater and a property called Cameron.

¶ 90 In a discussion among the respondents, Walker asked whether there were finder's fees payable in connection with the acquisitions of these properties. Tamburrino said there were, and when Paulson and Walker asked who the finder was, he said it was Vistanova Capital Inc.

¶ 91 Vistanova was incorporated in Alberta on February 8, 2005 at Tamburrino's request by Simon Manucci, Tamburrino's neighbour and friend since childhood. Manucci was a lawyer who practiced primarily in the area of real estate law.

¶ 92 The evidence includes an affidavit sworn by Manucci. In his affidavit, Manucci describes his and Tamburrino's understanding regarding Vistanova. Manucci's affidavit was put to Tamburrino on cross-examination and he did not dispute its accuracy.

¶ 93 Tamburrino invited Manucci to lunch in January or early February 2005. Tamburrino asked Manucci to incorporate Vistanova. He told Manucci he wanted Manucci to be Vistanova's sole shareholder and director. Manucci says "it was not made clear" to him whether Tamburrino "would eventually want to become a shareholder or director" and "he cannot say for certain whether that was his intention."

¶ 94 In his testimony, Tamburrino said that he and Manucci were to discuss "on an ongoing basis after the incorporation to add me on as a director".

¶ 95 Tamburrino never became a director of Vistanova, and there are no written records linking Tamburrino to Vistanova.

¶ 96 According to Manucci, Tamburrino told him that Tamburrino "would provide his expertise in business development" and that Manucci's role "would be to provide legal services and to provide his share of capital if necessary."

¶ 97 Manucci said that he and Tamburrino agreed that Vistanova was to be an investment company. Tamburrino told him that he would provide capital to Vistanova by providing finder's fees he was expecting, which Manucci believed were in connection with his work for Panterra.

¶ 98 Tamburrino testified that Vistanova's purpose was to invest in real estate transactions. Manucci says Tamburrino told him that he would provide Vistanova with opportunities to invest "in companies and in the stock market."

¶ 99 He and Manucci never made any agreement about the sharing of any profits Vistanova might earn as a result of its activities. Vistanova never entered into any real estate transactions nor did it carry on any significant business.

¶ 100 On Tamburrino's instructions, Panterra issued about 278,000 shares in March and April of 2005 in lieu of cash finder's fees to Vistanova for three of the Panterra property acquisitions that Tamburrino had negotiated with Eastlake. Of these, 200,000 shares were for Cameron. The remainder were for two other properties, 40,000 for one and about 38,000 for the other.

¶ 101 The 200,000 finder's fee shares issued in connection with the Cameron property are the ones described in the notice of hearing as being associated with Redwater. It became clear only during the hearing that these shares were actually issued in connection with Cameron.

¶ 102 The accounting for the 200,000 Cameron finder's fee shares was a comedy of errors. In addition to being allocated to Redwater instead of Cameron, they were assigned a cash value of $50,000 (the amount referred to in the notice of hearing) when it should have been $34,000. This brought the total expenses misallocated to Redwater to about $136,000 as alleged in the notice of hearing.

¶ 103 Tamburrino knew he was the finder. He says he asked the finder's fee shares to be issued to Vistanova because they were to be the seed capital for that company.

¶ 104 On December 2, 2005 Tamburrino took the finder's fee share certificates to Manucci. He told Manucci that the 38,000 shares associated with one of the properties would be deposited in Vistanova's trading account. He asked Manucci to endorse the remaining 240,000 shares back to Tamburrino. Manucci did not question this. He says he thought Tamburrino was "well within his right" to ask for the 240,000 shares back. He considered it up to Tamburrino to decide how much capital he wished to invest in Vistanova.

¶ 105 In his interview, Walker was asked whether the respondents discussed whether insiders could get finder's fees. Walker said, "We would not have had a discussion about that, if that question had come up. I would have said, 'No'." This was because Exchange policy prohibited the payment of finder's fees in any form to directors, officers, or other insiders of an issuer.

¶ 106 Tamburrino says he did not know in March and April of 2005 that directors were not entitled to receive finder's fees. He says he first learned that "some time in 2006". He testified he was unable to say with any more precision when in 2006 he found that out, yet he also said it was because of the Exchange's inquiries, which began in earnest in June 2006, that he learned of it.

