

2009 BCSECCOM 426

**Manna Trading Corp Ltd., Manna Humanitarian Foundation,
Legacy Capital Inc. and Legacy Trust Inc.
Hal (Mick) Allan McLeod, David John Vaughan,
Kenneth Robert McMordie also known as Byrun Fox,
Dianne Sharon Rosiek, Robert (Robb) Murray Perkinson**

Section 161 of the *Securities Act*, RSBC 1996, c. 418

Hearing

Panel	Brent W. Aitken David J. Smith Shelley C. Williams	Acting Chair Commissioner Commissioner
Dates of Hearing	January 6, 7, 9, 12, 14, 15, 28, 30, February 16, 18, 19, and March 6, 2009	
Date of Findings	August 4, 2009	
Appearing		
Douglas B. Muir	For the Executive Director	
Graham R. MacLennan		
Patricia A.A. Taylor	For Robert (Robb) Murray Perkinson	
Dianne Sharon Rosiek	For herself	

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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 a notice of hearing issued June 20, 2007 and amended June 27, 2008 the executive director alleges that, starting in January 2005, the respondents contravened the Act by:
- trading and distributing securities without being registered and without filing a prospectus,
 - making misrepresentations, and
 - perpetrating a fraud.
- ¶ 3 The executive director’s June 20, 2007 notice of hearing was accompanied by temporary orders (see 2007 BCSECCOM 349). The temporary orders required that the respondents comply with or cease contravening the Act and cease all investor relations activities on behalf of any issuer. The orders also required that all persons cease trading securities of Manna Trading Corp Ltd., Manna Humanitarian Foundation, Legacy Capital Inc., and Legacy Trust Inc. and in any issuer directed, managed or promoted by Hal (Mick) Allan McLeod, David John Vaughan, and Dianne Sharon Rosiek. On July 4, 2007 the Commission extended the temporary orders.
- ¶ 4 On July 27, 2007 the Commission extended the temporary cease trade order, and extended the other temporary orders against all of the respondents, except Kenneth Robert McMordie and Robert Murray Perkinson, until a hearing is held and a decision rendered. The Commission also set dates for the hearing in April through June 2008.

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- ¶ 5 The Commission adjourned the hearing twice at the executive director's request. None of the respondents opposed either of the executive director's adjournment requests.
- ¶ 6 Perkinson was represented by counsel at the hearing. Rosiek appeared on her own behalf. Vaughan appeared only once, a brief appearance on the first day. None of the other respondents appeared or was represented by counsel.
- ¶ 7 McLeod appears to be known primarily by his nickname, Mc (sometimes seen in the evidence as Mic or Mick). During the relevant period McMordie used the pseudonym Byrun Fox. Since this is the name by which investors knew him and that appears on most of the relevant documents, we refer to McMordie as Fox.
- ¶ 8 All dollar amounts are in US dollars.

II Synopsis

- ¶ 9 Manna was a fraud into which more than 800 investors deposited about \$16 million. They received as little as \$3 million, and no more than \$5.6 million, back. There is no apparent hope of recovering the rest.
- ¶ 10 McLeod created the Manna scheme and, with Vaughan's assistance, expanded it. The expansion became more aggressive when Fox and Rosiek joined the scheme later.
- ¶ 11 The Manna scheme's form changed in minor ways and used various entities to perpetrate the fraud: Manna Trading Corp, the Manna Foundation, and the two Legacy entities, Legacy Capital, and Legacy Trust. All of these entities (which we refer to collectively as "Manna") were in reality a single sham investment scheme which, in these Findings, we refer to as the Manna scheme.
- ¶ 12 Manna induced investors to loan it money and told them that their funds would be placed with experienced traders who had a long history of producing double-digit monthly returns through foreign currency trading. Manna told investors that it had "an annualized trading history of profit returns not less than 20% per month (240% per year)," and that Manna's profits enabled it to pay consistently high rates of return. Manna said it had historically paid returns to investors of 125.22% per year.
- ¶ 13 Manna promised investors 7% monthly returns (later reduced to 5%), sometimes compounded. (A 7% monthly compounded return works out to 125.22% per year.) Investors who became "affiliates" or "consultants" could bring in new investors. When they did so, they earned a commission on the amount invested and a continuing share of the return on the new investment.

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- ¶ 14 Some investors invested through a “private common law spiritual trust.” The trust was a mechanism Fox concocted ostensibly to avoid the application of tax and securities laws to investments in the Manna scheme.
- ¶ 15 Manna told investors that some of the returns Manna earned from its foreign exchange trading profits would be used for humanitarian causes.
- ¶ 16 All of these statements were misrepresentations. There is no evidence that Manna placed investors’ funds with foreign currency traders, or that the investors’ funds earned returns from any other source. Manna had no trading profits. Manna investors did not experience the historical returns Manna said they did. Manna had no source of revenue other than investor contributions. The trust structure was a sham. There is no evidence that any Manna funds went to humanitarian causes.
- ¶ 17 The reality is that Manna was a Ponzi scheme. Manna fraudulently used the investments of later investors to fund the promised returns to earlier investors, to pay commissions to the affiliates and consultants, to invest in an online gaming business, and to buy real estate in Costa Rica.
- ¶ 18 McLeod, Vaughan, Fox and Rosiek fraudulently used investors’ funds to enrich themselves.

III Background

A Creation and development of the Manna scheme

Manna Trading Corp.

- ¶ 19 Manna promotional material from 2005 says that the Manna scheme started out in 2001 as Manna Trading Corp., which the material describes as an investment club limited to the founders’ friends and family members with a maximum membership of 50.
- ¶ 20 McLeod founded the Manna scheme, possibly with others, but the evidence is clear that he was the directing mind and will of the Manna scheme. He created and operated the scheme from its inception to its collapse. He held the ultimate authority in the scheme.
- ¶ 21 McLeod hired Vaughan in 2004 to improve and run the scheme. When Vaughan was hired, there were only “a handful” of Manna investors – “maybe five or six.” By July 2005 there had been what Vaughan described in a letter to investors as “a tidal wave of participation.” A barbecue that month attracted 72 investors. Despite this rapid growth, Vaughan believed that the best plan for Manna was “slow controlled growth.”

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Manna Humanitarian Foundation

- ¶ 22 Rosiek heard of Manna from an acquaintance, who approached her about holding a Manna event at her house. Rosiek agreed. At the event Rosiek met Susan Cameron-Block, who eventually introduced her to Fox.
- ¶ 23 Rosiek understood that Manna was looking for a different operating structure. In fact it was. Vaughan, who mistakenly believed Manna was in compliance with securities legislation as long as its membership stayed below 50, could see that it was surpassing that. Rosiek thought Fox might be able to help, and introduced Fox to Vaughan. Ensuing discussions involving Fox, McLeod, Vaughan, and Rosiek resulted in McLeod's decision to adopt for Manna the structure devised by Fox – the “private common law spiritual trust.” The structure, Fox believed, would allow Manna to distribute securities outside the framework of the Act.
- ¶ 24 The Manna Humanitarian Foundation was established as a society under the laws of the State of Washington, which required five persons to sign its articles of incorporation as directors. At a Grey Cup party at Rosiek's house in November 2005, McLeod and Fox asked some of those present to sign. Five did, including Vaughan and Perkinson. Fox registered the Manna Foundation on November 30, 2005. As of January 1, 2006, all of the first directors had resigned.
- ¶ 25 In December 2005, Vaughan sent a message to Manna investors telling them that the original version of Manna would be replaced by the new structure:

As most of you are aware, when [McLeod] and I designed the Manna programme, we set out to create an ethical business structure that would be as safe and secure as possible for all participants. The first phase of the Club has served its purpose, and now, due to our continued solid growth, it must be updated to keep up with changing securities law. . . . We are finally ready to unveil the second phase of our Club to you . . .

...

The only thing that will be different is you will become a Trustee of your own private common law Trust. Manna Trading Corp. will be absorbed by a Private Non-Profit Foundation; MANNA HUMANITARIAN FOUNDATION.

...

We have retained the services of a specialist in the field of trusts. Along with his team, they have created a unique trust specifically suited to the needs of our Members.

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- ¶ 26 The message went on to say that existing members would be required to make a one-time purchase of a trust for \$250. In order to entice participation by new members, that price was offered to new members who joined before the end of 2005. Beginning January 1, 2006, the fee was \$450. Vaughan told investors to send their application and payment directly to the Central American Relief Trust, an entity controlled by Fox.
- ¶ 27 By February 2006 there were 275 investors in the scheme.
- ¶ 28 In March 2006, Manna reduced the monthly return for new investors from 7% to 5%.

Legacy

- ¶ 29 Through their work with Manna, Rosiek and Fox got a good look at the scheme, and began to think about how they could become involved in what appeared to them to be a money-making opportunity. They came up with the idea of developing a parallel program, essentially identical to Manna, but with the objective of growing it aggressively, rather than the philosophy of slow, controlled growth espoused by Vaughan.
- ¶ 30 They pitched their idea to McLeod, who also believed in an aggressive growth plan for Manna. In April 2006 Fox and Rosiek reached an agreement with McLeod to form Legacy. The intent was that Legacy would mirror and co-exist with Manna. Fox and Rosiek agreed not to solicit Manna members to leave Manna. As with Manna, McLeod was in charge.
- ¶ 31 In an addendum to the agreement, McLeod agreed “to provide” Fox and Rosiek “common shares in Tropical Poker at the rate of 10% of the amount raised at \$1.00 per share.” We discuss the Tropical Poker project in more detail below.
- ¶ 32 As things turned out, Legacy became the *de facto* replacement of the Manna Foundation in the Manna scheme. The scheme was promoted exclusively through Legacy soon after Legacy’s formation.
- ¶ 33 In August 2006, Vaughan resigned from Manna.
- ¶ 34 Under the Legacy version of the scheme, McLeod, Fox and Rosiek increased the trust fee to \$650 and imposed a \$100 administration fee (waived for the investor’s first investment). Early withdrawals were subject to a 20% penalty and the forfeiture of any gains, if the investment was less than a year old.
- ¶ 35 These changes were part of a trend that developed as the Manna scheme evolved. As Manna grew, and found it more challenging to pay interest, commissions, and

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principal, it changed the loan terms and adopted administrative measures to make it more difficult for investors to remove their capital from the scheme.

- ¶ 36 As 2006 wore on, Manna's ability to pay investors worsened. Manna misled investors who asked why they were not receiving statements, or were not being paid, by telling them that the delays were caused by problems in the payment system or regulations in foreign countries. This was untrue; Manna's obligations were outstripping its ability to raise funds from new investors to meet them.
- ¶ 37 By January 2007 the Manna scheme was out of money. In communications to investors, McLeod blamed banks for creating payment delays, but in a panicky-sounding email to Rosiek he made it clear that the scheme was simply overextended and was doomed unless she could raise a lot of money quickly:

. . . there will be little need for administration, here, there, or anywhere unless you and Legacy continue to keep new money rolling in. We all take our roles seriously . . . and we know you take your money raising role very seriously as well. Quite frankly, at this juncture, your role and the new money you bring in, is the most important role in our entire organization, because without it, we not only grind to a halt, we risk losing what has been contributed to this point. . . . yikes, we have a \$460K payment due in 2 weeks, and another \$250 due 30 days after that. And close to a million due in monthly overrides and payments. That's the minimal requirements just to keep what we've worked hard for. This says nothing for the additional several millions of dollars required over the next year or so for the development of land, poker, cash cards, payment solutions, not to mention gains and overrides promised to the Legacy group. . . . we don't have any money to speak of in our account.

