British Columbia Securities Commission

By regular mail

July 30, 2010

Dear Mr. Jennix:

Roy Jennix

This letter notifies you and the British Columbia Securities Commission that the Executive Director of the Commission (the Executive Director) is applying for orders against you under sections 161(6) and 161(1) of the *Securities Act*, RSBC 1996, c. 418. In this application, the Executive Director is seeking the same orders that the Alberta Securities Commission previously made against you but is not seeking any monetary sanction.

In making this application, the Executive Director relies on the following:

- Decision of the Alberta Securities Commission (ASC) dated July 29, 2009 (Decision).

I enclose copies of the Decision and section 161 of the Securities Act.

You are entitled to respond to this application. To do so, you must deliver any response in writing, together with any supporting materials, to the Secretary to the Commission by **Monday, September 6, 2010**.

The contact information for the Secretary to the Commission is:

Ann Gander
Secretary to the Commission
British Columbia Securities Commission
12th Floor, 701 West Georgia Street
Vancouver, BC V7Y 1L2
E-mail: commsec@bcsc.bc.ca
Telephone: 604-899-6534

If you do not respond within the time set out above, the Commission will decide this application and may make orders against you without further notice to you.

BCSC

The Commission will send you a copy of its decision.

Yours truly,

Langley E. Evans
Director, Enforcement Division

BMT/mdc
Encls.

cc: Ann Gander (by email)
Secretary to the Commission

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Jennix, Re, 2009 ABASC 368 **Date: 20090729**

Roy Jennix

Panel:	Glenda A. Campbell, QC Beverley A. Brennan, FCA Karen A. Prentice, QC
Appearing:	Deanna H. Steblyk for Commission Staff
	Frank H. Monaghan for Roy Jennix
Dates of Hearing:	4, 5, 6, 10 and 14 September 2007, 16 December 2008 and 22 and 26 June 2009
Date of Decision:	29 July 2009

I. INTRODUCTION

A. Overview of the Proceeding

[1] This proceeding originated in an amended notice of hearing dated 8 March 2007 (the "Notice of Hearing"), in which staff ("Staff") of the Alberta Securities Commission (the "Commission") alleged that 12 respondents – Carling Development Inc. ("Carling"), Carling Development (B.C.) Inc. ("Carling BC"), Integra Investment Service Ltd. ("Integra"), Rundle Development Cooperative ("Rundle"), Venture West Properties Ltd. ("Venture West"), 965081 Alberta Ltd. ("965081"), Wai-Leung Cheng (aka Danny Cheng) ("Cheng"), Lisa Wong ("Wong"), Roy Jennix ("Jennix"), Maxine Cooke ("Cooke"), John Anderson ("Anderson") and Mel Maschmeyer ("Maschmeyer") – traded and distributed securities of Carling, Carling BC and Rundle in breach of the *Securities Act*, R.S.A. 2000, c. S-4 (the "Act") and in so doing acted contrary to the public interest. An allegation that Jennix made a misleading representation to Staff during the investigation was withdrawn.

[2] Two years earlier Staff obtained an interim order from the Commission that trading cease in securities of Integra and Rundle and that Integra, Rundle, Jennix and Cooke cease trading in securities (with limited exceptions) and be denied the use of all exemptions under Alberta securities laws. The Commission subsequently extended that order, as modified (the "Interim Order"), until the hearing in the matter was concluded and a decision rendered, or until otherwise ordered.

[3] In September 2006 the Court of Queen's Bench of Alberta ("Queen's Bench") granted a receivership order in relation to all current and future undertakings, properties and assets of Integra, Aurora River Towers Inc. ("Aurora"), Carling Springs Village Inc. ("Carling Springs") and Carling BC (the "Receivership Order"). The Receivership Order imposed a stay of proceedings involving Integra, Aurora, Carling Springs and Carling BC, including proceedings involving Jennix or Cooke as a party, except with written consent of the receiver appointed ("Receiver") or with leave of Queen's Bench.

[4] The allegations against Rundle, Venture West, 965081, Anderson and Maschmeyer were addressed in three settlement agreements (*Re Rundle Development Cooperative*, 2007 ABASC 629; *Re Anderson*, 2007 ABASC 634; and *Re Maschmeyer*, 2007 ABASC 650). The allegations against Carling, Cheng and Wong were addressed in a separate hearing before a different panel (*Re Cheng*, 2007 ABASC 834).

[5] The hearing into the allegations against the remaining four respondents – Carling BC, Integra, Jennix and Cooke (the "Respondents") – began, with the Receiver's written consent, on 4 September 2007. Jennix and Cooke participated in the first four days of the hearing without the assistance of counsel.

[6] In the first three days of the hearing the panel heard testimony from eight witnesses – a Staff investigator, two contractors employed by Integra and five Alberta investors – and received documentary evidence. At the beginning of the third day Jennix advised the panel that he, Cooke and Integra were no longer disputing certain of Staff's allegations against them and wished to shorten the hearing, thereby saving time and costs for all parties. That afternoon Staff entered into evidence a statement of admissions (the "Statement of Admissions") signed by Jennix – on his own behalf – and Cooke – on her own behalf and on behalf of Carling BC and Integra, presumably as their sole director – in which the Respondents admitted that they breached the

registration and prospectus requirements of the Act and that their breaches amounted to conduct contrary to the public interest. In result, Staff advised that they would not call four additional investor witnesses and the panel adjourned the hearing to 10 September 2007 to hear any evidence Jennix and Cooke wished to adduce on the issue of sanction.

[7] On 10 September 2007 the panel heard testimony from Jennix and Cooke, received documentary evidence and then adjourned the hearing to 14 September 2007 to hear the parties' oral submissions.

[8] On 14 September 2007 counsel retained by Jennix and Cooke appeared before the panel and requested time to prepare submissions. The panel directed that Staff and the Respondents provide their written submissions by 21 September 2007 and 19 October 2007, respectively, and that Staff provide any written reply by 26 October 2007. The panel also advised that it would hear any oral submissions on 30 October 2007, subsequently rescheduled to 13 December 2007.

[9] By 29 October 2007 the panel was in receipt of Staff's written submissions, written submissions on behalf of Jennix and Cooke and Staff's written reply.

[10] On 6 December 2007 the panel agreed to the parties' request for an adjournment to obtain a ruling from Queen's Bench as to whether the Receiver's written consent had been sufficient or leave of Queen's Bench was required to lift the stay of proceedings imposed by the Receivership Order.

[11] On 8 February 2008 an order of Queen's Bench (the "Queen's Bench Order") confirmed that the Receiver's written consent had been sufficient to lift the stay of proceedings to permit the hearing to proceed or, alternatively, granted the Commission leave *nunc pro tunc* to proceed with and conclude the hearing against the Respondents.

[12] . On 10 September 2008 Staff advised that they recently concluded a settlement with Cooke, then a bankrupt (*Re Cooke*, 2008 ABASC 533). Staff further advised that in March 2008 Jennix had filed an appeal of the Queen's Bench Order but that no stay thereof had been sought or obtained by him. In consequence, Staff submitted that there was no impediment to the panel's continuation of the hearing against Carling BC, Integra and Jennix and, to that end, indicated that they relied on their written submissions. Counsel for Jennix subsequently advised that he wished to make oral submissions in addition to his written submissions.

[13] On 16 December 2008, the date scheduled for oral submissions, counsel for Jennix requested an adjournment of the hearing, advising the panel that, that morning, Jennix was filing an assignment into bankruptcy and the Court of Appeal of Alberta (the "Appeal Court") was hearing an application for a stay of the hearing against Jennix. In the circumstances, the panel granted an adjournment of the hearing insofar as it related to Jennix.

[14] The same day Staff requested that the panel proceed to render its decision with respect to Carling BC and Integra on the basis of Staff's written submissions. The decision concerning Carling BC and Integra was released in February 2009 (*Re Carling Development (B.C.) Inc.*, 2009 ABASC 62).

[15] By order of the Appeal Court entered on 30 March 2009, Jennix's appeal of the Queen's Bench Order was dismissed for failure to post security for costs as ordered.