¶ 107 Tamburrino says that Walker never told him that directors are not entitled to finder's fees, and Walker does not recall telling him that.

¶ 108 Paulson said in his interview that Tamburrino told him that Manucci and Vistanova earned finder's fees by making the introductions for the Redwater property. He said Tamburrino told him that Manucci was a friend of his "who was knowledgeable in the Redwater play and had dealt with Eastland on the project."

¶ 109 Walker described his process for obtaining the Exchange's approval for issuing finder's fee shares to a corporation (in this case, Vistanova). He said the Exchange always asks the name of the beneficial owner of a corporate recipient of finder's fees, so he would have said to Tamburrino, "Give me the name of the finder. He needs to be at arm's length to the company."

¶ 110 Walker says that Tamburrino, in answer to this question, gave Manucci's name as the beneficial owner, and told Walker Manucci wanted the shares issued in the name of Vistanova.

¶ 111 Tamburrino says that Walker never asked him who the beneficial owner is, only who the directors were, and that Walker never asked him who the finder was. He testified in the hearing, firmly and confidently, "No, he asked who it would be to".

¶ 112 Tamburrino's testimony is not credible.

¶ 113 Tamburrino appeared to us to exhibit selective recall when testifying at the hearing. We referred earlier to his statement that he was unable to recall the nature or extent of his discussions with Panterra's accountant while he was president of the company, contrary to common sense and the evidence.

¶ 114 Another example of Tamburrino's professed inability to recall came up in an interview he had with Exchange staff. Asked about the acquisition of the Ching and Lo shares, he told Exchange staff he could not recall the transactions relating to the acquisition of the Ching and Lo shares. In his testimony in the hearing, he admitted that he knew exactly what Exchange staff were talking about when they asked the question.

¶ 115 Yet Tamburrino testified firmly that he recalled the exact phrasing of a technical question asked of him by Walker over five years ago.

¶ 116 We prefer Walker's account of his discussion with Tamburrino. It is consistent with what a lawyer in his position would be required to ask to obtain approval of the issue by Panterra of the finder's fee shares. The question as Tamburrino professes to recall it would not yield the answer necessary to meet the Exchange's requirements.

¶ 117 Tamburrino was the finder. The Eastland deals were finalized after he became a director of Panterra. To the extent he worked on the deals before he became a director, that work was in anticipation of his becoming a director.

¶ 118 We do not believe Tamburrino's testimony that he did not know in March and April of 2005 that he was not entitled to finder's fees. We considered these facts:

- Tamburrino has experience as a director, and as an investor, in public companies.
- Tamburrino met with Manucci in early 2005. He, Walker and Paulson were about to acquire the Ching and Lo shares. Tamburrino had been working on the Eastland deals. He told Manucci he would be getting finder's fees.
- He asked Manucci to incorporate Vistanova so they could do business together but instructed Manucci to do so in a way that would not show Tamburrino's involvement in the company.
- Tamburrino led Paulson and Walker to believe that Vistanova was a valid finder. In particular, he told Paulson that Manucci knew about Redwater, had dealt with Eastland, and that Vistanova was Manucci's company.
- When the finder's fee shares were issued, he deposited only 38,000 of them back to Vistanova's account. The rest he had Manucci immediately endorse back to himself. If Tamburrino had intended to fund Vistanova with only 38,000 shares and keep the rest in his own name, why did he not cause Panterra to issue the remaining 240,000 shares in his name in the first place? Why pass them through Vistanova?

¶ 119 We find that Tamburrino knew that under Exchange policies he was not entitled to finder's fees for the Eastland deals, and, by using Vistanova as the putative finder, concealed from Walker, Paulson, and the Exchange that he was the one getting the fees.

¶ 120 We do not find that Walker or Paulson knew that Vistanova was not a valid finder at the time Panterra issued the finder's fee shares. However, they eventually found out. When, exactly, is not clear, but find out they did.