- ¶ 38 In February 2007 Fox left the scheme.

Collapse

- ¶ 39 In May 2007 Legacy sent a letter to investors advising them of the wind down of the program as a result of the Commission staff investigation.
- ¶ 40 Rosiek attempted a new incarnation of the scheme, called Phoenix. Legacy investors were offered the choice of restitution or rolling over their funds into the new scheme. Rosiek told investors that if they participated in the new scheme, there would be "no interruptions in gains" and the "Legacy dates would be honoured." Investors who chose restitution would lose all accrued gains.

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- ¶ 41 Legacy consultants generally discouraged investors from accepting restitution, and only a few accepted. There is no evidence that any who chose restitution were paid.
- ¶ 42 The whole scheme collapsed in June 2007 with the issue of the notice of hearing and the temporary orders.

B How the Manna scheme worked

Confidentiality

- ¶ 43 Confidentiality, and its importance, was a constant theme in all forms of the Manna scheme. No one could attend any presentation or meeting, or be provided with any information or promotional material by a Manna affiliate or consultant, without signing a non-disclosure agreement.
- ¶ 44 The non-disclosure agreements used by Manna in its various forms varied somewhat, but all required prospects to keep absolutely confidential any and all information about Manna for a five-year period. The agreements also purported to make the signatory financially liable to Manna for both intentional and inadvertent disclosure.
- ¶ 45 Investors testified that Manna told them that the non-disclosure agreements were intended to prevent disclosure of any information to regulators. One effect of the non-disclosure agreement was that some investors failed to seek advice about an investment in the Manna scheme, even from trusted friends or family members, because it was prohibited by the agreement.
- ¶ 46 Investors testified that the non-disclosure agreements were not merely presented for signature as part of a package. Rather, Manna representatives drew their attention specifically to the obligations in the agreement, and emphasized the importance of confidentiality.
- ¶ 47 One investor recounted his experience when attempting to enter a Manna presentation at the invitation of his consultant. The investor was late, and was physically barred from entering until his consultant, already inside, vouched for him.

Affiliates and consultants

- ¶ 48 Manna used existing investors, called affiliates (under the Legacy phase, consultants) to find new investors. It paid affiliates and consultants a one-time bonus of between 10% and 15% of the amount invested by the new investor, as well as a monthly “override” equal to 2% of the amount invested by the new investor, as well as a monthly 1% override on the amount invested by any investor brought in by the new investor.

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- ¶ 49 This multi-level marketing structure was the primary means by which Manna attracted new investors from its inception until its collapse in June 2007, especially once Legacy was established in April 2006.
- ¶ 50 Investors in Manna came in through the affiliates and consultants, and each affiliate and consultant served as the contact representative for Manna for each of their investors. Fox was concerned about the need for the Manna affiliates to deliver a consistent message about the Manna scheme. He asked Rosiek for her feedback on a memo he proposed to send Vaughan:
- . . . some type of training is needed for all Affiliates. . . . The others are saying some strange things, I had one lady say to me today . . . that she thought all the money put in Manna was the use [*sic*] to buy silver. We can't blame the affiliates, but I think we, perhaps more Di and myself, owe them an education in the product and procedure. Hence, we would like to put on an Affiliate training in about two weeks.
- ¶ 51 Manna conducted extensive training sessions for affiliates and consultants. Fox and Rosiek wrote the contents of Manna's training program for its affiliates and consultants, administered the program, and did training sessions personally. Fox and Rosiek spent many hours on this endeavour. According to Rosiek, during one period during the scheme, they were kept busy for 70 to 80 hours a week, preparing and delivering training sessions while keeping up with other work associated with the Manna scheme.
- ¶ 52 In the training sessions, Fox and Rosiek stressed the importance of consistency of message, and the use of uniform language in dealing with investors, so that all investors would hear the same information about the Manna scheme from every affiliate and consultant.
- ¶ 53 It appears that the training program succeeded in ensuring the delivery of a uniform message to investors. The investors who testified dealt with several different Manna affiliates or consultants, yet there is a high degree of consistency in their evidence about what they were told.
- ¶ 54 In the Legacy phase, Fox and Rosiek put restrictions on the process of becoming a consultant. Investors who wished to become consultants had to apply. If accepted, the candidate was required to attend a three-day session at the candidate's expense, and there was no guarantee that the candidate would ultimately be accepted as a consultant after completing the training.

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What Manna told investors

¶ 55 Manna told its early investors that its objectives included “long-term and secure” returns, and “a safe, secure infrastructure” to protect the members’ investment.

¶ 56 Through websites and promotional material, Manna told investors that it earned returns through investment in financial markets. For example, the Manna Foundation website stated the following:

Manna Humanitarian Foundation deals in the most liquid and lucrative market in the history of time: the trillion dollar a day stock market. Manna has aligned itself with a team of seasoned market professionals that make highly skilled and profitable buying and selling decisions that make above average daily, weekly, and monthly returns.

...

Manna Humanitarian Foundation deals in many aspects of the business and financial markets, including the Chicago Mercantile Exchange S&P futures trading market . . . high yield derivative trading, and the Forex markets. . . . We maintain a disciplined approach that has rewarded us with years of success, yet is continually mindful of capital preservation.

...

Manna Humanitarian Foundation has an annualized trading history of profit returns not less than 20% per month (240% per year).

¶ 57 During the early phase of the Manna scheme, investors were promised a return on their investment of 7% per month. Later, the promised return was 5% per month.

¶ 58 Investors testified consistently that it was represented to them that Manna earned its profits through trading in foreign exchange markets by experienced and skilled traders managed by McLeod. They were told that it was the profits achieved through this trading that enabled Manna to offer consistently high returns. Manna representatives told them that investors had historically received annual returns of 125.22%.

¶ 59 In January 2006, Vaughan told affiliates that in the fall of 2005 “we shifted our focus from higher-risk, higher-return strategies to a more conservative, more secure approach.”

¶ 60 Manna’s marketing tools included charts comparing an investment in Manna to an investment in savings accounts, GICs, term deposits, mutual funds, and RRSPs. The chart showed cumulative five-year returns on a \$5,000 investment ranging

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from about \$1,600 to \$6,000 for conventional investments, compared to about \$180,000 for an investment in Manna.

- ¶ 61 Manna also used a “Power of Compound Interest Chart” showing an investment of \$10,000 in Manna at 5% compounded monthly growing to about \$3.5 million at the end of 10 years. At investor presentations, Manna representatives sometimes put up a poster with four lines: “End of Year 10” at the top, then showing three large red dollar signs, then “In Your Account”, and at the bottom, in green, “\$3,570,465.00”.
- ¶ 62 The investors heard these representations from McLeod, Vaughan, Fox and Rosiek, and from Manna affiliates and consultants, at investor presentation meetings in hotels and restaurants and at Rosiek’s house.
- ¶ 63 Investors identified McLeod, Vaughan, Fox and Rosiek as participants in one or more investor presentations. They testified that McLeod and Vaughan made representations to investors individually and in groups at presentations.
- ¶ 64 Investors also testified that Fox and Rosiek made representations about Manna’s trading program, its returns, and the trust structure. The Manna Foundation loan agreements describe the trust as “a simple process that has been arranged in order to meet legal requirements. The result will be 100% compliance with securities laws with no effect on your financial outcome.” Several investors testified that they would not have invested in Manna had they not been assured that the scheme did not contravene securities laws.
- ¶ 65 Manna told investors that some of its profits were spent on humanitarian and charitable causes. For many investors, this was an important factor in their decision to invest.

The “private common law spiritual trusts”

- ¶ 66 The trust structure was concocted by Fox in hopes of allowing the Manna scheme to operate outside the framework of the Act. Under the structure, each investor would have a trust that would make the investment, instead of the investor investing as an individual.
- ¶ 67 The trust documents Fox created required the investor to state that he or she believed “in a God pursuant to the preamble of the Canadian Bill of Rights.” Fox and Rosiek told investors that the Canadian Bill of Rights allowed them to “steward the gifts of the creator” in any way they saw fit, as a practice of their religion.

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- ¶ 68 Vaughan, Fox and Rosiek explained to investors that the reason for establishing the Foundation and the accompanying trust-based structure was to accommodate securities laws.
- ¶ 69 The documents purporting to create the trust identified Central American as the trust grantor and the investor as the trustee. The original trust property was a silver dollar provided by Central American, mounted in a portfolio containing the trust document.
- ¶ 70 The beneficiaries of the trust were named by the investor in the loan agreement with Manna (in its Manna Foundation and Legacy forms). Manna told investors that the beneficiaries would get the benefit of the trust only if the investor died; as long as the investor was alive, he or she retained full control over, and the right to use, the trust's funds. Manna told investors they could change the name of the beneficiaries any time, and that the beneficiaries need not know that they were beneficiaries.

Documentation, statements, and payments

- ¶ 71 Manna described investments in Manna Trading Corp. as "loans" or "notes". In the Manna Foundation and Legacy forms, an investment was described as "stewarding the gifts of the Creator". The amount of the investment was described as the amount "stewarded", although the agreement contained a paragraph stating that "this document comprises a promissory note pursuant to Canadian law."
- ¶ 72 The so-called loan agreements or notes varied in some details as the Manna scheme evolved through its various forms, but all had two features in common: the investor provided a principal amount to Manna for a period of at least a year, and Manna promised to pay a return of 5% or 7%. In some cases, Manna offered investors the option of receiving monthly payments or leaving the interest to compound in their accounts.
- ¶ 73 Although Manna sometimes described the investments as notes, the agreements investors signed contained no unconditional promise to pay, and in many cases were not signed by any of the Manna entities.
- ¶ 74 When Manna first started, investors made their investments by giving Vaughan, directly or through an affiliate, cash, gold, drafts, and certified cheques made out, because Manna had no bank accounts, to third party entities. Vaughan forwarded the deposits to McLeod.

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- ¶ 75 Vaughan used contributions from new investors to pay his salary, to pay commissions to affiliates, and to pay existing investors their returns and principal repayments.
- ¶ 76 Initially investors were paid their monthly returns, commissions and overrides by cash or by draft. As the number of investors grew, it became a challenge to manage the volume of payments. Manna eventually adopted a debit card system, involving the services of World Money Online, World Credit Now, and hyperWallet.
- ¶ 77 hyperWallet has a global payments platform that essentially enables its customers to wire a lump sum payment and have it loaded onto pre-paid debit cards. World Money On-line was a hyperWallet customer that had rebranded hyperWallet's technology. World Credit Now had a merchant agreement with World Money On-line, and was the ultimate interface with Manna and Legacy.
- ¶ 78 Through the use of these entities, Manna established a complex and opaque payments process that allowed it to move large amounts of cash undetected.
- ¶ 79 Manna sent statements of accounts to investors showing their returns. The return information was fictional and not based on Manna's actual returns. The returns shown on the statements were generated simply by a spreadsheet formula based on the promised return.

C Online gaming and real estate ***Tropical Poker***

- ¶ 80 In 2005 Perkinson was seeking financing for an online gaming business called Tropical Poker that was being developed through a company called Palms Entertainment Group, S.A. in Costa Rica.
- ¶ 81 In 2003 and 2004 Perkinson had been involved in a previous project to establish an online gambling venture. That project failed, and Tropical Poker was an attempt to restart the project. Perkinson was working with a Jason Wilkes. Perkinson had a dormant British Columbia company from a previous business, and they used that as the management company for Tropical Poker, changing the company's name to Dragon Interactive Media Inc. in May 2005. Dragon was the company that employed the technical staff for the project.
- ¶ 82 A Vancouver businessman agreed to help Wilkes and Perkinson to finance the project, and an investor from California committed financing. However, during the spring and summer of 2005, these sources of financing fell away. All of a sudden, Wilkes and Perkinson had no financing for the project.