[16] On 24 April 2009 Staff advised that they had obtained an order of the Registrar in Bankruptcy dated 21 April 2009 granting leave to continue and conclude the hearing against Jennix, a bankrupt (the "Registrar's Order"). The Registrar's Order also stipulated:

> 4. Any decision respecting a monetary penalty imposed by the Commission arising out of the Hearing against Jennix, including any award of costs, may be filed at the Court of Queen's Bench in the ordinary manner, and writs of enforcement may be filed and registered as counsel for the Commission considers appropriate, but otherwise the enforcement of such monetary penalties shall be stayed and subject to the provisions of s. 69.3 of the BIA [*Bankruptcy and Insolvency Act* (Canada)]. For greater certainty, the Commission shall not have any remedy against Jennix or Jennix's Estate, or against any asset vested in the Trustee [of Jennix's Estate], nor shall the Commission commence or continue any proceeding to collect or otherwise enforce the monetary penalties without leave of this Honourable Court or the consent of the Trustee.
>
> 5. Nothing in this Order is intended to be, or shall be construed as, any adjudication or determination as to whether the claim of the Commission against Jennix is subject to s. 178(1) of the BIA or not.

[17] Also on 24 April 2009 Staff submitted that, given the Registrar's Order and the dismissal of Jennix's appeal of the Queen's Bench Order, there was no impediment to the panel's continuation of the hearing against Jennix and, to that end, indicated that they, once again, relied on their written submissions. When counsel for Jennix subsequently advised that he wished to make oral submissions in addition to his written submissions, a hearing was set for 26 June 2009 for that purpose.

[18] On 22 June 2009 the panel heard submissions from the parties and ruled on Jennix's interlocutory application to the panel for: an order requiring Staff to disclose all communications between the Receiver and Staff; an order directing Staff to answer the objected-to questions from the cross-examination on the affidavit of a Staff investigator (the "Staff Affidavit") in a separate Queen's Bench proceeding; and the admission into evidence of the affidavit and supplemental affidavit of Jennix sworn on 7 May 2009 and 10 June 2009, respectively (the "Jennix Affidavit" and the "Jennix Supplemental Affidavit"), the Staff Affidavit and transcripts of the cross-examination on the Staff Affidavit. We declined to make the first two orders because the information sought had no relevance to the issues before us. We also declined to admit into evidence the Staff Affidavit and transcripts of the cross-examination thereon because we were not persuaded of their relevance. However, we admitted into evidence, as relevant to the issues before us, paras. 1, 3 (starting with the words "I swear") and 4 of the Jennix Affidavit and paras. 1 and 6-11 inclusive of the Jennix Supplemental Affidavit, redacting the remaining portions as irrelevant.

[19] On 26 June 2009 the parties made oral submissions.

[20] Our decision and reasons concerning Jennix follow.

B. Decision

[21] For the reasons given below, we find that:

- Jennix engaged in illegal trades and distributions of Carling, Carling BC and Rundle securities, contrary to sections 75(1) and 110 of the Act;

- in so doing, Jennix acted contrary to the public interest; and

- it is in the public interest to order that Jennix:

    - cease trading in or purchasing any securities or exchange contracts, and be denied the use of all exemptions under Alberta securities laws, for 12 years, except for certain trading or purchasing in personal accounts;

    - resign from all positions he holds as a director or officer of any issuer, and not act for 12 years as a director or officer (or both) of any issuer; and

    - pay an administrative penalty of $50 000.

[22] We are also ordering that Jennix pay $40 000 towards the costs of the investigation and hearing.

II. ALLEGED PROCEDURAL DEFECTS

[23] Jennix, through his counsel, alleged three procedural defects that we were asked to consider in making our findings. First, Jennix claimed that he did not receive proper notice of the hearing. Second, Jennix claimed that, without leave of Queen's Bench, the panel was without jurisdiction to proceed with the hearing against him in September 2007. Third, Jennix characterized certain aspects of this proceeding as procedurally unfair.

A. Notice of the Hearing

[24] In furtherance of his claim that he did not have proper notice of the hearing, Jennix stated in the Jennix Affidavit – and made statements therein to the effect – that he did not understand that the hearing that began in September 2007 was a hearing into, nor that the Statement of Admissions concerned, allegations against him personally. Jennix repeated in the Jennix Supplemental Affidavit that the Commission "proposes to take proceedings against [me] on the basis of admissions I made . . . in the hearing taken against Integra Investment Service Ltd. but not me". Staff countered that "the hearing record clearly indicates that Mr. Jennix was aware that the hearing was against him" and further that Jennix's claim that he did not know that the Statement of Admissions applied to him "stretches the bounds of credulity".

[25] We agree with Staff. Nothing that occurred during the first four days of the hearing is supportive of Jennix's claim that he did not receive proper notice of the hearing or did not understand that allegations of securities laws misconduct against him personally were the subject of the hearing that began in September 2007 or the Statement of Admissions provided to the panel during the hearing.

[26] Staff – and the panel – proceeded on the basis that the hearing was, in part, a hearing into allegations against Jennix personally. The chair of the panel began the first day of the hearing by stating: "We are here this morning for a [h]earing into the matter of . . . Roy Jennix . . . ."

Jennix – who attended, and participated throughout, the first four days of the hearing – did not take issue with the adequacy of the notice of the hearing, nor did he assert that the hearing did not involve him personally as a Respondent. Indeed, having regard to the hearing transcript, Jennix's conduct throughout the first four days of the hearing evinced his unequivocal understanding that the hearing was, in part, a hearing into allegations of securities laws misconduct against him personally. For example, at the beginning of the third day of the hearing, Jennix stated: "On behalf of myself, and I'm speaking for Maxine as well, and Integra, we do give full admissions to the panel that . . . we have been offside". The same day he said: ". . . I understand . . . that on Monday, after going through the witnesses . . . would be the appropriate time to go through . . . the extenuating situations that [have] put us here; Integra, Maxine, myself." Further, at the conclusion of his testimony-in-chief on the fourth day of the hearing, Jennix stated: "I ask this panel to take today's information into consideration of your sanctions and of your penalties against Maxine Cooke, Roy Jennix and Integra Investments because there's no argument [or] denial that we're offside."

[27] Moreover, the Statement of Admissions, which addressed allegations of illegal trading and distributing set out in the Notice of Hearing, was titled "Roy Jennix, Maxine Cooke, Integra Investment Service Ltd. [and] Carling Development (B.C.) Inc.", included Jennix within the defined term "Respondents" and was signed by Jennix in his personal capacity and by Cooke in her personal capacity and on behalf of Carling BC and Integra, presumably in her capacity as their sole director.

[28] In short, Jennix's statements that – and to the effect that – he did not understand that the hearing and the Statement of Admissions implicated him personally are not credible, and we are in no doubt that Jennix had proper notice of the hearing. More particularly, we find that Jennix knew that the hearing that began in September 2007 was a hearing into allegations set out in the Notice of Hearing against him personally as well as against Carling BC, Integra and Cooke and that Jennix also knew that the Statement of Admissions addressed allegations of securities laws misconduct against him personally as well as against Carling BC, Integra and Cooke.

B. Jurisdiction

[29] As to the panel's jurisdiction to proceed with the hearing against Jennix in September 2007, Jennix asserted in the Jennix Affidavit his understanding that, as a result of the Receivership Order, all proceedings against him were stayed.

[30] We acknowledge that the Receivership Order in place imposed a stay of proceedings involving Integra, Aurora, Carling Springs and Carling BC, including proceedings involving Jennix or Cooke as a party, except with the Receiver's written consent or with leave of Queen's Bench. However, it was with the Receiver's written consent – tendered to the panel at the outset of the hearing – that the hearing into the allegations against the Respondents began in September 2007. According to the hearing transcript, Jennix raised no objection to that written consent, a copy of which was provided to him.