¶ 121 Walker recalled his thoughts upon learning that Tamburrino was associated with Vistanova. "It was a very bad day," he said. They had a problem – they had made filings with the Exchange, received approvals, and issued the shares, only to discover they had a problem with the finder:

> "And I frankly did not know what to do initially. I thought it through. It then became apparent what I should do, and, and that is to notify the authorities and take the first steps in the process of

> getting the finder's fees back into the company. And I didn't do that. Uhm, that, to me, has been the hardest thing that I have lived with for the last three years, that I had a – there was a point in time where I could have said, go left, but I went right, and I took the easy way out. My thought process was that, oh, my God, if I go back to the Exchange, they are going to look at this, and a lot of other things that have been going on with Panterra very carefully. I would love that not to happen. So, I made the wrong decision. I just took the easy way out and certainly didn't fulfil my professional responsibility to you people, the Exchange and the company."

¶ 122 This evidence suggests the event had considerable impact on Walker yet he seems unsure of when he actually learned that Vistanova was not a valid finder. He has steadily pushed back the date of that event. In his July 2006 reply to the Exchange's inquiries, he said he knew as early as April or May 2005. By the time of his interview in August 2007 he thought it was more likely July or August 2005.

¶ 123 Finally, in his testimony at the hearing, he settled on October 2005, at least as the latest time, because in that month he met the individual whom Paulson found to act as an intermediary to sell Tamburrino's 240,000 finder's fee shares. He acknowledges that he would have known for some time before that meeting that Vistanova was not a valid finder.

E Sale of the finder's fee shares

¶ 124 Walker is very clear in his recollection that, once he became aware of the association between Tamburrino and Vistanova, he raised his concerns about the invalidity of the Vistanova finder's fee shares with Tamburrino and Paulson. Paulson also says they discussed it. Walker says: "We certainly discussed what, what should be done. No question about that."

¶ 125 What Tamburrino, Walker and Paulson should have done was return the shares to Panterra for cancellation and then make a clean breast of things to the Exchange, as Walker testified would have been the right thing to do.

¶ 126 Instead they decided to keep 240,000 of the finder's fee shares, sell them, and split the proceeds equally.

¶ 127 Of this decision, Walker said:

> "We had made the fateful decision that we would keep a portion of the finder's fee shares. That was the – obviously – that's the Armageddon. That's the thing we're all talking about."

¶ 128 His agreed statement of facts with the Law Society says;

> " . . . [the respondents] decided to simply keep the Finder's Fee Shares for themselves, despite that they had no legal entitlement to these shares and would be violating securities law and TSX rules in appropriating any finder's fee shares to their own benefit."

¶ 129 Walker asked Paulson if he knew anyone who could act as an intermediary to facilitate the sale of the 240,000 Vistanova finder's fee shares. Paulson located a Thomas Wikström, who was based in Europe. Wikström and Walker met in October 2005. Walker said he "regretted the situation I found myself in before ever hearing or meeting Mr. Wikström . . . then I made a second mistake by . . . going along with [the sale]." Walker admitted that there was "no possible justification" for his participation in the scheme to transfer the shares to Wikström.

¶ 130 Tamburrino denies having been a part of these discussions but we do not believe him:

- It is not clear why Tamburrino would agree to this arrangement if he thought the shares were rightfully his.
- Walker and Paulson could not have executed the sale of the Vistanova shares without Tamburrino's assistance – he was the one who had the relationship with Manucci and, at that point, *de facto* custody of the shares, which were registered in the name of Vistanova and endorsed to him.
- Tamburrino kept the shares in the name of Vistanova until early December 2005, when he had Manucci endorse 240,000 back to him – timing that fits perfectly with the plan to sell the shares through Wikström.
- The method the respondents chose to sell the shares – through an offshore intermediary – shows their desire to conceal the transaction. It would have been much easier and straightforward for them to have done so through a broker in Vancouver or Alberta.

¶ 131 We prefer the evidence of Walker and Paulson.

¶ 132 The shares were apparently sold: Paulson and Tamburrino each say they netted about $30,000 from the sale.

¶ 133 Walker says he received nothing. When asked if he inquired of Tamburrino or Paulson about his share, he said "Absolutely" and that he was told "It's gone." He knew that meant "they had taken it, or Wikström had taken it, all I knew was that I wasn't getting it."