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- ¶ 83 One of Perkinson's former employees was Cameron-Block. She knew Perkinson was looking for financing for Tropical Poker. In October 2005 Cameron-Block put Perkinson in touch with Rosiek and McLeod. McLeod met Wilkes and Perkinson a number of times, starting with a dinner meeting at Rosiek's attended by them, Rosiek, and Cameron-Block. By the end of the month, McLeod had agreed to invest in Tropical Poker. Rosiek must have had a hand in the outcome. In an email, Perkinson thanked her "for all the help in bringing Mick to a place of comfort in our project."
- ¶ 84 In October 2005, McLeod provided the project with \$150,000 in financing, and another \$150,000 in December. He told Wilkes that he was willing to invest another \$500,000 if the terms were right.
- ¶ 85 By the end of 2005, Tropical Poker was in beta testing and open for free play. In January 2006, McLeod told Perkinson that Manna had decided to diversify into other businesses, and that he had identified online gaming as a potential source of good returns.
- ¶ 86 McLeod told Perkinson that Manna would invest in Tropical Poker through Dragon, which Manna would control. Manna would purchase Dragon by the end of January 2006, and in the meantime Perkinson would stay on as signing authority on Dragon's bank accounts. Dragon would disburse funds as instructed by Wilkes and McLeod.
- ¶ 87 Perkinson agreed. He says he was the finder, and Manna the investor.
- ¶ 88 Manna bought Dragon as of January 31, 2006 as agreed and made its first investment in Tropical Poker with a deposit of \$100,000. McLeod promised another \$600,000 within a week. The funds did not come until February, when Manna transferred \$100,000, and March, when the remaining \$500,000 was deposited. In the meantime, Tropical Poker had run out of cash, and Perkinson deposited funds to Dragon from his personal brokerage account to meet Tropical Poker's cash requirements.
- ¶ 89 McLeod told Perkinson that to avoid future delays, Manna would instruct investors to deposit funds directly to Dragon. He also later directed Perkinson to transfer funds to debit card providers and to other recipients, including a Costa Rica real estate lawyer.
- ¶ 90 Beginning in late February 2006, Manna instructed investors to make payments to Dragon. Perkinson deposited those payments into Dragon's accounts and continued to pay Tropical Poker expenses out of those accounts on the instructions, he says, of Wilkes and McLeod.

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¶ 91 On March 13, 2006 Tropical Poker announced its official opening. Perkinson emailed Rosiek on March 11 to tell her about it.

¶ 92 Manna spent at least \$3.4 million of investor funds on Tropical Poker, which ultimately failed.

Costa Rica real estate

¶ 93 While Tropical Poker was underway, Perkinson was also interested in investing in Costa Rica real estate and was seeking financing for that.

¶ 94 Perkinson told Rosiek that if she were able to locate financing for his real estate ventures, he would pay her a finders fee.

¶ 95 In May 2006 McLeod and Perkinson were in Costa Rica. McLeod had come to meet Wilkes and inspect the Tropical Poker operation. Perkinson had talked previously to McLeod about real estate opportunities in Costa Rica and McLeod was interested in looking into them.

¶ 96 Perkinson showed McLeod a property and introduced him to a Costa Rica realtor and developer. McLeod became interested in purchasing large properties for development as an investment opportunity for Manna. Manna spent at least \$1.4 million of investor funds on real estate in Costa Rica, including two large development properties.

D Reality of the scheme

¶ 97 The Manna scheme was a sham. A few investors received all of the payments they expected. Some received a few monthly payments but did not get their principal back. Many received nothing.

¶ 98 There is no evidence that the currency traders existed or, if they did, that they were given any Manna funds. There is no evidence that any Manna funds were invested in any of the markets described in the Manna promotional material.

¶ 99 We received a report from Dr. Peter Klein, who also testified. In addition to a law degree and a Masters in Business Administration from the University of Western Ontario, Dr. Klein has a doctorate in finance from the University of Toronto. He is a Chartered Financial Analyst, a Chartered Business Valuator, and a Certified General Accountant. He was an investment banker for seven years and is currently the portfolio manager for an investment fund that specializes in hedge fund investments. He has over 11 years of teaching and research in finance and has published extensively on finance and other subjects.

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- ¶ 100 We accepted Dr. Klein as an expert in the areas of international banking and trading for the purpose of providing opinion evidence in the hearing.
- ¶ 101 The following summarizes Dr. Klein's report and his oral testimony:
- It is not possible to generate returns to investors of 5% or more per month in Canadian or US currency on a consistent basis through trading or investing in any financial market. He bases this conclusion both on principles of financial theory and empirical studies.
 - Financial theory includes the principle of the trade-off between expected return and risk – investors seeking stable returns accept higher risk only if compensated by higher expected return. Financial theory also says that although very high returns are possible for brief periods, efficient markets that reflect in prices all relevant public information preclude returns that will “beat the market” on a risk-adjusted basis over the long term.
 - In short, financial theory would say that as the return increases, the incidence of consistency of those returns decreases.
 - This was borne out by his empirical research of the returns of 277 hedge funds with active trading strategies in futures and foreign exchange markets over the three-year period 2005 through 2007 and over the 15-year period 1994-2008.
 - During the three-year period, 146 of those funds generated a monthly return of more than 7% at least once; during the 15-year period, 205 did so.
 - During both periods, only 2 produced six consecutive monthly returns of more than 7%, and none produced 12.
 - Dr. Klein concludes, “I am not aware of any legal trading or investment opportunity which would have been able to generate a consistent return of 5% or more per month in Canadian or US currency during the 2005 to 2007 period”
- ¶ 102 In other words, not only did Manna fail to pay the returns it promised investors, it is impossible to earn consistent returns on that scale through legal means.

E Where the money went

- ¶ 103 The evidence includes a Commission staff analysis of the Manna scheme's financial activity and cash flows. The objective of the analysis was to account for the \$16 million investors placed with Manna.
- ¶ 104 Commission staff reviewed thousands of bank records, cheques, drafts, wire confirmations, and investment documents. The analysis was challenging:
- Manna did not keep proper accounting systems or financial records
 - Instead of establishing proper banking arrangements for the scheme's financial activity, Manna used accounts owned by other individuals or corporations
 - Manna and the individual respondents conducted a significant portion of their business transactions in cash

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- Many relevant records were located in Costa Rica, outside of the Commission's jurisdiction
- Many investors were reluctant to cooperate with the investigation because of the non-disclosure agreements.

¶ 105 During the relevant period, more than 800 investors participated in the Manna scheme, investing about \$16 million, including at least \$200,000 in trust fees. Manna received cash from no other source.

¶ 106 Commission staff were able to trace the movement of 80% of investor funds through numerous bank accounts in British Columbia and Costa Rica, but could trace only 58% of the investor funds to identified recipients.

¶ 107 We have summarized the key results from the Commission staff analysis into the table below:

	(\$000's)
Funds provided by investors	16,075
Disbursement of funds	
To trading losses	26
To investors	3,045
To Tropical Poker	3,396
To real estate	1,414
To respondents	932
To miscellaneous	438
To unidentified recipients	3,624
Untraced	3,202
Total disbursements	16,075

Trading Losses

¶ 108 In July 2005 McLeod transferred \$60,000 of Manna funds into his personal trading account. The funds were used to buy and sell "Sep 05 E-mini S&P 500 Globex" contracts, resulting in a net trading loss of \$26,000. McLeod transferred the balance of funds remaining in his personal account back to Manna in August 2005.

Payments to Investors

¶ 109 Commission staff traced about \$3 million that was paid to Manna investors, primarily through debit cards. This amount excludes any payments that were made in cash. It is unclear from the evidence what portion of the payments

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covered monthly returns, commissions, or repayments of principal. This amount also includes payments to some investors who provided administrative services to Manna.

- ¶ 110 Payments were often made directly from incoming cash collected from new investors. A few payments were also made from Rosiek's or Vaughan's personal accounts.

Payments to Tropical Poker

- ¶ 111 The largest portion of investor funds, \$3.4 million, went towards the development of Tropical Poker to cover administration, staff, and software development expenses.

Payments for real estate

- ¶ 112 Manna paid at least \$1.4 million for real estate developments in Costa Rica as described above.

Payments to the respondents

- ¶ 113 Commission staff traced payments from Manna totalling about \$932,000 to the individual respondents as follows:

(\$000's)	Debit Card /Other	Trust Fees	Total
McLeod	110	-	110
Fox	142	60	202
Rosiek	402	111	513
Vaughan	40	-	40
Perkinson	67	-	67
Total	761	171	932

- ¶ 114 Rosiek claims that funds she received through her debit cards she used to pay staff salaries, consultants, and other investors whose cards would not work. She also claims that the trust fees paid to her include reimbursement for the scheme's debit card fees.
- ¶ 115 The payments to Perkinson appear to be reimbursements for personal funds invested in or expended on behalf of Tropical Poker.
- ¶ 116 The amount in the table is not necessarily a complete record of the payments Manna made to the individual respondents. It is possible that a portion of the untraced cash transactions, mentioned below, were also payments to the respondents.

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Miscellaneous payments

- ¶ 117 Manna spent \$438,000 on credit card balances, yacht charters, debit card processing fees, and other expenses.

Payments to unidentified recipients

- ¶ 118 Manna spent \$3.6 million, mostly from its Costa Rica accounts, to unknown recipients. It is likely these funds went to Tropical Poker and Costa Rica real estate.

Untraced

- ¶ 119 Commission could not trace \$3.2 million, of which \$2.6 million represent cash transactions. It is possible that some of these funds were paid back to investors as monthly returns or commissions – Manna often paid investors in cash. If all of this cash was returned to investors, then the amount Manna paid to investors would total \$5.6 million.

F Activities and conduct of the individual respondents

- ¶ 120 During the relevant period, none of the respondents was registered, nor did any of them file a prospectus, under the Act.

McLeod

Role

- ¶ 121 McLeod created the Manna scheme. Vaughan described McLeod as the “central figure” and “mastermind” of both the Manna and Legacy versions of the scheme. This is consistent with the evidence.
- ¶ 122 McLeod set the terms of the loans throughout the operation of the scheme. McLeod ostensibly had the connection to the fictitious currency traders.
- ¶ 123 Nothing happened in the Manna scheme without McLeod’s knowledge and consent. He directed Vaughan’s work. He was the one that had to be convinced to adopt Fox’s trust structure for the Foundation. When Fox and Rosiek wished to form the Legacy version of the scheme, they had to reach agreement with McLeod.

Representations to investors

- ¶ 124 McLeod told investors, individually and in groups at Manna presentations, that Manna promised monthly returns, sometimes compounded, of 5% or 7%, and explained how Manna’s enormous profits from foreign currency trading made those returns possible. He also made representations about Manna’s historical trading profits and investment returns through the Manna website.

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¶ 125 The Commission issued an investigation order in March 2006. By November, McLeod was aware of it. In December 2006, he wrote to investors telling them that their funds “are safe and working hard. Manna is secure and solid. The future is bright for all Trustees involved in our program.”