[31] Further, in December 2007 the panel agreed to the parties' request for an adjournment to obtain a ruling from Queen's Bench as to whether leave was required to lift the stay of proceedings imposed by the Receivership Order. The resulting Queen's Bench Order confirmed that the Receiver's written consent had been sufficient to lift the stay of proceedings to permit the hearing to proceed or, alternatively, granted the Commission leave *nunc pro tunc* to proceed with

and conclude the hearing against the Respondents. Finally, Jennix's appeal of the Queen's Bench Order was dismissed by Order of the Appeal Court entered on 30 March 2009.

[32] We therefore find that the panel had the jurisdiction to proceed with the hearing against Jennix in September 2007.

C. Procedural Fairness

[33] Jennix also characterized certain aspects of this proceeding as procedurally unfair. His written submissions, while not suggesting any "positive misconduct" by Staff, referred to "a disquieting feeling that systemic considerations such as the lack of separation between the prosecuting lawyer and investigator [and] prosecutorial exuberance born of incomplete and poor investigative analysis by individuals not suited to the task, time and commitment have seriously flawed the terms upon which evidence was presented to the panel". Statements in the Jennix Affidavit focused on alleged unfairness in relation to the Statement of Admissions, including the circumstances of its execution by self-represented Jennix, its content and its impact on any sanctions to be sought by Staff or imposed by the panel. The Jennix Supplemental Affidavit repeated that Jennix made admissions when self-represented and referenced Jennix's belief that his treatment by Staff "was condescending, unfair and premised a strong adversarial approach which seemed to be advanced on the basis that I was guilty of something beyond regulatory breaches".

[34] Any flaws in a Staff investigation could generally be expected to result in evidence insufficient to sustain any allegations levelled. That said, there was no indication before us of bad faith conduct, want of fairness or "systemic" failings on the part of Staff in undertaking or pursuing this proceeding, whether in the investigation or during the hearing. Indeed, during the hearing, as reflected in the hearing transcript, Staff – as well as the panel – endeavoured to assist self-represented Jennix and Cooke to understand the hearing process and to participate effectively in the hearing, and Jennix and Cooke did actively participate. They presented their answer and defence to the panel by cross-examining witnesses called by Staff, testifying before the panel and tendering documentary evidence.

[35] Further, there was no indication before us of any unfairness in relation to the Statement of Admissions. At the beginning of the third day of the hearing Staff advised the panel that they had had some discussions with Jennix and Cooke as to what they might do to shorten the hearing as they were concerned about the costs being incurred:

> MR. EPP: There has been a development this morning that I would like to advise the panel of, given that Ms. Cooke and Mr. Jennix are unrepresented. . . . I have advised them of several things. One, I'm not their lawyer and I can't give them any legal advice. I've advised them that they are free at any time to stand up and make any admissions that they see fit to the panel in the interests of cost saving or for any other reason; and thirdly, I've advised them that if they have a story to tell and evidence that they feel you should hear, . . . they are entitled to take the stand, give that evidence and call any witnesses they want at the conclusion of [S]taff's case.
>
> And I understand that Ms. Cooke and Mr. Jennix may want to say something to you this morning, bearing in mind the advice that I have given them.

[36] After Jennix made oral admissions on behalf of himself, Cooke and Integra, it was at the panel's suggestion that any admissions by self-represented Jennix and Cooke "be reduced to

writing so that there is an understanding of what exactly that means and what the impact is for you as well". That afternoon, after the lunch break, Staff, with the express agreement of Jennix and Cooke, entered into evidence the Statement of Admissions, an agreement that they had reached "with the assistance of Mr. Jennix and Ms. Cooke". The following exchange then occurred:

> MR. EPP: ... But I do want to touch on the subject of the effect of this [S]tatement of [A]dmissions so that Mr. Jennix and Ms. Cooke are clear on where we stand.
>
> I have advised them that as a result of these admissions [S]taff will not be calling any evidence on Friday or Monday as it relates to the merits of the allegations. However, I have advised them that in terms of sanction, that matter still needs to be addressed. As I understand it, on Monday Mr. Jennix and Ms. Cooke may well lead some evidence relating solely to the issue of what, if any, sanction ought to be imposed. And I have advised them they are free to testify themselves if they so choose, to call witnesses if they so choose, and, of course, that I can't give them any advice in that regard.
>
> I also want to make sure that Mr. Jennix and Ms. Cooke understand ... – and I believe they do, but I'd like them to acknowledge it here this afternoon – that when we go forward on Monday any evidence that they lead goes towards the sanction portion of the hearing. They have ... admitted through their [S]tatement of [A]dmissions that the Act has been breached and they've done so of their own free will, without any duress. They are free to lead evidence on the issue of sanction. We may have some evidence to call in rebuttal, but we won't be addressing any issues of liability on Monday. I believe they understand that, and I would like them to acknowledge that here this afternoon.
>
> THE CHAIR: Do you understand that?
>
> MR. JENNIX: I so agree and understand.
>
> MS. COOKE: Yes, I agree and understand.

[37] Also, in the Statement of Admissions, at para. 17, the Respondents "acknowledge that they have voluntarily made the admissions", "state that they could not afford to retain legal counsel" and state that "[t]hese admissions are made for the purposes of shortening this proceeding".

[38] Therefore, as made clear by the hearing transcript and the Statement of Admissions, Jennix made oral admissions as well as executed the Statement of Admissions voluntarily for the purposes of shortening the hearing and saving costs, knowing that he did so without availing himself of the assistance of counsel and that the issue of sanction still had to be addressed.

[39] In result, we give no credence to Jennix's characterization of certain aspects of this proceeding as procedurally unfair. Jennix's allegations of procedural unfairness relating to various aspects or phases of this proceeding are, in our view, without merit.

III. BACKGROUND

[40] We summarize below the background relevant to our decision, as gleaned from the testimony heard and the documentary evidence, including the Statement of Admissions, received by us.

A. Relevant Respondents

[41] Jennix and Cooke, residents of Alberta, were common law spouses. Neither has ever been registered in any capacity with the Executive Director of the Commission, but during the relevant period Cooke was employed by Westcor Mortgage Inc. ("Westcor") and licensed by the Real Estate Council of Alberta as a mortgage agent entitled to sell mortgages only through Westcor, a licensed mortgage brokerage.

[42] Integra, an Alberta corporation, was at all material times in the business of marketing investment opportunities to Alberta residents. According to the Statement of Admissions, Cooke was at all material times the sole shareholder and director of Integra, but Jennix and Cooke were Integra's controlling minds. Indeed, Jennix testified that "... I am the controlling mind of Integra Investment Service Ltd., and Maxine, she did play an important role and position [as] the president of Integra Investment Service Ltd." Consistent with that, Cooke testified: "My role was to sign [contracts and cheques].... All daily activities were handled by Roy. Integra was Roy's company." Cooke was, she explained, Integra's president and sole shareholder due to Jennix's "difficulty with Revenue Canada" and "he had just finished a bankruptcy or it was almost at the end of a bankruptcy". Integra has never been a reporting issuer in Alberta, been registered under the Act to trade in securities or filed a prospectus with the Commission.

[43] In November 2002 Rundle was incorporated under Alberta laws as a cooperative by Integra, Venture West and 965801 to develop real estate projects. According to corporate documentation, in October 2004, Jennix was an officer, and Cooke was a director, of Rundle. Rundle has never been a reporting issuer in Alberta, been registered under the Act to trade in securities or filed a prospectus with the Commission.

[44] Cheng and Wong carried on business as real estate developers through Carling and Carling BC, Alberta corporations. Cheng was the sole director of Carling BC until November 2003, when Cooke became its sole director and Integra its sole shareholder. Cooke admitted to being the sole officer of Carling BC in September 2007. Neither Carling nor Carling BC has ever been a reporting issuer in Alberta, been registered under the Act to trade in securities or filed a prospectus with the Commission.

[45] Anderson, a lawyer licensed to practise law in Alberta, was apparently a director and officer of 965081 at all material times and a director of Rundle from its incorporation in 2002 until May 2003.