III Analysis and Findings

A Fraud

General

¶ 134 The notice of hearing alleges that the respondents perpetrated a fraud, contrary to section 57 of the Act.

¶ 135 At the relevant time, section 57 said:

> "57. A person . . . must not, directly or indirectly, engage in or participate in a transaction or series of transactions relating to a trade in or acquisition of a security . . . if the person knows, or ought reasonably to know, that the transaction or series of transactions
> . . .
> (b) perpetrates a fraud on any person in British Columbia, or
>
> (c) perpetrates a fraud on any person anywhere in connection with trading in or acquiring securities . . . in British Columbia."

¶ 136 The respondents say that we cannot find that they contravened section 57 because, even if they engaged in the conduct alleged by the executive director, that conduct is not "fraud" within the meaning of section 57.

¶ 137 The respondents say that for a fraud to be prohibited under section 57, the fraud must be found in the contract to trade or acquire a security. In their words, "The fraud must be in the securities contract. It must be in the securities contract that perpetrates a fraud."

¶ 138 It follows, they say, that none of the transactions alleged by the executive director contravene section 57, because they do not involve contracts under which securities were traded or acquired or, when they do, the respondents were not parties to the transactions.

¶ 139 The $86,000 transaction cannot be a fraud within the meaning of section 57, they say, because it was a transfer of cash from Panterra to the respondents. There were no securities involved in the transaction. That the respondents used the

proceeds of the $86,000 transaction to purchase Panterra shares, as opposed to, say, a helicopter, is irrelevant, they say.

¶ 140 Panterra's issue of the finder's fee shares was a trade in securities, but they say it was not a transaction to which any of the parties is a party. Similarly, the transfer of the finder's fee shares from Vistanova to Wikström involved securities but none of the respondents was a party to that agreement, they say.

¶ 141 The language of section 57 does not support the respondents' interpretation. To the contrary, section 57 was drafted just to avoid such a narrow interpretation.

¶ 142 The respondents would have us read section 57 essentially as if it said, "A person must not enter into a transaction that is a trade or acquisition of a security if the person knows . . . that the transaction or series of transactions . . . perpetrates a fraud". Section 57 is much broader:

- The person need not be a party to an agreement. It is enough if they engage or participate, "directly or indirectly" in the impugned transaction or series of transactions.
- The prohibition is not limited to a single transaction – engagement or participation in a series of transactions attracts the prohibition.
- Securities need not be the subject matter of the impugned transaction or series of transactions. It is enough if those transactions "relate" to a trade or an acquisition of a security.

¶ 143 Section 57 is drafted broadly so that the public interest objectives of the Act can be achieved. Those objectives are the protection of investors and the fostering of public confidence in our capital markets.

¶ 144 All of the transactions alleged by the executive director in the notice of hearing as contraventions of section 57 are capable of being contraventions under that section if the requirements for proving the contravention are met:

- The $86,000 transaction is one in which the respondents participated directly and it related to an acquisition of a security – the whole purpose for the transaction was the respondents' acquisition of the Ching and Lo shares.
- The issue of the finder's fee shares was a transaction in which the respondents participated – all of them authorized the issue of the shares and Tamburrino was the recipient.
- The sale of the finder's fee shares was for the sole benefit of the respondents. Clearly they engaged and participated in the sale, and at least two of them received proceeds from the sale.

¶ 145 Section 57 was considered by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7. The Court said:

> "29 Fraud is a very serious allegation which carries a stigma and requires a high standard of proof. While proof in a civil or regulatory case does not have to meet the criminal standard of proof beyond a reasonable doubt, it does require evidence that is clear and convincing proof of the elements of fraud, including the mental element."

¶ 146 The Court cited the elements of fraud from *R.* v *Théroux*, [1993] 2 SCR 5 (at p. 20):

> ". . . the *actus reus* of the offence of fraud will be established by proof of:
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the mens rea of fraud is established by proof of:
> 1. subjective knowledge of the prohibited act; and
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk)."