¶ 126 McLeod told investors that the Manna scheme was compliant with the Act, and referred to the exemption described in section 46(d). He told investors that the Commission had no jurisdiction in the matter, and that investors could not talk to Commission investigators because it would violate the non-disclosure agreement, and would be contrary to the “British Columbia Privacy Act.” [sic]

Fundraising; handling of Manna funds; enrichment

¶ 127 McLeod participated in raising funds from investors by appearing and speaking at Manna presentations to investors.

¶ 128 McLeod and Rosiek directed the disbursement of all of the funds investors placed with Manna, other than the trust fees investors paid to Central American. All of the proceeds from investors went to him, or to entities or accounts that he or Rosiek controlled.

¶ 129 McLeod invested the Manna funds in Tropical Poker and spent it on Costa Rica real estate. He took Manna funds for his own personal use by settling his personal trading account at a brokerage firm and by paying his personal expenses.

¶ 130 McLeod received at least \$110,000 in direct payments from Manna.

Vaughan Role

¶ 131 In late 2004 McLeod hired Vaughan as Managing Director, Member Services. Vaughan drafted much of the Manna scheme’s promotional material and investor documentation. He assisted with the non-technical aspects of the Manna scheme’s website design and improved its content. Vaughan processed investor loan agreements (sometimes signing them on behalf of Manna).

¶ 132 Vaughan decided whether an investor qualified as “friend or family”. He received funds from investors, gave the funds to McLeod, kept investor records, and sent out account statements to investors. Vaughan also managed the relationships between Manna and the affiliates and directed prospective investors to the Manna website.

¶ 133 Vaughan was also responsible for Manna’s accounting. McLeod showed Vaughan what purported to be reports from the traders. The names of the trading firm and the individual traders were blacked out. The reports showed returns from

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trading that supported McLeod's claim that Manna was earning returns of 20% per month, but Vaughan says he never saw any banking or other financial records that reflected Manna's investments, its returns, or its actual profits, nor did he ask to see them.

- ¶ 134 In August 2006, Vaughan resigned from Manna. He objected to the formation of Legacy, in part because he disagreed with that strategy of continuing to grow the business. He says his approach from the start of his involvement is that growth should be slow and controlled. He was also of the view that Fox and Rosiek were not complying with their agreement and that Manna investors were being moved to Legacy. When he confronted McLeod with his concerns, McLeod became "irate". "I've never seen him quite like that," he says.

Representations to investors

- ¶ 135 Vaughan told investors that Manna's objectives were to offer long-term, secure returns and to create a safe secure infrastructure to protect the investments. He told affiliates that Manna had switched from a high-risk, high-return philosophy to a more conservative, more secure approach.
- ¶ 136 Vaughan helped create the promotional material that described Manna's trading business, its history of profits, and the returns its investors had experienced.
- ¶ 137 Vaughan promised investors returns of 5% or 7% per month.

Fundraising; handling of Manna funds; enrichment

- ¶ 138 One of Vaughan's primary responsibilities was fund-raising. He arranged presentations, followed up with prospects, signed up investors, and took their deposits. He gave investor contributions to McLeod.
- ¶ 139 Vaughan used contributions from new investors to pay his salary (\$2,000 per month at the start, later \$8,000), to pay commissions to affiliates, and to pay existing investors their returns. Vaughan received at least \$40,000 in direct payments from Manna.

Regulatory history

- ¶ 140 Vaughan has a regulatory history with the Commission. In February 1999 Vaughan entered into a settlement agreement with the executive director in which he admitted to trading and distributing securities without being registered or filing a prospectus under the Act. He agreed to an order denying him the use of the exemptions under the Act until the later of one year from the date of the order and the date on which he paid penalties and costs of \$5,000. He also undertook to comply with the Act. He has not yet paid all of the penalties and costs, so the order remains in force.

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Fox

Role

- ¶ 141 Fox concocted the so-called “private spiritual common law trusts”. He did so in order to bring Manna’s distribution of loan agreements in compliance through the exemption in section 46(d). Once the trust structure was in place, Fox told investors, directly and through affiliates and consultants, that it made the Manna scheme compliant with securities laws.
- ¶ 142 Fox, who was concerned about the need for the Manna affiliates to deliver a consistent message about the Manna scheme, proposed an education for affiliates “in the product and procedure.” With Rosiek he created and delivered the training programs for affiliates and consultants.
- ¶ 143 Fox worked with Rosiek to create the Legacy version of the scheme. In late 2005 Rosiek sent a note to Fox:

Are you still considering offering to be the front man for Manna?
If so, what is that worth?

For \$70,000 and an ongoing \$500 per new member, we have given them longevity and the opportunity to bring in unlimited clients. Cheap at the price. Now to take it a step further and allow them to basically sit back and collect the fruits from their labours with no risk, to me this is priceless. Give it some thought . . .

- ¶ 144 It appears that Fox agreed with Rosiek’s idea that they should be more aggressively engaged in the Manna scheme. In a December 2005 email to Rosiek, he said:

Thanks for email. How did you feel about our meeting with [McLeod]. . . . Let’s ramp this puppy up, high octane, six gear them.

- ¶ 145 In April 2006 Fox wrote to Vaughan about the use of an “agency agreement” to establish the Legacy program:

As we discussed, the lineage of Manna traces back to Manna Trading Corp. in the British Isles, which takes the whole thing to another continent of origin. This is very good and can be used to advantage in the process of creating the isolation of all parties on this continent. If everyone is operating only by “Agency Agreement” then we have effectively severed responsibility. . . . It’s a very clever way to cover your arse.

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There are two elements which must be proven in order for a fraud conviction to be found. They are '*actus rea*' [*sic*] and '*mens rea*'. The first is a guilty act, and the second, (actually more significant) is a guilty mind.

. . . If something happened with the program and you were not able to meet obligations, you would have *actus rea*, but if you could effectively show due diligence, you would not be guilty because of the lack of the *mens rea* component. . . .

. . . I am proposing a parallel or 'shadow' program. This . . . affects you in a number of ways, which I think you will find positive:

. . .

2. Should any legal issues arise within the current program, you will have a fall back position with everything in place for continuity and distribution of funds, i.e., reduced likelihood of an unhappy client pressing charges, and of course, '*mens rea*'.

¶ 146 Fox knew about Manna's investments in Tropical Poker and Costa Rica real estate. Under the April 2006 agreement with McLeod that created Legacy, he and Rosiek obtained the right to acquire shares in Tropical Poker.

¶ 147 He and Rosiek travelled to Costa Rica three times in 2006. A March 2006 Manna Foundation directors' resolution certified by Fox (in his McMordie persona) purports to approve an investment of \$500,000, and to ratify an investment of \$100,000, in Tropical Poker in exchange for shares in a Palms Entertainment holding company. The resolution is in an unsigned certificate from Fox (in his McMordie persona) that the resolution was passed at a telephone meeting of the directors held on March 6.

¶ 148 This resolution is consistent with the investments McLeod made in Tropical Poker in February and March 2006. The inescapable conclusion is that Fox knew about Manna's investment in Tropical Poker in March 2006.

¶ 149 In September 2006, Fox and Rosiek sent an email to McLeod about activities in Costa Rica and Perkinson's role. This is an excerpt:

Our direct responsibilities are to the flow of funds . . . we are fully on board with this project and need everyone present at all times so that when opportunities come up we can act upon them immediately . . . would you be able to . . . find out the status of all accounts: DIM, LCI, LTI, and any others.

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¶ 150 It is clear from McLeod's response that this related to real estate:

I think that we should insist that . . . Robb . . . include us as shareholders of each corporation holding land, and . . . of the new corp being formed to hold all the land corporations.

¶ 151 In October 2006 McLeod, Fox and Rosiek entered into an arrangement with a Costa Rica law firm to receive and disburse funds in connection with real estate transactions, among other things.

¶ 152 Fox left the scheme in March 2007. By then the Commission investigation had been underway for over a year, and the scheme was out of money. He says he left because his relationship with Rosiek had deteriorated, because, in part, she was "a very fiery person" with "a lot of anger in her." He said he was also "not too clear on how straight she was handling the money."

Representations to investors

¶ 153 Fox was an affiliate and brought investors into the scheme. In doing so, he made representations about Manna's business and the returns it offered.

¶ 154 In creating and delivering the training programs for affiliates and consultants, he indirectly made representations to investors who heard from affiliates and consultants what Fox had taught them to say.

¶ 155 At almost the same time that Legacy was formed, there were problems paying the Manna investors. By late May 2006 Rosiek was, she says, using her own funds to make payments to investors. Rosiek emailed McLeod asking for money, saying "If we don't keep the home act together it's going to be big problems for all."

¶ 156 Yet in July 2006 Fox sent a message to Legacy investors, telling them that "the final little pieces are now in place and we are having a very successful quarter, far beyond our expectations."

Fundraising; handling of Manna funds; enrichment

¶ 157 Fox assisted in the fundraising process by his participation in investor presentations and by training affiliates and consultants.

¶ 158 Fox became a Manna affiliate, apparently at Rosiek's suggestion. He brought in \$235,000 in investor funds. Rosiek says that she and Fox, through the consultants, raised about \$10 million through the Legacy program in 15 months.

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- ¶ 159 Investors paid Fox fees for the trusts. Original Manna investors paid \$250 when the Foundation was established. The fee then went to \$450, and then to \$650 in the Legacy phase. Fox split the fees with Rosiek.
- ¶ 160 Fox received at least \$202,000 in direct payments from Manna, including \$60,000 in trust fees.

Rosiek

Role

- ¶ 161 Rosiek played a central role in the Manna scheme. Although in her interviews and affidavit evidence she attempts to portray her role as merely administrative, the evidence as a whole shows that she played a significant role in the scheme.
- ¶ 162 Rosiek hosted many Manna events at her house. She actively participated in presentations at investor meetings. After an investor meeting in December 2005 about the creation of the Manna Foundation, Vaughan sent an email to Manna investors, saying, “Last night’s special Club event was attended by over 120 Members. Many stayed well after the official ending and continued to glean information from Byrun and Dianne.” Later in the month, Vaughan sent another email to investors telling them that they should contact Fox and Rosiek for information about “any aspects of the trusts, i.e., applications, procedural and philosophical questions, payments, etc.” and provided contact information for Fox and Rosiek.
- ¶ 163 Rosiek played an important role in the formation of the Manna Foundation. Fox paid Rosiek a finder’s fee for introducing him to Manna. Susan Cameron-Block, who introduced Fox to Rosiek got wind of it and asked for a share. In replying to this request, Fox said:

In my opinion, I actually owe the finders fee to the person that made it happen, and that was definitely Dianne. She was the driving force that pushed it through. As a result, the parties involved have benefited greatly from the energy she invested.

- ¶ 164 The fees investors paid Fox for the trusts he shared with Rosiek because, he said, they had “partnered up” on the trust business. He said her role was to market the trusts.
- ¶ 165 It seems Rosiek was always thinking about ways to maximize her and Fox’s profit from Manna. In January 2006 she emailed Fox:

We need to make you an affiliate with Manna. In order to receive commissions you must have an active contract. . . . The current

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amount is \$5000.00 but David might allow a lesser amount. You will have to negotiate that with him. As I am your affiliate that introduced you to Manna, I (we) will receive 10% (15%) on the initial investment and 2% per month (and a potential 1% per month once the dust settles with our relationship with Mc).

If you (we) have to invest the \$5000.00 it won't be a total loss. I (we) will receive \$500 (\$750) up front and \$100.00 per month for the life of the contract. You (we) will also receive 7% per month as per the fee structure currently in place with Manna.

This will in the long run serve us as we will put all contracts through you and hopefully be able to capitalize on the 1% override.