B. Investments

[46] We reiterate, as equally applicable here, our findings in *Carling Development (B.C.)* at paras. 24-25, 27-28, 30-31:

> Carling and Carling BC retained Integra as their exclusive marketing agent to solicit Alberta residents to invest funds for the development of three real estate projects by Carling and Carling BC (the "Carling Projects") – Carling Springs Village in Airdrie, Alberta; Aurora River Towers in Fort McMurray, Alberta; and Royal Villa Estates in Surrey, British Columbia.
>
> Between January 2001 and "at least" December 2003, in response to solicitations by or on behalf of Integra, approximately 150 Alberta residents entered into agreements with Carling or Carling BC to provide funds to be used for the development of the Carling Projects, including the purchase

of certain lands. According to the documentary evidence before us, the salient terms of these investments in the Carling Projects, in general, were as follows:

Carling Springs Village – Issuer, Carling

- term:
  - 24 months; or
  - if mortgage, minimum one year and maximum two years;
- return:
  - initial investment plus additional 50% on or before end of term; or
  - if mortgage, interest of 12% per annum, paid monthly; and
- security:
  - "Personally and Corporately Guaranteed" investment opportunity; or
  - if mortgage, mortgage on project lands.

Aurora River Towers – Issuer, Carling

- term:
  - approximately 16 to 20 months to date of maturity; or
  - if mortgage, minimum one year and maximum three years;
- return:
  - initial investment plus additional 25% on first of project completion or date of maturity, and interest of 8% per annum on any balance due and owing after date of maturity; or
  - if mortgage, interest of 11% per annum, paid monthly; and
- security:
  - corporate guarantee issued by Carling and personal guarantee issued by Carling's president; or
  - if mortgage, mortgage on project lands.

Royal Villa Estates – Issuer, Carling BC

- term:
  - approximately 19 to 27 months to date of maturity;
- return:
  - initial investment plus additional 50% on first of project completion or date of maturity, and interest of 8% per annum on any balance due and owing after date of maturity; and
- security:
  - corporate guarantee issued by Carling BC and personal guarantee issued by Carling BC's president.

. . .

As a result of the solicitations by or on behalf of Integra, Alberta residents invested approximately $5.4 million in Carling and Carling BC for the development of the Carling Projects. Ultimately, none of the Carling Projects was completed, and Carling BC, Integra, Aurora and Carling Springs were placed into receivership.

Between November 2002 and sometime in 2005, in response to solicitations by or on behalf of Integra, Alberta residents purchased "membership shares" and investments in syndicated mortgages being offered by Rundle; apparently approximately 140 Alberta residents invested $9 million in Rundle. Integra admitted to soliciting investments in Rundle totalling approximately $10.6 million.

. . .

In October 2006 Queen's Bench appointed an inspector under the *Cooperatives Act* (Alberta) to investigate Rundle's assets and liabilities and to review the sale process of its assets. In May 2007

Queen's Bench issued a "Liquidation and Claims Process Order", which ordered the liquidation and dissolution of Rundle and set out a process whereby Rundle's creditors, including its Alberta investors, would receive a portion of Rundle's assets. It seems that, through this process, the Alberta investors in Rundle would likely receive some return of their investments.

For selling investments in the Carling Projects and Rundle to Alberta residents, approximately $1.2 million in commissions were received, according to the Statement of Admissions, by Integra, Jennix and Cooke.

[47] The solicitations by or on behalf of Integra that resulted in Alberta residents investing in the Carling Projects and Rundle included solicitations by Jennix directly. Indeed, the testimony of all five Alberta investor witnesses satisfies us that Jennix sold, or was instrumental in selling, to them investments in at least one or the other of the Carling Projects and Rundle.

[48] Integra, Jennix and Cooke purported to rely:

- on the then-existing private issuer exemption in selling the non-mortgage investments in the Carling Projects;
- on a then-existing cooperatives exemption in selling the investments in Rundle by way of "membership shares"; and
- on the then-existing mortgage exemption – which contemplated mortgages being "offered for sale by a person who holds the appropriate authorization issued under the *Real Estate Act* or is exempted from holding such an authorization" – in selling the mortgage investments in the Carling Projects and Rundle.

[49] There was no evidence that any other exemptions from the registration and prospectus requirements were relied on in relation to the investments made in the Carling Projects and Rundle.

C. Legal Advice

[50] Neither Anderson nor MM, also a lawyer licensed to practise law in Alberta, was called as a witness in the hearing, despite evidence from Jennix – in his testimony, the Jennix Affidavit and the Jennix Supplemental Affidavit, combined – that he, and Cooke and Integra, relied on legal advice from Anderson or MM or both that Jennix's, Cooke's and Integra's selling of investments in the Carling Projects and Rundle was in compliance with Alberta securities laws.

[51] Staff investigator BH testified about interviewing Anderson concerning his involvement with Jennix, Cooke and Integra and their selling of investments in the Carling Projects and Rundle. Anderson told BH that he had known Cooke since high school, had met Jennix in the early 1990s and had socialized with them after that. BH understood from his investigation that Anderson originally acted as counsel for Integra "at the very outset", assisting in its formation. Anderson told BH that he acted as counsel for both Carling and Integra in relation to an earlier Carling project at Applewood Town Gardens but in relation to the Carling Projects, the subject matter of this hearing, he acted solely for Carling. However, Anderson said that he advised Jennix and Cooke that the non-mortgage investments in the Carling Projects, which were referred to in evidence as the "private investments", were in compliance with Alberta securities laws; in this regard, Anderson advised them that they could not advertise these non-mortgage

investments. Anderson also said that he advised Jennix and Cooke that they could not sell the mortgage investments in the Carling Projects but that Jennix and Cooke told him that they had looked into the matter and they were satisfied they could sell these mortgage investments.

[52] BH indicated that in his interviews of Jennix and Cooke (held, according to other evidence, on 18 October 2005 and 30 November 2005, respectively) both said that they had spoken with Anderson about the mortgage investments in the Carling Projects and that "they could do this". Cooke told BH, as did Jennix, that Anderson advised Cooke that there would be no repercussions for offering these mortgage investments on her mortgage agent licence. BH acknowledged the conflict between Anderson's evidence and that of Cooke and Jennix on this point.

[53] BH understood that Anderson was counsel for Rundle for several months from its incorporation in 2002. BH also understood from Anderson that Anderson gave advice to Rundle that it could sell its shares based on a then-existing cooperatives exemption. As we note below, this advice was incorrect and therefore the sales of Rundle's membership shares contravened the registration and prospectus requirements of the Act. As to any advice given by Anderson concerning the mortgage investments in Rundle, the following question was posed by Staff counsel and answered by BH:

> Q Now, just to clarify, and as I understand your earlier evidence, no advice was given by Mr. Anderson with respect to the mortgage fund-raising by Rundle; is that correct?
>
> A That was the information that Mr. Anderson gave during his interview, yes, conflicted with what Mr. Jennix and Ms. Cooke had said earlier in their interviews.

[54] According to BH, Anderson indicated that he mainly did litigation work, and Cooke thought that Anderson practised in several areas of law, including litigation, but she was uncertain about his securities law expertise. Indeed, it did not appear to be in dispute that Anderson was not a securities lawyer. BH understood that any advice given by Anderson to Jennix and Cooke had been verbal, and Cooke acknowledged in her testimony that she received no advice from Anderson in writing.

[55] Concerning the mortgage investments in, we surmise, the Carling Projects and Rundle, Cooke testified that she relied on the advice of Anderson, who had been her friend since 1987, that ". . . I was exempt under section 87(e) of the Real Estate Act" (a reference, we believe, to section 87(e) of the then-existing securities statute). She understood that to mean that "[a]s long as I had my licence for agent that the corporation [Integra] was under the exemption" and "we were exempt". In response to questioning by the chair of the panel as to advice Cooke received when Integra first started raising money for Carling, Cooke testified:

> Q And what did he [Anderson] tell you?
>
> A He said that we were exempt under section 87(e) of the Real Estate Act. He had made all the paperwork and the contracts, as far as I know.
>
> Q And did he take a look at what your licence was?
>
> A Yes. And I had spoken to him. I told John, I said, I don't want to do anything that's going to jeopardise my licence whatsoever. He said there was nothing to worry about.