The $86,000 transaction

¶ 147 The executive director alleges that Tamburrino, Walker and Paulson perpetrated a fraud against Panterra by using over $86,000 of Panterra's funds to purchase Panterra shares from Ching and Lo for their own account.

¶ 148 In our opinion, the evidence establishes clear and convincing proof of the elements of fraud, including the mental element, in connection with the respondents' taking of $86,000 of Panterra funds to purchase the Ching and Lo shares for their own account.

¶ 149 We have found that the respondents' taking $86,000 from Panterra to purchase the Ching and Lo shares for their own account was not a loan. They took the funds from Panterra and gave it nothing in return.

¶ 150 Tamburrino, Walker and Paulson admit they all agreed to use Panterra's funds to buy the Ching and Lo shares. Walker's agreed statement of facts with the Law Society states that he used Panterra's funds for his own benefit without any lawful

entitlement. Neither did Tamburrino or Paulson have any lawful entitlement to do so.

¶ 151 Despite their earnest assertions that they regarded the transaction as a loan, Tamburrino, Walker and Paulson did not document it as such, and they all, as we have found, signed and certified the Panterra financial statements that falsely accounted for the transaction.

¶ 152 Tamburrino and Walker both, as we have found, misled Panterra's management (Rumak and Sparrow) about the nature of the transaction.

¶ 153 As a result of the respondents' use of Panterra's funds to buy the Ching and Lo shares for their own account, Panterra suffered deprivation. It had over $86,000 removed from its treasury (over a third of its cash on hand as of the end of the 2005 first quarter) with no asset to show for it, and no enforceable means of recovering it. It lost the use of those funds for nearly a year and earned no interest on them while in the hands of the respondents.

¶ 154 That the funds were ultimately repaid is irrelevant. The repayment was at the pleasure of the respondents. Walker testified that there was "no sense of urgency" among them to repay the funds, and in fact did so only as a result of Rumak's ever more insistent demands.

¶ 155 One is left to speculate how long Panterra may have waited for its money had the respondents' deception been successful for a longer period. This is especially so in light of the respondents' pact that none of them would repay his portion until all three of them could do so. In the end, Paulson was able to repay his portion only from the proceeds of another fraud – the respondents' sale of the finder's fee shares.

¶ 156 Tamburrino, Walker and Paulson all had to have known from their business and professional experience that it was wrong to take funds from Panterra to buy the Ching and Lo shares for their own account. Even if they did so purportedly as a loan, they had to have known that it was wrong to fail to protect Panterra's interests by documenting the transaction accordingly.

¶ 157 The respondents engaged in deceit:

- Tamburrino and Paulson certified financial statements that they knew concealed the transaction.
- Walker signed financial statements either not knowing or not caring how the transaction was disclosed (but knowing that they had all agreed not to record it as a loan).

- Tamburrino and Walker misled Panterra's management when Rumak and Sparrow made inquiries.
- Even when making the repayment to Panterra, Walker persisted in the deception by characterizing it as a "return of trust monies".

¶ 158 The respondents' deceptive conduct to conceal their taking of the money shows clearly that they knew it was wrong – they attempted to conceal the transaction because they knew it would not stand scrutiny.

¶ 159 The respondents all had to have known that their taking of the more than $86,000 of Panterra's funds put Panterra's pecuniary interests at risk. Panterra, with no documentation or other evidence of any kind that the respondents owed it a debt, not only had no ability to enforce collection, but no means of knowing that it could do so.

¶ 160 We find that Tamburrino, Walker and Paulson committed a prohibited act when they took over $86,000 from Panterra, had subjective knowledge of that prohibited act, and subjective knowledge that the act resulted, not only in Panterra's pecuniary interests being put at risk, but in its actual deprivation.

¶ 161 We find that Tamburrino, Walker and Paulson perpetrated a fraud on Panterra, and in so doing contravened section 57(b) and (c), when they used over $86,000 of Panterra's funds to purchase the Ching and Lo shares for their own account.

Finder's fee share transactions

¶ 162 The executive director alleges that Tamburrino, Walker and Paulson perpetrated a fraud against Panterra by causing Panterra to issue 200,000 of its common shares in payment of a $50,000 finder's fee to Vistanova, which had no involvement in the related transaction, and by causing Vistanova to transfer the shares to Wikström to sell, and distribute the proceeds to the three of them.