- ¶ 166 Rosiek got the ball rolling on the formation of Legacy by asking Fox about his continuing as a “front man” for Manna, and suggesting he give the circumstances some thought. She was equally involved with Fox in the negotiations with McLeod that led to the creation Legacy.
- ¶ 167 Rosiek apparently wielded some authority in the scheme's affairs. Before sending his note to Vaughan about the need for affiliate training sessions, Fox sought her feedback. Once the training project was a go, Rosiek, with Fox, planned the content of the affiliate and consultant training sessions, and participated in the delivery of the training sessions.
- ¶ 168 Near the end of April 2007 “Legacy Administration” send a letter to its consultants telling them about the Commission investigation. The letter asks them, if contacted by Commission investigators not to return messages or, if contacted directly to refuse to talk to them. A draft of the letter was sent to Rosiek, as well as McLeod, for approval.
- ¶ 169 The experience that Keith Young had in dealing with Rosiek gives an insight into her role in the scheme.
- ¶ 170 Young is a Calgary business consultant on matters ranging from systems integration to general business issues. He has computer programming and public company experience, having been the chief financial officer of a TSX Venture listed company for three years.
- ¶ 171 In 2006, Young's largest client was a Craig McMorran, a Calgary businessman. McMorran heard about Manna from Perkinson, a friend. McMorran asked Young to check it out.

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- ¶ 172 Young attended a Manna promotional meeting in Calgary and met Vaughan, Fox, and Rosiek. He listened to the presentation and asked questions. He did some research and discovered that Vaughan admitted to contravening the Act in a 1999 settlement with the executive director.
- ¶ 173 Young concluded that Manna was a Ponzi scheme and advised McMorran not to invest. McMorran ignored his advice and invested \$40,000 in Manna.
- ¶ 174 McMorran was soon frustrated with his investment. His investment in Manna was arbitrarily transferred to Legacy and it seemed that Legacy could not produce a statement showing the status of his investment. He asked Young to assist Legacy in setting up an account statement system.
- ¶ 175 Despite his reluctance to be involved with the Manna scheme, Young agreed to do so, for McMorran's sake.
- ¶ 176 Shortly afterwards, Young received instructions by email from Rosiek and Fox.
- ¶ 177 In carrying out his work, Young took his instructions primarily from Rosiek and worked at Rosiek's house in an area adjacent to her desk. Young says she had files with all the signed investor contracts in them at her desk. She also kept binders with records of the investors, their investments and maturity dates, and who their affiliate was. He described Rosiek as "a very well-organized individual." She had also prepared an Excel spreadsheet capable of being imported into the database he was creating to generate the account statements.
- ¶ 178 Young's discomfort in working on the Manna scheme continued and he put off working on the project. Rosiek called McMorran to put pressure on Young to finish the job.
- ¶ 179 Ultimately, Young designed an Excel spreadsheet and form of statement for Legacy's use. Investors' funds were on one-year terms. If the investor failed to redeem their funds, the investment automatically rolled over for another year. Rosiek told Young to design the form so that the redemption timing and procedure would not be obvious to investors. Like Vaughan's statements, the Legacy statements calculated returns simply by multiplying the agreed return by the amount invested, on a compounding basis.
- ¶ 180 Rosiek knew about Manna's investments in Tropical Poker and Costa Rica real estate.

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- ¶ 181 Rosiek knew about McLeod's initial investments in Tropical Poker in October and December 2005 – Perkinson was grateful to her for her role in persuading McLeod to invest.
- ¶ 182 In February 2006, on McLeod's instructions, investors were making payment directly to Dragon. As a Manna affiliate Rosiek would know, as a result of those instructions, that that investor funds were being funnelled into Tropical Poker.
- ¶ 183 Given how closely Fox, Rosiek and McLeod were working together in March 2006 (the formation of Legacy was imminent), it is inconceivable that Rosiek did not know about the \$600,000 Manna Foundation investment in Tropical Poker.
- ¶ 184 Fox's and Rosiek's knowledge that Manna was investing in Tropical Poker could explain why the April 2006 agreement with McLeod that created Legacy gave Fox and Rosiek the right to acquire shares in Tropical Poker.
- ¶ 185 In September 2006, Rosiek directed Wilkes to disburse funds from Legacy's account to Dragon and to real estate deals. In October 2006 she sent funds from the Legacy account to a Costa Rica law firm in connection with a real estate deal.
- ¶ 186 An October 17, 2006 to-do list of Rosiek's relating to Manna business includes the signing of one real estate transaction and the payment of \$456,000 toward another.

Representations to investors

- ¶ 187 Rosiek was an affiliate and brought investors into the scheme. In doing so, she made representations about Manna's business and the returns it offered.
- ¶ 188 In creating and delivering the training programs for affiliates and consultants with Fox, Rosiek indirectly made representations to investors who heard from affiliates and consultants what she and Fox had taught them to say.

Fundraising; handling of Manna funds; enrichment

- ¶ 189 It is clear from communications among Fox, Rosiek and McLeod that she took her fund-raising responsibilities with Manna seriously.
- ¶ 190 In McLeod's panicky email to Rosiek for funds at the end of January 2007, he said:

We are all aware of and are proud of what you (Legacy) have accomplished over the past year. Not only have you picked up the ball where Manna dropped it, but you have continued to keep the wheels of our vehicles (poker, cash cards, payment solutions,

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and land projects) on track. A job well done, and we sincerely thank you. Without your efforts and accomplishments, the long term picture of what I had in mind 3 years ago would be considerably different from what it is today.

- ¶ 191 Rosiek personally brought \$17,000 of investor funds into Manna and says that she and Fox, through the consultants, raised about \$10 million through the Legacy program in 15 months.
- ¶ 192 Legacy investors gave their funds to Rosiek, who deposited some of them in a bank account in Vancouver. Rosiek also bundled drafts from Legacy investors and couriered them to McLeod in Costa Rica for deposit. Rosiek kept investor records, issued account statements, and made payments to investors. She also controlled the cash flows in the Legacy account. For example, she sent \$675,000 to hyperWallet, and sent \$578,000 to a Costa Rican law firm to fund a real estate project. Rosiek also kept track of due dates for Manna's spending commitments and directed McLeod to make payments as they came due.
- ¶ 193 At almost the same time that Legacy was formed, there were problems paying the Manna investors. Rosiek emailed McLeod asking for money, saying "If we don't keep the home act together it's going to be big problems for all."
- ¶ 194 In 2007 Rosiek sent Manna records to Costa Rica.
- ¶ 195 Rosiek split the fees investors paid Fox for the trusts. Original Manna investors paid \$250 when the Foundation was established. The fee then went to \$450, and then to \$650 in the Legacy phase.
- ¶ 196 Rosiek received at least \$513,000 in direct payments from Manna, including \$111,000 in trust fees.

Perkinson

- ¶ 197 Perkinson became involved with Manna through a friend who was a Manna investor and affiliate. At the friend's invitation, Perkinson attended a Manna presentation and decided to invest. He understood that Manna's business was foreign currency trading. He says he invested \$15,000 in Manna for his own account in three instalments, two in August and one in October, 2005. He has received no interest payments and his principal has not been repaid.
- ¶ 198 Perkinson, although named as a Manna affiliate, says he did not act as one and did not bring anyone into the scheme.

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- ¶ 199 In November 2005 Perkinson heard about the creation of the Foundation from Fox at a dinner at Rosiek's house. Over the next few weeks he heard more about it from Vaughan, Fox and McLeod, and understood a major Vancouver law firm was involved in setting up the structure. By the time of Rosiek's Grey Cup party on November 27, when Fox and McLeod asked him to sign the Foundation's articles of incorporation as a director, he believed it was legitimate. He was nevertheless uneasy about acting as a director, and told Fox he wanted to be able to resign soon. The Foundation accepted his resignation as of January 1, 2006.
- ¶ 200 In late March 2006 Perkinson was with McLeod when McLeod told him he had to meet Fox in Langley to open a bank account for the Foundation. McLeod told him this account would replace the Dragon banking arrangements and once opened, Perkinson would no longer be signing officer for Dragon, as they had previously agreed.
- ¶ 201 Fox didn't show, and McLeod asked Perkinson to sign instead. He agreed on condition that Fox replace him within a few days. It turned out that the account was open only about month and was mostly inactive. Perkinson did not sign any transactions.
- ¶ 202 Perkinson incorporated companies in Costa Rica and opened several bank accounts in Canada and Costa Rica for various entities related to Tropical Poker and Legacy. He facilitated millions of dollars of deposits and payments through the accounts, which he says he did on McLeod's instructions. Wilkes' assistant admits to having conducted transactions in some of these accounts without his instructions while he was absent due to illness. The assistant also admits to having forged Perkinson's signature to open a Dragon bank account in Costa Rica with Perkinson as the sole authorized signatory.
- ¶ 203 Perkinson says that in 2006 he attended several meetings with Fox and McLeod at a major Vancouver law firm relating to the formation of Manna.
- ¶ 204 In September 2006 Wilkes and Perkinson met McLeod. McLeod expressed dissatisfaction with Wilkes' running of Tropical Poker, and said he wanted more shares and control. He demanded that they keep Fox and Rosiek happy by giving them shares in Tropical Poker. He upbraided Perkinson for telling Fox and Rosiek about Manna's real estate investments because they were now demanding a share in them. Perkinson says he ended his relationship with McLeod then and there.
- ¶ 205 Perkinson says that until McLeod's involvement in 2005, he funded Tropical Poker's expenses from his own resources and with funds from a California investor. Even after Manna funds became a source of financing, he funded

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expenses. Perkinson estimates he paid over \$260,000 in expenses related to Tropical Poker between March 2005 and October 2006. He does not dispute the executive director's allegation that he was paid \$85,000 during his involvement with the projects between October 2005 and July 2006. His affidavit includes an itemized list of the amounts he was paid. They are all expense reimbursement, except a \$3,000 finders fee he paid to Cameron-Block for introducing him to McLeod.

G Investor witnesses

- ¶ 206 Eleven Manna investors, all residents of British Columbia, testified at the hearing. They described how McLeod, Vaughan and Fox structured the investment, how McLeod, Vaughan, Fox and Rosiek represented the investment to the investors, and the roles played by each of them.

Investor A

- ¶ 207 Investor A is a 69-year-old retired widow. She and her husband invested \$5,000 in Manna in November 2005 after attending an investor presentation put on by McLeod and Vaughan. They told the couple that they would earn 7% per month on their investment. Investor A and her husband invested another \$15,000 in March 2006.
- ¶ 208 Investor A's husband became ill, and Fox, who knew him well, called her daily to inquire about his condition.
- ¶ 209 The husband died. Fox let Investor A know that he was involved with the Legacy phase of the scheme. Knowing her husband had believed that the Manna investment was safe and was going to provide for her retirement, she asked Fox if she could invest in Legacy. He initially demurred, thinking that she would be taking money out of the Manna phase to do so. However, once she advised him to the contrary and that her investment would be new funds, he agreed to take her money. Fox told her she would earn 5% per month on her investment. In July 2006 she invested \$12,000, and in September another \$8,000.
- ¶ 210 Investor A received only a few interest payments. Her \$40,000 in principal has not been repaid.
- ¶ 211 Investor A is devastated by her loss. She thinks of how her husband would have felt, having invested their money in a way that he thought would provide for her. She is embarrassed about having invested.

Investor B

- ¶ 212 Investor B is 72 years old and retired, having run a dry-cleaning business for many years.