[56] Cooke did not recall receiving any other advice concerning the non-mortgage investments in the Carling Projects, but she confirmed that Anderson had given advice about the non-mortgage investments in Rundle and she believed that he had "put together the paperwork for that".

[57] According to Jennix's evidence, he believed, on the advice of Anderson, that he, Cooke and Integra were in compliance with Alberta securities laws in relation to the non-mortgage investments as well as the mortgage investments in the Carling Projects and Rundle. As to the non-mortgage investments in the Carling Projects, Jennix said that Anderson told him that "a private offering could not exceed 50 investors". Jennix did not recall all of his discussions with Anderson concerning the private issuer exemption requirements, but Jennix testified that Anderson did not say at any time that "it was offside". According to Jennix, he was never told by Cheng that, with this exemption, there could be no selling of securities to the public. As to the non-mortgage investments in Rundle, Jennix testified:

> At no time did I feel we were offside under the act, the Cooperative Act [a reference, we believe, to the then-existing securities statute], because John Anderson expressed very clearly . . . to the board that he had researched the act and the incorporation and the . . . guidelines under the act [and] that the RDC was actually being put together under those guidelines . . . in accordance [with] the act.

[58] As to the mortgage investments, Jennix recalled a meeting involving him, Cooke and Anderson in which Cooke asked Anderson if the first of the mortgage investments – in one of the Carling Projects – would affect her mortgage agent licence because she did not want to do anything to jeopardize her licence and Anderson's response that they would not. We understand Jennix's evidence to be that he, and Cooke and Integra, considered this advice to be applicable to the mortgage investments in the three Carling Projects and Rundle. Jennix also testified:

> Q You understand that Mr. Anderson's position is that . . . he gave you no advice with respect to whether you could sell mortgages, and that you advised him that you looked into it and you could go on and do it. That's his position as you understand it, whether you agree with it or not?
>
> A . . . I'll boldly say that's a lie.
>
> Q But you understand that that's his position?
>
> A Yeah. . . .
>
> . . .
>
> Q Now, I take it you won't be calling Mr. Anderson to give testimony here today or tomorrow, because you know that what he's going to say is going to conflict directly with what you have told the panel. Isn't that the case?
>
> A Of course he would. That's protecting his interest, of course.

[59] Jennix stated that Anderson had originally been counsel for Integra, and indeed for Jennix's family, but Jennix acknowledged that Anderson subsequently became counsel for Carling. Jennix was unclear as to when Anderson ceased acting for Integra and began acting for

Carling, but Jennix acknowledged that it would have occurred prior to August 2002. According to Jennix, Anderson was acting on Integra's, or Jennix's, behalf when Anderson gave his advice as to the private issuer exemption, but Anderson was counsel for Carling when Anderson gave his advice as to the first of the mortgage investments.

[60] RW – a contractor employed by Integra – testified that MM, who was not a securities lawyer, began acting as counsel for Integra in January or February 2003. It was Jennix's testimony that MM began acting as such in January or February 2004, but there is an October 2003 letter exhibited to the Jennix Supplemental Affidavit in which MM states he has been retained by Integra. When asked if MM reviewed, or continued on with, what was in place at Integra, Cooke testified that MM "said that he had reviewed it and that he had fine-tuned any areas that needed fine-tuning". When further asked if MM had looked at her mortgage agent licence, Cooke responded that "[m]y licence was hanging up in the office so . . .". However, she also said that there was, when MM was hired, no more money being raised for Carling and MM did not give her any legal advice on raising money. Jennix testified that he asked MM to review all of Integra's documents and that MM "did tweak various documents of the mortgage". JW – another contractor employed by Integra – testified that he was told by MM that "things were being done not right, not legal". These things, he elaborated, included using funds from one Rundle property to address another property's shortfall and adding on commissions to funds being raised for a mortgage.

[61] Having considered all of the evidence on this issue, we are satisfied that Anderson gave legal advice to Jennix that he, Cooke and Integra would be in compliance with Alberta securities laws in selling non-mortgage investments in the Carling Projects and Rundle if done in accordance with the then-existing private issuer exemption and a then-existing cooperatives exemption, respectively. We are also satisfied that Jennix was entitled to rely on this advice in selling these investments. We need not decide whether, when giving this legal advice, Anderson was acting as counsel for Jennix or Integra as opposed to the issuer in question because Jennix would have been entitled to rely on this advice regardless, as he was selling securities of the issuer in question. As the Commission stated in *Re KCP Innovative Services Inc.*, 2007 ABASC 584 at para. 108:

> When an issuer chooses to depend on agents – whether volunteers or otherwise – to trade and distribute its securities in Alberta, as KCP did here, it is obliged to take reasonable care and be diligent in instructing and supervising those agents with a view to ensuring their adherence to Alberta securities laws. In our view, in such circumstances, it is imperative that the issuer impress on its agents the necessity of strict compliance with any exemption or exemptions relied on.

[62] Further, we are satisfied that Jennix relied on this advice as it related to the non-mortgage investments in Rundle and that this reliance was reasonable. On the evidence before us, Jennix had no reason to question or be concerned about this advice. In contrast, the evidence showed that the private issuer exemption 50-investor limit, about which Jennix was apprised by Anderson, was exceeded in relation to the non-mortgage investments in the Carling Projects. We are compelled, in the circumstances, to conclude that Jennix either wilfully disregarded this limit or recklessly failed to ensure that he understood and complied with it in relation to these investments. In short, Jennix did not follow Anderson's legal advice as it related to these investments.

[63] Within the conflicting evidence concerning the mortgage investments, we discern some common, essentially uncontroversial, ground: as to this, we are satisfied that Anderson and Jennix and Cooke discussed Jennix's, Cooke's and Integra's selling of mortgage investments, whether in the Carling Projects or Rundle, and that it was through or as a result of this discussion that Jennix and Cooke learned of the then-existing mortgage exemption and its requirement for appropriate authorization. However, on the evidence before us, we are not satisfied, and cannot find, that Anderson gave legal advice to Jennix and Cooke that Jennix's, Cooke's and Integra's selling of mortgage investments in the Carling Projects and Rundle would be in compliance with this exemption. In our view, the claim that Jennix, Integra and the consultants retained by Integra were authorized to sell mortgage investments in the Carling Projects and Rundle under Cooke's mortgage agent licence – that restricted Cooke to selling mortgages through Westcor – is simply unbelievable. It would have been obvious from Cooke's licence on its face that it authorized only Cooke to sell mortgages and then only mortgages through Westcor. Rather, we believe that Jennix and Cooke were left to their own devices to determine whether they and Integra were appropriately authorized to sell these mortgage investments in compliance with this exemption. The evidence is clear that they were not so authorized. In the circumstances, we find that Jennix, and Cooke and Integra, either wilfully disregarded the appropriate authorization requirement or recklessly failed to ensure that they understood and complied with it.

[64] Finally, the evidence before us does not suffice to establish that MM gave legal advice to Jennix, Cooke or Integra that Jennix's, Cooke's and Integra's selling of investments in the Carling Projects and Rundle was in compliance with Alberta securities laws.

IV. FINDINGS ON THE MERITS OF STAFF'S ALLEGATIONS AGAINST JENNIX

A. Illegal Trades and Distributions

[65] Having regard to the evidence, including Jennix's admissions in the Statement of Admissions, we find that the investments he sold, or was instrumental in selling, to Alberta residents in the Carling Projects and Rundle were "securities" as defined under the Act and that he "traded" these Carling, Carling BC and Rundle securities without registration as required under section 75(1) of the Act. On the evidence, including Jennix's admissions, we further find that, because these securities had not been previously issued, Jennix also "distributed" them without a receipted prospectus as required under section 110.

[66] We also find that some of these trades and distributions were made without an available exemption from the registration and prospectus requirements. First, in selling the non-mortgage investments in the Carling Projects, Integra, Jennix and Cooke purported to rely on the then-existing private issuer exemption. However, the evidence showed that the requisite 50-investor limit was exceeded in relation to these investments, rendering this exemption unavailable for some of them. On the evidence, there may also have been some non-compliant advertising of these investments to the public.