¶ 163 In our opinion, the evidence establishes clear and convincing proof of the elements of fraud, including the mental element, in connection with Panterra's issue of the finder's fee shares, and the respondents' taking and selling them for their own benefit.

¶ 164 We have found that Tamburrino wrongfully caused Panterra to issue the finder's fee shares to Vistanova. We have found that Tamburrino knew he was not entitled to a finder's fee when he caused Panterra to issue them.

¶ 165 We have found that Tamburrino, Walker and Paulson, instead of returning the wrongfully-issued shares to Panterra's treasury, decided to keep them for their

own benefit, to sell them, and to split the proceeds. As Walker admits, the respondents kept the shares when they had not lawful entitlement to them.

¶ 166 Walker facilitated the transfer of the shares from Tamburrino to Wikström, whom Paulson located to sell the shares.

¶ 167 Through the use of an offshore intermediary, the respondents chose a method of selling the shares calculated to deceive Panterra by concealing from it the sale of the shares.

¶ 168 Panterra suffered deprivation as a result of the wrongful issue of the finder's fee shares. The issue of these shares resulted in dilution of the value of Panterra's outstanding shares. This makes it more difficult for Panterra to finance its activities.

¶ 169 Walker says the dilution, expressed as a percentage of Panterra's total issued and outstanding shares, was negligible, but that is not the point.

¶ 170 We have found that Tamburrino knew that he was not entitled to the finder's fee shares when he caused Panterra to issue them.

¶ 171 We have found that Tamburrino, Walker and Paulson all knew the shares were wrongfully issued by the time they decided to sell them through Wikström and to split the proceeds. We have found and that they knew it was wrong to do so instead of returning the wrongfully-issued shares to Panterra for cancellation.

¶ 172 We find that Tamburrino committed a prohibited act when he caused Panterra to issue the finder's fee shares to Vistanova, had subjective knowledge of that prohibited act, and subjective knowledge that the act resulted, not only in Panterra's pecuniary interests being put at risk, but in its actual deprivation.

¶ 173 We find that Tamburrino perpetrated a fraud on Panterra, and in doing so contravened sections 57(b) and (c) when he caused Panterra to issue the finder's fee shares to Vistanova.

¶ 174 We find that Tamburrino, Walker and Paulson committed a prohibited act when they sold the finder's fee shares (and in the case of Tamburrino and Paulson, kept the proceeds for themselves), had subjective knowledge of that prohibited act, and subjective knowledge that the act resulted, not only in Panterra's pecuniary interests being put at risk, but in its actual deprivation.

¶ 175 We find that Tamburrino, Walker and Paulson perpetrated a fraud on Panterra, and in so doing contravened sections 57(b) and (c), when they sold the finder's fee

shares for the purpose of keeping the proceeds for themselves. That Walker apparently did not enjoy the proceeds of the fraud does not mitigate the finding against him.

B Filing of false and misleading information

¶ 176 The executive director alleges that Tamburrino, Walker and Paulson contravened section 168.1(1)(b) by filing financial statements with the commission containing false and misleading information.

¶ 177 Section 168.1 says:

> "168.1(1) A person must not
> . . .
>
> (b) make a statement or provide information in any record required to be filed . . . under this Act or the regulations that, in a material respect and at the time and in light of circumstances under which it is made, is false or misleading, or omit facts from the statement or information necessary to make that statement or information not false or misleading."
>
> (2) A person does not contravene subsection (1) if the person
>
> (a) did not know, and
>
> (b) in the exercise of reasonable diligence, could not have known
>
> that the statement or information was false or misleading.

¶ 178 Section 168.2 says,

> "168.2 If a person, other than an individual, contravenes a provision of this Act . . . an employee, officer, director or agent of the person who authorizes, permits or acquiesces in the contravention . . . also contravenes the provision . . . ."

¶ 179 We have found that Panterra's 2005 first and second quarter financial statements filed with the Commission were false and misleading because the $86,000 transaction was charged as property expense to Redwater. We find that Panterra therefore contravened section 168.1(1)(b) when it filed those statements.