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- ¶ 213 Investor B incurred significant expenses in caring for his sick wife before she died, in February 2006. He was introduced to Manna by a long-term member of his church. She told Investor B that an investment in Manna would be “high interest, very safe, and never lose money, make good money return.”
- ¶ 214 In March 2006 Investor B invested a total of \$80,000 in Manna in instalments of \$20,000, \$50,000 and \$10,000. After statements from Manna showed that he had made \$1,400 in one month on his first \$20,000, he invested the additional \$60,000. Based on the Manna “Power of Compound Interest” chart the Manna consultant gave him, he thought that after five years this \$60,000 would be worth over \$2 million.
- ¶ 215 To pay for his Manna investments, Investor B, who already had two mortgages on his house, mortgaged it three more times.
- ¶ 216 Investor B received monthly payments from Manna for only a few months before they stopped. His principal has not been paid.
- ¶ 217 To settle his mortgages, Investor B was forced to sell his house. The proceeds were insufficient to pay off all of the outstanding debt. He describes himself as an “empty pocket. No money. I owe bank credit card \$70,000.” At the time he testified, Investor B was trying to find an “old pensioner house,” but had not yet found a home.

Investor C

- ¶ 218 Investor C is a 52-year-old entrepreneur who works in website development.
- ¶ 219 Investor C learned about the Legacy version of Manna from an acquaintance who was a Manna consultant. He signed a non-disclosure agreement and attended a meeting at Rosiek’s residence, where, he says, she and Fox did most of the talking. He says that they played equal roles in the presentation.
- ¶ 220 They told the people at the meeting that Legacy funds would be invested in foreign exchange and the return on an investment in Legacy would be 5% per month. Fox and Rosiek distributed documents to those present illustrating the effect of 5% per month compounded monthly.
- ¶ 221 Investor C was also impressed by the apparent professionalism of the Legacy organization. He took the training to become a consultant. He attended at least three consultant training meetings, where Fox and Rosiek did most of the training.

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- ¶ 222 Investor C invested a little over \$10,000 in the scheme in November 2006. He received no payments, although he did receive \$2,000 as a consultant for introducing an investor into the scheme. His principal has not been repaid.

Investors D and E

- ¶ 223 Investor D is a 48-year-old film and television production manager. He invested in Manna and, with his friend Investor E, in the Legacy version of Manna. Investor E is a 39-year-old film and television transport coordinator.
- ¶ 224 Investor D's landlord was a Manna affiliate. He took Investor D to a Manna presentation in Surrey by McLeod and Vaughan, Vaughan being the primary speaker. Vaughan said Manna had long-standing ties to the community, was limited to family and friends, and required a minimum investment of \$10,000. Vaughan said that Manna put investors' funds into a proprietary foreign exchange trading system and they could expect to receive compounded monthly returns of 7%. Neither Vaughan nor McLeod gave any details of this trading system, other than that there were supposedly four traders in New York, overseen by McLeod.
- ¶ 225 About a week after the presentation, Vaughan called Investor D and asked if he was interested in investing. The two met and Investor D gave Vaughan \$10,000 in cash. Vaughan said he would send Investor D paperwork and Investor D could expect monthly statements. Investor D received no paperwork or monthly statements, but took comfort from knowing that his Manna affiliate and his brother were receiving monthly payments.
- ¶ 226 After about a year, Investor D received his promised return, a little over \$20,000, in cash from Vaughan.
- ¶ 227 After Investor D invested in Manna, the Manna affiliate told him about the Legacy version of Manna, mentioning that the minimum investment was \$5,000. Investor D asked if he could partner on the investment with his friend, Investor E.
- ¶ 228 Investor D told Investor E about how his \$10,000 Manna investment had doubled in about a year. Investor E decided to co-invest in Legacy with Investor D. They each invested \$2,500.
- ¶ 229 Investors D and E met the affiliate at a shopping mall in December 2006 and gave him bank drafts for the investment.
- ¶ 230 In June 2007 Investors D and E attended a presentation about the Legacy version of Manna by Fox and Rosiek at Rosiek's house. Rosiek did most of the talking at the presentation, with Fox providing examples of the dollar amount of return produced by a specific amount invested. Rosiek described Legacy's use of

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foreign currency traders in Ireland who worked under McLeod's proprietary system.

- ¶ 231 Investors D and E both declined Legacy's restitution offer on the affiliate's advice, who said if they did so they would lose any gains earned on their investment.
- ¶ 232 Investor D and E received no payments on their \$5,000 investment. Their principal has not been repaid.
- ¶ 233 Investor D feels he betrayed the trust of two friends, Investors E and F, and that he has been robbed by "a collection of thieves."

Investor F

- ¶ 234 Investor F is a 45-year-old production coordinator in the film industry. She invested in the Legacy version of Manna after hearing about it from her friend and colleague, Investor D.
- ¶ 235 Investor D put Investor F in touch with his Manna affiliate, who met with her at her office in December 2006. She signed the paperwork and gave the affiliate a bank draft for \$7,000.
- ¶ 236 Investor F did not at first receive her monthly statements. After contacting her affiliate, she began to receive statements showing her "gains generated." The gains showed on the statements were consistent with the promised return 5% compounded monthly return.
- ¶ 237 Investor F declined Legacy's offer of restitution. She received no payments on her investment and her principal has not been repaid. The loss was a hardship as it coincided with a slump in the film industry, and she regrets that her investment "basically ruined my friendship and working relationship" with Investor D.

Investor G

- ¶ 238 Investor G is a 36-year-old mother of three who works part-time as a fundraiser for non-profit organizations.
- ¶ 239 Investor G learned about Manna from her father, who had invested in the Legacy version of Manna and was happy with the results.
- ¶ 240 Investor G and her husband attended several presentations by Fox and Rosiek at Rosiek's house. Fox and Rosiek talked about the Legacy trust structure and that the funds would be invested in foreign exchange through traders associated with an old high school friend of McLeod's. They said investors funds would be safe

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because they were divided among multiple traders, and that McLeod had purchased land – “hard assets” – to safeguard the initial investment.

- ¶ 241 Investor G and her husband invested a total of \$80,000 in the Legacy version of Manna: \$20,000 in September 2006, \$40,000 in November 2006, and \$20,000 in February 2007. To raise the funds, they collapsed their RRSPs and an educational trust fund.
- ¶ 242 Rosiek encouraged Investor G to become a consultant for the Legacy version of Manna. Investor G took the consultant training, which Rosiek and Fox provided. Fox focused on the trust structure and Rosiek on the business aspects of the operation.
- ¶ 243 Investor G declined Legacy’s restitution offer, because they would not be able to “roll over” their investment into Phoenix, and would lose their accrued gains. She feels particularly betrayed by Rosiek, who used Investor G’s home for a meeting to promote Phoenix.
- ¶ 244 Investor G and her husband received payments of about \$5,000 on their investment in Manna. None of their principal has been repaid.

Investor H

- ¶ 245 Investor H is 70 and works part-time in a camera store. A friend introduced him to the Legacy version of Manna. Based on the Legacy promotional material, including the “Power of Compound Interest” chart and the promised 5% compounded monthly return, Investor H invested \$10,000 in April 2007.
- ¶ 246 Investor H declined Legacy’s restitution offer. He has received no payments and his principal has not been repaid.

Investor I

- ¶ 247 Investor I is a 50-year-old software designer. He learned about the Legacy version of Manna from a member of his choir.
- ¶ 248 Investor I attended a presentation by Rosiek and Fox at Rosiek’s house, where they said that the funds would be invested in foreign exchange trading. Investor I borrowed funds on a line of credit and invested \$6,000 in September 2006.
- ¶ 249 Investor I declined Legacy’s restitution offer. He has received no payments and his principal has not been repaid.

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Investor J

- ¶ 250 Investor J is a 72-year-old retired contractor. He learned about Manna from his daughter's father-in-law, who told him that Manna had paid "fantastic" returns over several years, and that it operated under exemptions from the requirements of securities legislation.
- ¶ 251 Investor J invested \$3,000 in Manna in October 2005. For the next few months he received \$210 per month in cash. Seeing the first investment pay off, he invested another \$4,000 in January 2006.
- ¶ 252 Investor J received payments totalling about \$1,800. His principal has not been repaid

Investor K

- ¶ 253 Investor K is a 60-year-old nurse. She learned about the Legacy version of Manna from friends in Alberta.
- ¶ 254 Attracted by the promised 5% compounded monthly return as shown in the Legacy promotional material, her understanding that she would never lose her initial investment, and that the funds were invested in humanitarian projects, Investor K invested \$10,000 in October 2006, using funds borrowed on a line of credit.
- ¶ 255 Investor K accepted Legacy's restitution offer, but was not paid. She has received no payments and her principal has not been repaid. Her loss has affected her emotionally and financially.

IV Analysis and Findings

A The evidence of Rosiek and Perkinson

- ¶ 256 Commission staff interviewed Rosiek in March 2007 and again in March 2008. She was not represented by counsel at either interview. The evidence includes a transcript of those interviews.
- ¶ 257 Commission staff interviewed Perkinson in July 2006. He was represented by counsel at the interview. During the hearing, Perkinson applied to have the interview transcript excluded from the record. We denied the application and the evidence includes the transcript.
- ¶ 258 At the hearing, Perkinson entered his evidence almost entirely by affidavit. He gave brief *viva voce* evidence in chief and made himself available for cross-examination on his affidavit.

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- ¶ 259 Rosiek entered her evidence exclusively by affidavit and did not make herself available for cross-examination. The panel chair explained to her that if she did not make herself available for cross-examination, it could affect the weight the panel gave her affidavit evidence.
- ¶ 260 At the hearing, counsel for the executive director conducted a very limited cross-examination of Perkinson.
- ¶ 261 In the affidavit Perkinson entered at the hearing, in the affidavit he swore in July 2007 (in connection with the hearing of the executive director's application to extend the temporary orders), and in the affidavit he swore in January 2009 (in support of his application to exclude the interview transcript), Perkinson says that some of the information he gave at his interview is inaccurate. He repeats this statement in his submissions, but nowhere does he identify the information that he says is inaccurate.
- ¶ 262 We have considered the evidence Rosiek and Perkinson gave in their affidavits. Where their affidavit evidence is inconsistent with their interviews, the documentary evidence, or the testimony of other witnesses, we have weighed their evidence against the inconsistent evidence in making our findings.

B Illegal trading and distribution

- ¶ 263 The executive director alleges that the respondents contravened sections 34(1) and 61(1).
- ¶ 264 Section 34(1) says “a person must not . . . trade in a security . . . unless the person is registered in accordance with the regulations . . .”
- ¶ 265 Section 61(1) says “. . . a person must not distribute a security unless . . . a preliminary prospectus and a prospectus respecting the security have been filed with the executive director” and the Executive Director has issued receipts for them.
- ¶ 266 If we are to find that a respondent contravened sections 34(1) and 61(1), we must first find that:
1. the Manna loan contracts agreements and notes were “securities”
 2. the respondents traded those securities in British Columbia, and
 3. for section 61(1), those trades were a distribution.

Are the Manna loan contracts “securities”?

- ¶ 267 Section 1(1) defines security to include, among other things, “a bond, debenture, note, or other evidence of indebtedness” and “an investment contract.”