[67] Second, Integra, Jennix and Cooke purported to rely on a then-existing cooperatives exemption in selling the investments in Rundle by way of "membership shares", but this exemption was not available for these investments because the regulation associated with it was not in force during the relevant period.

[68] Third, in selling the mortgage investments in the Carling Projects and Rundle, Integra, Jennix and Cooke purported to rely on the then-existing mortgage exemption, which

contemplated mortgages being "offered for sale by a person who holds the appropriate authorization issued under the *Real Estate Act* or is exempted from holding such an authorization". The evidence established that, of Integra, Jennix and Cooke, only Cooke was authorized to sell mortgages and then only as a mortgage agent through Westcor as a mortgage brokerage. Therefore, this exemption, too, was unavailable to Integra, Jennix and Cooke in relation to these investments.

[69] Finally, there was no evidence that any other exemptions from the registration and prospectus requirements were relied on or available in relation to the investments in the Carling Projects and Rundle. In this regard, the combined testimony of contractor JW and Alberta investors EF, GB, HR and PH satisfies us that no one made efforts to ensure that investors in the Carling Projects and Rundle met accredited investor qualifications or any other exemption requirements.

[70] We therefore find, consistent with Jennix's admissions, that Jennix engaged in illegal trades and distributions of Carling, Carling BC and Rundle securities.

[71] Similarly, having regard to the evidence, we find that the investments sold to Alberta residents by or on behalf of Integra in the Carling Projects and Rundle were "securities" as defined under the Act and that it "traded" these Carling, Carling BC and Rundle securities without registration as required under section 75(1) of the Act. On the evidence, we further find that, because these securities had not been previously issued, Integra also "distributed" them without a receipted prospectus as required under section 110. For the reasons given above, we also find that some of these trades and distributions were made without an available exemption from the registration and prospectus requirements. We therefore find that Integra engaged in illegal trades and distributions of Carling, Carling BC and Rundle securities. Jennix, as a – if not the dominant – controlling mind of Integra, is also responsible for these illegal trades and distributions by Integra.

[72] These findings on the merits of the allegations against Jennix are not abrogated by any receipt of and reliance on legal advice, however reasonable. Such receipt and reliance will, however, be considered in determining what, if any, sanctions should be imposed in the public interest.

B. Conduct Contrary to the Public Interest

[73] As a result of Jennix's failure to comply with the registration and prospectus requirements of the Act and to appropriately use the exemptions under Alberta securities laws – and Integra's similar failure, for which Jennix bears responsibility – Alberta residents invested significant funds in Carling, Carling BC and Rundle – as much as $16 million – without the benefit of two core protections mandated by Alberta securities laws: the advice of a registrant; and the information provided by a prospectus. Further, the evidence is clear that Jennix received some portion of approximately $1.2 million in commissions for these illegal trades and distributions. Illegal trades and distributions impair investor confidence in the fairness and integrity of the Alberta capital market and jeopardize other market participants' opportunities to legitimately raise capital in the exempt market and, indeed, the continued existence of the exemptions regime. We therefore find, consistent with Jennix's admissions, that his conduct in this case was also contrary to the public interest.

V. SANCTIONS

A. Parties' Submissions

1. Staff's Submissions

[74] Staff contended that it would be in the public interest to impose on Jennix a cease-trade order, a denial of exemptions and a director-and-officer ban, all for 15 years, and an administrative penalty of $100 000.

[75] In so contending, Staff addressed factors identified in *Re Lamoureux*, [2002] A.S.C.D. 125 at para. 11 (affirmed on other grounds 2002 ABCA 253). Staff characterized the illegal trades and distributions here as significant and inherently serious and submitted that Jennix did not truly recognize the seriousness of, or fully accept responsibility for, his misconduct. Staff argued that Jennix had significant prior experience in the capital market through his selling of mortgage investments with BD Corporation ("BD Corp.") and could not claim that his misconduct was the result of total inexperience with, or ignorance of, Alberta securities laws. Staff also argued that the illegal trades and distributions here caused financial harm to the Alberta investors in the Carling Projects and Rundle, or at least put them and the Alberta capital market at risk of financial or other harm, while the commissions earned – some portion of approximately $1.2 million – significantly benefitted Jennix. Staff submitted that significant sanctions were required to deter the same or similar misconduct by Jennix or like-minded capital market participants, and they suggested we could take guidance from *Re 526053 B.C. Ltd.*, 2006 ABASC 1795, as a previous sanctioning decision involving similar facts. Finally, Staff acknowledged, as mitigating factors, that the existence of the cooperatives exemption purportedly relied on and the non-existence of the associated regulation could be confusing and that Jennix has not been previously sanctioned by the Commission. However, Staff submitted that the mitigating effect of Jennix's, and Cooke's and Integra's, receipt of legal advice from Anderson is "significantly muted". To that end, they argued that it was not reasonable for Jennix, Cooke and Integra to have relied on any advice that Anderson may have given because at all material times Anderson was acting for Carling and his securities law expertise was unknown to them.

2. Jennix's Submissions

[76] Jennix proposed that the public interest would be satisfied by imposing on him a cease-trade order, a denial of exemptions and a director-and-officer ban, all for 10 years, and an administrative penalty of $20 000. He also proposed two carve-outs: that he be permitted to trade or purchase securities in a personal account for his benefit or a registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) ("RRSP") for the benefit of himself or himself and any of his children; and that he be permitted to become a director of Integra for the sole purpose of pursuing litigation on its behalf when he considers it appropriate to do so but the Receiver does not.

[77] In so proposing, Jennix, too, addressed *Lamoureux* factors. He submitted that the sanctions sought by Staff overlook his cooperation with the investigation, are inconsistent with that imposed or agreed to in previous decisions and settlements and would in the circumstances be punitive. Jennix contended that he was inexperienced in the capital market but that, from his receipt of the Interim Order, he recognized the seriousness of his misconduct. He also apologized and expressed regret for failing to comply with Alberta securities laws "for investment [he] truly believed in". Jennix further contended that he has accepted full responsibility for his misconduct, having expended considerable effort, to his detriment, to

protect the Alberta investors in the Carling Projects and Rundle. In this regard, Jennix asserted that the only investors who may be left with less than full recovery are those who purchased non-mortgage investments in the Carling Projects, who "likely will have actions against Carling and its solicitors". He also asserted that commissions received have been spent, and his home, his relationship with Cooke and his livelihood have been lost, in his, Cooke's and Integra's efforts to assist investors. He further asserted that he would continue to assist the Receiver in its pursuit of litigation for the purpose of recovering investors' funds. Jennix argued that there is no evidence that he "will continue to flout" Alberta securities laws, and he posited that, were the Commission to better educate market participants, this could better achieve general deterrence than sanctions. Jennix also advanced, as mitigating factors, that he has not been previously sanctioned by the Commission and that he, and Cooke and Integra, reasonably relied on legal advice from Anderson or MM or both that Jennix's, Cooke's and Integra's selling of investments in the Carling Projects and Rundle was in compliance with Alberta securities laws.

3. Staff's Reply

[78] In reply, Staff asserted that there was no evidence, apart from Jennix's bald assertions, that he has taken steps to protect the interests of Alberta investors in the Carling Projects and Rundle.

B. Sanctioning Principles and Factors

[79] The Commission is responsible for the administration of Alberta securities laws, including jurisdiction in the public interest over the trading and distributing of securities in Alberta. A key component of the Commission's public interest jurisdiction is the protection of investors and the Alberta capital market from harmful misconduct by those who enjoy the privilege of access to our capital market. In exercising our public interest authority to order sanctions under sections 198 and 199 of the Act, we act prospectively to protect against and prevent future harm in our capital market; we do not punish or remedy capital market misconduct (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). The need for specific and general deterrence is an important consideration in making protective and preventive orders (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62).