¶ 180 Tamburrino, Walker and Paulson were all directors of Panterra. We have found that Paulson and Tamburrino knew that the information in the statements about Redwater was false and misleading. We have found that Walker failed to exercise reasonable diligence to make inquiries about the statements in circumstances where he knew there was a high risk of their being inaccurate.

¶ 181 All of the respondents signed these financial statements, or certified their accuracy, or both.

¶ 182 We find that Tamburrino, Walker and Paulson, under section 168.2, contravened section 168.1(1)(b) when they authorized, permitted, or acquiesced to Panterra's filing of its false and misleading 2005 first and second quarter financial statements.

C Summary of Findings

¶ 183 We find that:

1. Tamburrino, Walker and Paulson perpetrated a fraud, contrary to sections 57(b) and (c) of the Act, when they used over $86,000 of Panterra's funds to purchase the Ching and Lo shares for their own account;

2. Tamburrino perpetrated a fraud, contrary to sections 57(b) and (c), when he caused Panterra to issue 200,000 finder's fee shares to Vistanova;

3. Tamburrino, Walker and Paulson perpetrated a fraud when they sold the 200,000 finder's fee shares for the purpose of keeping the proceeds for themselves; and

4. Tamburrino, Walker and Paulson, under section 168.2, contravened section 168.1(1)(b) when they authorized, permitted, or acquiesced to Panterra's filing of its false and misleading 2005 first and second quarter financial statements.

¶ 184 The respondents started down a road with the intention of protecting the interests of Panterra investors. Through the arrangements they negotiated with the Tam group, they considered they had achieved their objectives. After that, things went seriously awry, as our findings show.

¶ 185 Panterra was a small company. The amounts of money involved in the allegations are not great. The respondents argue that the company did not really need the cash, that the dilution associated with the issuance of the finder's fee shares was negligible, and that, in the end, no harm was done because – after all – they paid back the money.

¶ 186 This is an astonishingly narrow perspective from individuals who are directors of a junior public company. If anyone should understand the importance of having a credible market for venture issuers, it should be them. Venture capital markets are the lifeblood of a growing economy. They are a source of new businesses. They are a place where new ideas and enterprises can find the capital they need to grow and prosper, creating jobs and economic benefits in the process.

¶ 187 When these markets are abused, untold damage ensues. People with the interest in venture capital, and with appropriate tolerance for risk, are prepared to invest in a venture market if they know that market has integrity. They understand that those markets have the risk inherent in the nascent quality of the issuer's businesses. This risk they are prepared to accept.

¶ 188 What they are not prepared to accept is fraud and false disclosure. When they find these, they lose confidence in the market. They look elsewhere to invest. So every fraud in a venture market puts at risk the viability of all of the other participants in that market.

¶ 189 The respondents in this case appear either not to understand that, or they do not care. They were Panterra's board of directors, yet used over $86,000 of its funds for their own purposes and casually decided it was all right not to document the transaction to protect Panterra's interest. They knowingly (or in Walker's case, negligently) filed false disclosure that concealed the transaction. Tamburrino's attitude was blasé. He convinced himself that the misleading disclosure was not serious.

¶ 190 Tamburrino chose to enrich himself at Panterra's expense by causing it to issue finder's fees to which he was not entitled. He, Walker and Paulson decided to solve this problem by enriching themselves through the sale of the shares.

¶ 191 There are no doubt countless ways for directors of public companies to demonstrate reprehensible behaviour. This is a deplorable example. It is exactly the kind of conduct that brings the reputation of venture markets into disrepute.

V Submissions on sanction

¶ 192 We direct the parties to make their submissions on sanctions as follows:

By August 9	The executive director delivers submissions to the respondents and to the secretary to the Commission
By August 23	The respondents deliver response submissions to the executive director and to the secretary to the Commission

	Any party seeking an oral hearing on the issue of sanctions so advises the secretary to the Commission
By August 30	The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission

¶ 193 July 12, 2010

For the Commission

Brent W. Aitken
Vice Chair

Bradley Doney
Commissioner

Suzanne K. Wiltshire
Commissioner