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- ¶ 268 The Manna investments were evidences of indebtedness. Investors gave principal amounts to Manna with an expectation of the repayment of those amounts, and the payment of interest for the term of the loan.
- ¶ 269 The Manna investments were also investment contracts. Well-known common law defines an investment contract as an investment of money in a common enterprise with profits to come from the efforts of others. (See *SEC v. W. J. Howey Co.* 328 U.S. 293 (1946), *SEC v. Glen W. Turner Enterprises, Inc.* 474 F.2d 476 (1973), *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112.)
- ¶ 270 Participation in the Manna scheme required an investment of money. The investors' profits were to come from the efforts of persons other than themselves – the evidence is clear that once they deposited their funds, investors were not required to do anything else to earn their returns. The commonality that is required by the cases cited above existed between the respondents and the investors.
- ¶ 271 We find that the Manna loan agreements and notes were securities.

Did the respondents trade securities in British Columbia?

- ¶ 272 Section 1(1) defines trade:

“trade” includes

(a) a disposition of a security for valuable consideration whether the terms of payment be on margin, installment or otherwise . . .

. . .

(f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e);

McLeod, Vaughan, Fox and Rosiek

- ¶ 273 Manna was based in British Columbia. It produced its promotional materials here, raised funds here from persons inside and outside the province. It kept records and handled funds here.
- ¶ 274 McLeod created the Manna scheme and had ultimate authority over its operations throughout the relevant period. He told investors about Manna's promised monthly returns, and explained how Manna's profits from foreign currency trading made those returns possible.

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- ¶ 275 McLeod was the one who set the terms of the Manna securities throughout the operation of the scheme. He directed Vaughan's work in soliciting investors and administering the paperwork and payments. He signed some loan agreements on behalf of Manna.
- ¶ 276 Vaughan drafted investor documents and worked on Manna's promotional material. He solicited investors and signed loan contracts on behalf of Manna. He made presentations at investor meetings. He managed the affiliate relationships and directed investors to the Manna website.
- ¶ 277 Fox concocted the trust structure that led to the establishment of the Manna Foundation version of the scheme. He was an active participant at investor presentations. Along with Rosiek, he created the Legacy version of the scheme. He and Rosiek also developed and administered the affiliate and consultant training program.
- ¶ 278 Fox was a Manna affiliate and raised \$235,000 in that capacity. Along with Rosiek, he managed the Legacy program and raised another \$10 million.
- ¶ 279 Rosiek was an active participant at investor presentations. Along with Fox, she developed the Legacy version of the Manna scheme. She and Fox also developed and administered the affiliate and consultant training program.
- ¶ 280 Rosiek was a Manna affiliate and raised \$17,000 in that capacity. Along with Fox, she managed the Legacy program and raised another \$10 million.
- ¶ 281 All of these activities fall within paragraphs (a) and (f) of the definition of trade. We find that McLeod, Vaughan, Fox, and Rosiek traded the Manna securities in British Columbia.

Perkinson

- ¶ 282 Perkinson had no role in promoting or selling the Manna securities or making representations about them. The executive director says that Perkinson facilitated the investments of three other investors but his involvement was at most peripheral. There is no evidence that Perkinson was privy to Manna's affairs or operations, or had knowledge of its true financial situation. He was documented as a founding director of the Manna Foundation but resigned a month later.
- ¶ 283 In these circumstances, his activities in moving funds through the Dragon accounts, incorporating companies, and opening bank accounts in Costa Rica were too remote from the sale of the Manna securities to be considered acts or conduct in furtherance of those trades.

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¶ 284 We do not find that Perkinson traded the Manna securities.

Were these trades “distributions”?

¶ 285 Section 1(1) defines distribution as “a trade in a security of an issuer that has not been previously issued.”

¶ 286 The Manna loan contracts were securities not previously issued. We find that the trading by McLeod, Vaughan, Fox, and Rosiek in these securities were distributions.

Contraventions of sections 34(1) and 61(1)

¶ 287 We have found that the Manna loan contracts were securities, and that McLeod, Vaughan, Fox, and Rosiek traded and distributed those securities in British Columbia.

¶ 288 None of McLeod, Vaughan, Fox, and Rosiek was registered under the Act. None has filed a prospectus. Therefore, in the absence of an exemption, these respondents contravened sections 34(1) and 61(1) when they traded the Manna securities.

¶ 289 Implicit in McLeod’s, Vaughan’s, Fox’s, and Rosiek’s conduct is that they believed that they were trading and distributing securities, because they were conscious of the Act’s application to the Manna distribution. They attempted to operate outside the framework of the Act by designing each version of Manna to fit an exemption under the Act.

¶ 290 The legislation provides exemptions from sections 34(1) and 61(1). The onus of showing that any of those exemptions applies rests on the person who seeks to rely on the exemption (*Bilinski* 2002 BCSECCOM 102).

¶ 291 From its inception until the formation of the Manna Foundation, Manna distributed its securities ostensibly in reliance on the so-called “friends and family” exemption. There is no evidence that the exemption applied to those distributions. To the contrary, it is clear from the evidence that the exemption did not apply to several of those distributions.

¶ 292 Beginning in 2006, the scheme purported to rely on the exemptions in sections 46(d) and 75(a) of the Act. Section 46(d) is an exemption from the registration requirement in section 34(1). Section 75(a) is an exemption from the prospectus requirement in section 61(1) for trades described in section 46(d).

¶ 293 Section 46(d) says a person may, without being registered under section 34(1), trade in “negotiable promissory notes or commercial paper maturing not more

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than 12 months from the date of issue, so long as . . . the purchaser is not an individual.”

- ¶ 294 These exemptions did not apply to the distribution of the Manna securities. The Manna securities were not promissory notes because they contained no unconditional promise to pay, as required under common law and by the *Bills of Exchange Act (Canada)* RSC 1985, c. B-4. Instead, the notes stipulated only that the investor agreed to deposit his funds for at least one year. The Manna securities were not commercial paper, as defined in the *Interpretation Act* RSBC 1996, c. 238, nor were they negotiable. According to Black’s Law Dictionary, an instrument is negotiable only if it is “legally capable of being transferred by endorsement or delivery.” Manna made no provision for transfers of the Manna securities.
- ¶ 295 These section 46(d) and 75(a) exemptions also do not apply because the Manna and Legacy distributions did not meet the requirement that the purchaser not be an individual. This is because the trusts were shams.
- ¶ 296 Waters Law of Trusts in Canada, 3rd, ed., describes trusts as “illusory” when (at p 146):
- . . . the trust property was used without hesitation for the settlor’s personal purposes, and the named beneficiaries of the trust had never received any benefits from the trust, or any accounting from the trustees. They may have been told nothing of the trust . . . Such trusts have been judicially ruled to be void as shams, and the trust property to have remained the personal property of the settlor.
- ¶ 297 This describes perfectly the rights of the beneficiaries of the trust under the Manna and Legacy trusts. The beneficiaries had no rights to the trust property as long as the investor was still alive, and there was no obligation that the beneficiary be informed of the trust’s existence. Indeed, many investors did not tell their beneficiaries, usually their children, about the trust.
- ¶ 298 The deficiencies in the Manna and Legacy trusts went beyond that. In a true trust, the trustee’s duty is to hold, and sometimes manage, the trust property for the benefit of another, the beneficiary. The unfettered right of the trustee to use and dispose of the trust property is utterly inconsistent with the concept of a trust.
- ¶ 299 That the Manna and Legacy trusts were structured in that fashion is not surprising. The evidence clearly shows that there was no intention on the part of the grantor (Central American) to establish a trust for the benefit of the beneficiaries – all the

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benefit was for the account of the trustee, not the beneficiary. In effect, under the Manna so-called trusts, the beneficiary was the trustee.

¶ 300 The trusts were established solely for the purpose of attempting to bring the distribution of the Manna securities into the ambit of the section 46(d) exemption. Vaughan, Fox and Rosiek explained to investors that the reason for establishing the Foundation and the accompanying trust-based structure was to accommodate securities laws.

¶ 301 We find that the Manna and Legacy trusts were shams, and that, for the purposes of section 46(d), the investors purchased the Manna securities as individuals.

¶ 302 In Vaughan's case, no exemptions apply because he is still subject to an order to that effect under his 1999 settlement with the executive director.

Finding

¶ 303 We find that McLeod, Vaughan, Fox, and Rosiek contravened sections 34(1) and 61(1) when they traded and distributed the Manna securities.

C Misrepresentation

The law

¶ 304 Section 50 says:

50. A person, . . . with the intention of effecting a trade in a security, must not make a statement that the person knows, or ought reasonably to know, is a misrepresentation.

¶ 305 Section 1 defines "misrepresentation" as "an untrue statement of a material fact" or "an omission to state a material fact that is . . . necessary to prevent a statement that is made from being false or misleading in the circumstances in which it was made."

¶ 306 Section 1 defines "material" fact as a fact about a security "that significantly affects, or could reasonably be expected to significantly affect, the market price or value" of a security.

The allegations

¶ 307 The notice of hearing alleges that McLeod, Vaughan, Fox and Rosiek represented to investors that:

(a) [Manna] Loan Contracts, as a result of being made through the spiritual trusts, would be shielded from certain tax and securities laws;

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- (b) investors' funds would be placed with experienced traders, who would conduct trades in companies listed on the Standard & Poors "e-mini trading division", commodities and foreign currency;
- (c) Manna Foundation had "an annualized trading history of profit returns not less than 20% per month (240%) per year"; and
- (d) as a result of these trading profits, holders of [Manna] Loan Contracts would receive high rates of return in the form of interest payments, the historical of which had been 125.22%.

¶ 308 The notice of hearing alleges that in making those "and other false" statements, the "respondents" (which includes Perkinson) made misrepresentations contrary to section 50(1)(d) of the Act. In submissions the executive director stated there is no allegation of misrepresentation against Perkinson, which we take to be a withdrawal of the allegation of misrepresentation against Perkinson.

Trusts would shield the distribution of the Manna securities from tax and securities laws

¶ 309 These representations were untrue statements. We have found that the Manna and Legacy trusts were shams, and failed to bring the Manna distribution within the ambit of section 46(d). This is a material fact that could reasonably be expected to significantly affect the value of the securities. There is a substantial risk that a security sold as part of an illegal distribution will have no value. Investors testified that they would not have invested had they known the distribution was not in compliance with securities laws. We find these statements are misrepresentations.

¶ 310 McLeod, Vaughan, Fox and Rosiek were all aware of the trust structure. Vaughan, Fox and Rosiek misrepresented to investors that the trust structure would bring the Manna distribution into compliance with the Act. Vaughan, Fox and Rosiek made the misrepresentation with McLeod's knowledge and approval. Although the evidence is not clear whether McLeod made this misrepresentation directly to investors, we find that by knowing and approving of Vaughan's, Fox's and Rosiek's conduct, he made the representation indirectly.

Investors' funds would be placed with experienced traders who would conduct trades in equity, commodities and foreign exchange markets

¶ 311 This representation was an untrue statement. There is no evidence that investor's funds were placed with experienced traders for the purposes of earning returns for Manna investors. To the contrary, the evidence is that, apart from as little as \$3 million, and no more than \$5.6 million, of the funds that were returned to

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investors, investor funds were dissipated on a variety of ill-advised investments and spent for the benefit of some or all of the respondents.

¶ 312 This fact was material and was central to a Manna investor's decision to invest. It was touted as the means by which Manna was able to promise its eye-popping returns. It was at the core of the perceived value of the Manna securities. We find this statement was a misrepresentation.

¶ 313 McLeod, Vaughan, Fox, and Rosiek all made this misrepresentation directly to individual investors and to groups of investors at presentations, and indirectly through Manna's promotional material and, in the case of Fox and Rosiek, through their creation and teaching of the affiliate and consultant training program).