[80] A number of factors may be relevant to determining whether, or what, sanctions are in the public interest in the circumstances of a particular case (*Re Ironside*, 2007 ABASC 824 at paras. 62-64). We are assisted in our analysis by a consideration of the *Lamoureux* factors, as refined by the Commission in *Re Workum and Hennig*, 2008 ABASC 719 at para. 43:

- the seriousness of the findings against the respondent and the respondent's recognition of that seriousness;
- characteristics of the respondent, including capital market experience and activity and any prior sanctions;
- any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
- the risk to investors and the capital market if the respondent were to continue to operate unimpeded in the capital market or if others were to emulate the respondent's conduct;
- decisions or outcomes in other matters; and
- any mitigating considerations.

C. Sanctioning Considerations

[81] In applying the sanctioning principles and factors to the circumstances of Jennix's misconduct, we are of the view that significant sanctions against Jennix are in the public interest for the following reasons.

Seriousness of Misconduct and Recognition of Seriousness

[82] Jennix failed to comply with the registration and prospectus requirements of the Act and to appropriately use the exemptions under Alberta securities laws. Jennix, as a controlling mind, is also responsible for Integra's similar failure. These failures resulted in Alberta residents investing significant funds in Carling, Carling BC and Rundle without the benefit of the advice of a registrant and the information provided by a prospectus as mandated by the Act. Any failure to comply with these two most fundamental requirements of the Act is serious misconduct, calling for significant sanction.

[83] In light of Jennix's unwarranted attempt to deflect responsibility to Anderson for Jennix's and Integra's illegal selling of the mortgage investments in the Carling Projects and Rundle, we cannot find that Jennix truly recognizes the seriousness of, or fully accepts responsibility for, his misconduct, despite his submissions to the contrary. This incomplete recognition and acceptance by Jennix argues for some moderation in sanction but not to the extent that full recognition and acceptance would.

Capital Market Experience and Activity

[84] We agree with Staff that Jennix had significant prior experience in the capital market through his selling of mortgage investments with BD Corp., about which he testified before us. On this basis alone, Jennix could not claim to be unaware of the existence of regulatory requirements, such as securities laws, nor the necessity for strict compliance therewith. Indeed, Jennix possessed knowledge of certain of the registration and prospectus exemptions provided under Alberta securities laws, yet in selling certain of the investments in the Carling Projects and Rundle he either wilfully disregarded the requirements of those exemptions or recklessly failed to ensure that he understood and complied with them.

[85] These considerations compel us to conclude that, unless we severely curtail his future capital market access through significant sanction, Jennix would pose a serious, continuing threat to the financial well-being of Alberta investors and the integrity of the Alberta capital market.

Harm to Investors or the Capital Market and Benefits to Jennix

[86] As a result of Jennix's and Integra's illegal trades and distributions, Alberta residents invested significant funds – as much as $16 million – in Carling, Carling BC and Rundle. Consistent with what we found in *Carling Development (B.C.)* at para. 44, we accept that Alberta investors in Rundle are likely to recover some of the funds they invested, and we note that the exact extent to which Alberta investors in Carling and Carling BC have been harmed is uncertain. That said, it should be recognized that all of these investors were exposed to financial harm by the illegal trades and distributions of Carling, Carling BC and Rundle securities.

[87] Moreover, the harm caused by Jennix's failure to comply with the registration and prospectus requirements of the Act and to appropriately use the exemptions under Alberta securities laws – and Integra's similar failure, for which Jennix is responsible – might not be limited to that directly suffered by the Alberta investors in the Carling Projects and Rundle. This

misconduct may also have harmed the integrity of the Alberta capital market generally. The Alberta investors in the Carling Projects and Rundle may well be reticent about pursuing other exempt market investments in future, and any prospective investor learning of their unhappy experience may suffer a similar loss of confidence in the capital market.

[88] For selling investments in the Carling Projects and Rundle to Alberta residents, approximately $1.2 million in commissions were received by Integra, Jennix and Cooke. Jennix asserted, in his written submissions, that the evidence of benefits received by him and Cooke was "overstated" and further that commissions received have been spent in his, Cooke's and Integra's efforts to assist investors. Notably, it was the Statement of Admissions that indicated the significant amount received in commissions, and we believe it reasonable to conclude that a considerable percentage of that amount would have made its way into the hands of Integra's controlling minds Jennix and Cooke. We do not believe that Jennix failed to benefit financially from at least some of the commissions earned. However, even if we were to assume that all commissions received by Jennix have been spent by him in his attempts to assist investors, we believe that Jennix engaged in the impugned selling activities, personally and through Integra, in the expectation that he would profit financially from doing so.

[89] These considerations, then, also militate in favour of significant sanction. However, we take into account below his efforts made to assist Alberta investors to recoup their losses.

Need for Deterrence

[90] Having regard only to the seriousness of the misconduct here, the harm to which it exposed the Alberta investors targeted and the Alberta capital market generally, the amount of money raised, and Jennix's expectation – if not enjoyment – of associated financial benefit, we are persuaded that specific and general deterrent measures are necessary.

[91] Further, we are not convinced that Jennix would not re-enter the Alberta capital market to pursue similar ventures, should they present themselves. In this regard, we note that his counsel made the following oral submission: "I think personally that it is unlikely that Mr. Jennix will ever consent to be the director of a publicly traded company unless there's a very sophisticated lawyer giving that company and him advice." In the circumstances, substantial specific deterrence is warranted.

[92] Moreover, any measure or measures directed at general deterrence must suffice to dissuade others from similar capital market misconduct.

Other Decisions

[93] Because the facts of *526053 B.C.*, the decision cited by Staff, are not sufficiently similar, we do not find that decision to be of much assistance in determining the sanctions appropriate here.

[94] However, we do take some guidance from the two decisions rendered in relation to five of the original respondents in this matter – one of which involved a statement of admissions and a joint proposal as to sanction – as they concern the same factual background and the same, or similar, allegations. We also take some guidance from the four settlement agreements entered into between Staff and six of the original respondents in this matter, more so from the settlement agreement entered into between Staff and Cooke. In considering these decisions and settlement

agreements, we are mindful that settlements – and admissions and joint proposals – are negotiated between parties and may be reflective of unknown considerations and motivations.

Mitigating Factors

[95] We also recognize several mitigating factors.

[96] First, Jennix has not been previously sanctioned by the Commission. We are reluctant to accord much weight to this factor because Jennix's selling of certain of the investments in the Carling Projects and Rundle over several years evinced either wilful disregard for the requirements of certain registration and prospectus exemptions or reckless failure to ensure that he understood and complied with them.

[97] Second, as acknowledged by Staff, Jennix was cooperative in the investigation. While we take this factor into account here, it will have greater relevance to and impact in our costs analysis.

[98] Third, we are prepared to accept, in mitigation, that Jennix has expended some effort, to his detriment financially and otherwise, to protect the Alberta investors in the Carling Projects and Rundle. However, we note that the evidence before us does not suffice to establish either effort or detriment to the extent asserted by Jennix.

[99] Fourth, we consider Jennix's claims of reliance on legal advice. We were satisfied that Anderson gave legal advice to Jennix that he, Cooke and Integra would be in compliance with Alberta securities laws in selling non-mortgage investments in the Carling Projects and Rundle if done in accordance with the then-existing private issuer exemption and a then-existing cooperatives exemption, respectively. We were also satisfied that Jennix was entitled to rely on this advice in selling these investments whether, when giving this advice, Anderson was acting as counsel for Jennix, Integra or the respective selling issuer in safeguarding its interests.

[100] Further, we were satisfied that Jennix relied on this legal advice as it related to the non-mortgage investments in Rundle and that this reliance was reasonable. This reasonable reliance on legal advice is of some mitigating effect.

[101] On the other hand, we found that Jennix did not follow this legal advice as it related to the non-mortgage investments in the Carling Projects. As noted, the evidence showed that the requisite 50-investor limit, about which Jennix was apprised by Anderson, was exceeded in relation to these investments, rendering the private issuer exemption unavailable for some of them. We were compelled, in the circumstances, to conclude that Jennix either wilfully disregarded this limit or recklessly failed to ensure that he understood and complied with it. This is of no mitigating effect.