Historical profits and returns

¶ 314 That Manna Foundation had an annualized trading history of profit returns of not less than 20% per month (240% per year), and that as a result of trading profits investors would receive high rates of return, historically 125.22% were untrue statements. There is no evidence that Manna Foundation had produced any trading profits at all, never mind at those levels. As for the returns on funds invested, the evidence of Dr. Klein is compelling that consistent returns at the level claimed are impossible to achieve in the markets Manna identified as the ones in which its funds were being traded.

¶ 315 Like the previous misrepresentation, these two statements went to the heart of the value of the Manna securities, and therefore the Manna investor's decision to invest in them. We find these statements are misrepresentations.

¶ 316 McLeod and Vaughan made these misrepresentations directly to investors, through the affiliates, and through Manna's website and promotional materials. Fox and Rosiek made these misrepresentations directly to investors they brought in to Manna, and indirectly through the affiliate and consultant training program.

Other false statements

¶ 317 The representation that the Manna investments were "safe and secure" was an untrue statement. They were anything but, as is clear from these findings.

¶ 318 The safety and security of an investment is a critical factor in making an investment decision, and bears directly on the value of the security. We find this statement was a misrepresentation.

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- ¶ 319 McLeod, Vaughan, Fox and Rosiek made this misrepresentation directly to investors. McLeod and Vaughan made it indirectly through Manna's promotional materials.

Reliance on McLeod

- ¶ 320 Vaughan and Rosiek say they relied on McLeod as to the truth of the statements, and did not know that they were untrue. For this defence to succeed, they would have to show that they exercised due diligence in determining whether the statements were true. There is no evidence they did so.
- ¶ 321 In Vaughan's case, his evidence is that he simply took McLeod's word at face value on everything, but the public interest demands that those engaged in trading in securities take reasonable steps to ensure the accuracy of their representations.
- ¶ 322 In Rosiek's case, she knew that investor funds were going, not to foreign currency traders, but to Tropical Poker and to purchase Costa Rica real estate.

Finding

- ¶ 323 All of the misrepresentations were made for the sole purpose of inducing investors to invest in Manna, and therefore were made with the intention of effecting a trade in the Manna securities, and we so find.
- ¶ 324 We therefore find that McLeod, Vaughan, Fox, and Rosiek contravened section 50 by making misrepresentations with the intention of effecting a trade in Manna securities.

D Fraud

- ¶ 325 The notice of hearing alleges that the respondents engaged in transactions, or a series of transactions, that perpetrated a fraud on persons in British Columbia, contrary to sections 57(b) and 57.1(b) of the Act.
- ¶ 326 Sections 57(b) and 57.1(b) say:
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.
- 57.1 A person . . . must not, directly or indirectly, engage in or participate in a transaction or series of transactions relating to a trade in or

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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 anywhere.

¶ 327 The language describing fraud in sections 57(b) and 57.1(b) is identical. Section 57(b) 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.

¶ 328 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).

Prohibited act and deprivation

¶ 329 The evidence provides clear and convincing proof that McLeod, Vaughan, Fox, and Rosiek committed what Théroux describes as a "prohibited act" and that it caused deprivation. All of them made misrepresentations with the intention of effecting a trade in Manna securities. All of them spent investor funds on commissions and overrides to affiliates and consultants and received investor funds for their own use. McLeod and Rosiek directed investor funds to Tropical Poker and Costa Rica real estate deals.

¶ 330 Commission staff could trace only \$3 million of Manna funds in payments to investors. Even if the entire cash portion (\$2.6 million) of the untraced amounts

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went to investors, which is improbable, only \$5.6 million of the \$16 million was returned to investors in the form of interest payments, commissions, or repayments of principal.

¶ 331 No funds were sent to traders to invest in the foreign exchange market, the S&P 500 futures market, or any other type of trading activity. There were no trading profits earned in the scheme – in fact the Manna scheme had no source of income other than deposits from investors. Instead of being invested as the respondents represented to investors, the investors' funds were spent on commissions and overrides to affiliates and consultants, Tropical Poker, Costa Rica real estate, and disbursed to the individual respondents.

¶ 332 Manna was a simple Ponzi scheme, by definition fraudulent, as described in Titan Investments Ltd. Partnership, [2005] A.J. No. 1041 (AB QB) at para 8:

Ponzi schemes are fraudulent investment schemes whereby individuals are enticed by a con-man or fraudster to make investments in an operation promising an unreasonable high rate of return. Once the first few investments are made, subsequent investors are enticed to invest partly through reported gains and partly through high payouts to earlier investors.

¶ 333 Ponzi schemes are a particularly sinister form of fraud because those lucky enough to get in at the beginning do in fact earn the promised returns, and lend the credibility to the scheme that it needs in order to lure investors. This is exactly how Manna operated.

¶ 334 Manna distributed securities to investors in British Columbia and elsewhere.

Subjective knowledge

¶ 335 The evidence provides clear and convincing proof that McLeod, Vaughan, Fox, and Rosiek had subjective knowledge of the deceit, and that it could have as a consequence the deprivation of others.

McLeod

¶ 336 McLeod created the scheme and held ultimate authority over it. Nothing happened in Manna without his knowledge and consent.

¶ 337 McLeod controlled the disbursement of Manna's funds. He knew that the funds were not placed with traders and that Manna had no source of cash other than the funds that came from investors. He knew that there were no trading profits. He knew that Manna's funds were being spent, not as represented to investors, but on Tropical Poker and Costa Rica real estate.

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- ¶ 338 McLeod received investors' funds through direct payments totalling at least \$110,000.

Vaughan

- ¶ 339 Through Manna's promotional materials, and in meetings with investors, individually and in groups, Vaughan made misrepresentations to investors without taking any steps to ensure that the statements he was making were true.
- ¶ 340 Although Vaughan knew he was responsible for Manna's accounting, he failed to demand from McLeod the records necessary to confirm Manna's actual trading profits and returns. Instead, he relied on a few blacked-out documents purporting to be trading reports. In preparing statements for investors, he showed returns using a formula based on the promised return. He knew, in preparing those statements, that he had no factual basis for showing those returns because he did not know whether Manna was actually earning the trading profits necessary to fund the returns. Meanwhile, he continued to bring in new investors.

- ¶ 341 Vaughan received investors' funds through direct payments totalling at least \$40,000.

Fox

- ¶ 342 Fox created the bogus trust structure that was the basis for the Manna Foundation and Legacy versions of the scheme. Fox's note to Vaughan about the proposed establishment of Legacy shows he was attuned to the possibility of fraud allegations.
- ¶ 343 He not only knew of Manna's spending on Tropical Poker and Costa Rica real estate, but actively facilitated it, while telling investors their money would be invested in foreign currency trading.
- ¶ 344 Fox received investors' funds through direct payments totalling at least \$202,000, including \$60,000 in trust fees.

Rosiek

- ¶ 345 Rosiek was second only to McLeod in power and influence in the scheme. Like Fox, Rosiek both knew of Manna's spending on Tropical Poker and Costa Rica real estate, and actively facilitated it, while telling investors their money would be invested in foreign currency trading.
- ¶ 346 Rosiek handled investor funds and directed disbursements of those funds to Tropical Poker and Manna's Costa Rica real estate deals.

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¶ 347 Rosiek knew from McLeod's panicky email in January 2007, if not before, that Manna had no source of income other than investor contributions.

¶ 348 Rosiek received investors' funds through direct payments totalling at least \$513,000, including trust fees of \$111,000.

The allegation against Perkinson

¶ 349 *Anderson* requires evidence of fraud that is clear and convincing proof of the elements of fraud, including the mental element.

¶ 350 The executive director says that Perkinson committed a prohibited act by disbursing investors' funds to pay returns to existing investors, to fund Tropical Poker, to fund Costa Rica real estate projects, to pay debit card providers, and to pay himself as reimbursement for Tropical Poker expenses. The executive director says that Perkinson had subjective knowledge of these acts and that they could result in the deprivation of others.

¶ 351 Opening bank accounts, acting as signing authority on those accounts, and disbursing funds out of the accounts, are not inherently fraudulent. They are not "prohibited acts" unless other factors are present. The executive director has not alleged misrepresentation by Perkinson – the executive director's submission is that in disbursing investor funds as he did, he acted wrongfully, and he knew it.

¶ 352 In Perkinson's case, the fraud allegation hinges entirely on his knowledge: his conduct in disbursing funds would be wrongful only if he knew that it was inconsistent with what investors were then being told, and if he knew that investors could be deprived as a consequence of his conduct.

¶ 353 Although we find Perkinson's evidence in several respects confusing and unconvincing, the onus is on the executive director to provide "clear and convincing proof" that Perkinson had that knowledge. In our opinion the evidence does not do so.

¶ 354 Perkinson understood when he invested in October 2005 that Manna's business was foreign currency trading, but the evidence does not establish that he had any knowledge of what the other respondents were telling investors at the time he was disbursing investor funds. The evidence does not establish that Perkinson was acting as a *de facto* director or officer of Manna, or that he was even privy to Manna's affairs and operations. There is no evidence that Perkinson knew that Manna was not engaged in foreign currency trading, and so had no profits to pay investors the promised returns, or that he knew anything else about Manna's true financial situation. Absent that evidence, we cannot conclude that he knew his conduct was wrongful, or that investors' pecuniary interests were being put at risk.

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Finding

- ¶ 355 We find that McLeod, Vaughan, Fox, and Rosiek committed prohibited acts, had subjective knowledge of their prohibited acts, and that those acts would result, not merely in the investors' pecuniary interests being put at risk, but in their actual deprivation.
- ¶ 356 We find that McLeod, Vaughan, Fox, and Rosiek perpetrated a fraud on persons in British Columbia and elsewhere, and in so doing contravened sections 57(b) and 57.1(b).
- ¶ 357 We do not find that Perkinson contravened sections 57(b) and 57.1(b).

E The non-individual respondents

- ¶ 358 The distributions, misrepresentations and frauds made by McLeod, Vaughan, Fox, and Rosiek were made through Manna Trading, Manna Foundation, Legacy Capital and Legacy Trust. None of these entities is registered or has filed a prospectus under the Act.
- ¶ 359 We find that Manna Trading, Manna Foundation, Legacy Capital and Legacy Trust have contravened sections 34(1), 61(1), 50(1)(d), 57.1(b), and 57.1(b).

F Summary of Findings

- ¶ 360 We find that McLeod, Vaughan, McMordie (known as Fox), Rosiek, Manna Trading, Manna Foundation, Legacy Capital, and Legacy Trust:
1. traded in securities without being registered to do so, contrary to section 34(1) of the Act, and distributed those securities without filing a prospectus, contrary to section 61(1) of the Act;
 2. made misrepresentations, contrary to section 50(1)(d), when they lied to investors about how their money would be invested, the returns offered, and the risk associated with the investment scheme; and
 3. perpetrated a fraud, contrary to sections 57(b) and 57.1(b), when they lied to the investors, inducing them to invest in the Manna securities.
- ¶ 361 We make no findings against Perkinson.
- ¶ 362 This deliberate and well-organized fraud resulted in the loss of at least \$10.4 million, and probably closer to \$13 million, by more than 800 investors in British Columbia and elsewhere.

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V Submissions on sanction

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

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|-----------------|---|
| By September 4 | The executive director delivers submissions to the respondents and to the secretary to the Commission |
| By September 21 | The respondents deliver response submissions to the executive director, to each other, 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 September 28 | The executive director delivers reply submissions (if any) to the respondents and to the secretary to the Commission |

¶ 364 August 4, 2009

For the Commission

Brent W. Aitken
Acting Chair

David J. Smith
Commissioner

Shelley C. Williams
Commissioner