[102] Finally, we were satisfied that Anderson and Jennix and Cooke discussed Jennix's, Cooke's and Integra's selling of mortgage investments, whether in the Carling Projects or Rundle, and that it was through or as a result of this discussion that Jennix and Cooke learned of the then-existing mortgage exemption and its requirement for appropriate authorization. However, we were not satisfied that Anderson gave legal advice to Jennix and Cooke that Jennix's, Cooke's and Integra's selling of mortgage investments in the Carling Projects and Rundle would be in compliance with this exemption. Rather, we concluded that Jennix and Cooke were left to their

own devices to determine whether they and Integra were appropriately authorized to sell these mortgage investments in compliance with this exemption, hence any compliance deficiencies would rest with them alone. Further, the evidence was clear that they were not appropriately authorized. In the circumstances, we found that Jennix, and Cooke and Integra, either wilfully disregarded the appropriate authorization requirement or recklessly failed to ensure that they understood and complied with it. This is not mitigating.

[103] In sum, these factors, with emphasis on Jennix's reasonable reliance on legal advice as it related to the non-mortgage investments in Rundle, argue for some mitigation in sanction.

D. Sanctions Ordered

[104] For the foregoing reasons, we consider that it is in the public interest to order sanctions against Jennix that would remove him from the capital market and from positions of authority with issuers for a significant period and would require his payment of a substantial monetary penalty. We conclude that 12-year market-access bans and a $50 000 monetary administrative penalty satisfy the public interest while taking into account the required moderating and mitigating factors as discussed above. Had there been no call for moderation and mitigation, we would have imposed bans of considerably longer duration and a markedly larger penalty, particularly given the significant funds raised by, and the commissions earned from, the illegal trades and distributions here.

[105] We do not perceive the trading carve-out sought by Jennix to be contrary to the public interest and so incorporate that into our cease-trade order below. However, we are not persuaded that the director-and-officer carve-out sought by Jennix is in the public interest. Of course, nothing would preclude Jennix from seeking a variation of the director-and-officer ban below should he, for example, be in a position to demonstrate that his pursuit of litigation on Integra's behalf, that the Receiver declines to pursue, would be of benefit to the Alberta investors in the Carling Projects and Rundle.

[106] Accordingly, we consider that it is in the public interest to make the following orders:

- under sections 198(1)(b) and (c) of the Act, Jennix must cease trading in or purchasing securities or exchange contracts, and all of the exemptions contained in Alberta securities laws do not apply to him, for 12 years from the date of this decision, except that this order does not preclude Jennix from trading in or purchasing securities or exchange contracts through a registrant (who has first been given a copy of this decision) in:
  - an account for his benefit; or
  - an RRSP for the benefit of himself or himself and any of his children;

- under sections 198(1)(d) and (e), Jennix must resign all positions he holds as a director or officer of any issuer, and he is prohibited for 12 years from the date of this decision from becoming or acting as a director or officer (or both) of any issuer; and

- under section 199, Jennix must pay an administrative penalty of $50 000.

VI. COSTS

[107] In addition to sanctions, Staff sought an order under section 202 of the Act that Jennix pay $50 000 towards the costs of the investigation and hearing.

[108] To that end, Staff tendered a two-page itemization of investigation costs (about $131 340) and hearing costs (about $32 160) totalling approximately $163 500, in addition to three pages of supporting documentation. While acknowledging that Jennix was cooperative in the investigation, Staff submitted that the costs order sought against him is warranted because there was no reasonable basis for him to contest much of the evidence at the hearing and the Statement of Admissions did not constructively contribute to simplifying or accelerating the hearing.

[109] Jennix contended that he should not be required to pay costs in an amount greater than that required of Anderson, namely $5000. He suggested in the Jennix Supplemental Affidavit that, had there been more communication between Staff and him, much of the expense of the investigation and hearing could have been avoided "as most of it did not apply to me and I was not asked . . . of my views in respect of that which [Staff were] seeking to prove".

[110] An order for payment of costs under section 202 of the Act is not a sanction. Rather, a costs order is directed at the recovery of costs incurred by the Commission in conducting enforcement proceedings related to a market participant's contravention of Alberta securities laws or conduct contrary to the public interest. A costs order is also a mechanism by which the Commission can promote procedural efficiency in the conduct of enforcement proceedings. Therefore, when a respondent has been found to have contravened Alberta securities laws or acted contrary to the public interest, it is generally appropriate that the respondent pay at least a portion of the costs of the investigation and hearing that led to such findings. The extent to which the respondent facilitated or impeded an efficient investigation and hearing process is a factor that we consider when determining the amount of the costs incurred that ought to be paid by the respondent.

[111] The types of costs itemized by Staff are the types for which we can make costs orders under section 202 of the Act. Further, the total amount of costs does not appear unreasonable for the investigation and hearing that occurred here. Indeed, the total does not include what we presume to be a considerable amount of costs incurred since at least 29 October 2007. We do note that, of the total of approximately $163 500, $95 000 has been recovered from other of the original respondents. We also reduce the hearing administration costs subtotal by $10 000 to account for an overcharge in relation to the prescribed daily maximum. Accordingly, we accept that approximately $58 500 is potentially recoverable under a costs order against Jennix.

[112] We are satisfied that Jennix facilitated Staff's investigation by cooperating with Staff. However, we note that the hearing process was not as efficient as it might have been and the hearing into the merits was not greatly shortened by the provision of the Statement of Admissions.

[113] In the circumstances, we consider it reasonable and appropriate to order that Jennix pay costs in the amount of $40 000. We therefore order, under section 202 of the Act, that Jennix pay $40 000 towards the costs of the investigation and hearing.

VII. PROCEEDING CONCLUDED

[114] The Interim Order expires as against Jennix with the issuance of this decision.

[115] This proceeding is now concluded.

29 July 2009

For the Commission:

"original signed by"
Glenda A. Campbell, QC

"original signed by"
Beverley A. Brennan, FCA

"original signed by"
Karen A. Prentice, QC

Current to December 31, 2009

R.S.B.C. 1996, c. 418, s. 161

[eff since September 28, 2009](Current Version)

SECURITIES ACT

RSBC 1996, CHAPTER 418

Part 18 -- Enforcement

SECTION 161

Enforcement orders

161 (1) If the commission or the executive director considers it to be in the public interest, the commission or the executive director, after a hearing, may order one or more of the following:

(a) that a person comply with or cease contravening, and that the directors and officers of the person cause the person to comply with or cease contravening,

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

(ii) a decision, whether or not the decision has been filed under section 163, or

(iii) a bylaw, rule, or other regulatory instrument or policy or a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a self regulatory body, exchange or quotation and trade reporting system, as the case may be, that has been recognized by the commission under section 24;

(b) that

(i) all persons,

(ii) the person or persons named in the order, or

(iii) one or more classes of persons

cease trading in, or be prohibited from purchasing, any securities or exchange contracts, a specified security or exchange contract or a specified class of securities or class of exchange contracts;

(c) that any or all of the exemptions set out in the regulations do not apply to a person;

(d) that a person

(i) resign any position that the person holds as a director or officer of an issuer, registrant or investment fund manager,

(ii) is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager,

(iii) is prohibited from becoming or acting as a registrant, investment fund manager or promoter,

(iv) is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, or

(v) is prohibited from engaging in investor relations activities;

(e) that a registrant, issuer or person engaged in investor relations activities

(i) is prohibited from disseminating to the public, or authorizing the dissemination to the public, of any information or record of any kind that is described in the order,

(ii) is required to disseminate to the public, by the method described in the order, any information or record relating to the affairs of the registrant or issuer that the commission or the executive director considers must be disseminated, or

(iii) is required to amend, in the manner specified in the order, any information or record of any kind described in the order before disseminating the information or record to the public or authorizing its dissemination to the public;

(f) that a registration or recognition be suspended, cancelled or restricted or that conditions, restrictions or requirements be imposed on a registration or recognition;

(g) if a person has not complied with this Act, the regulations or a decision of the commission or the executive director, that the person pay to the commission any amount obtained, or payment or loss avoided, directly or indirectly, as a result of the failure to comply or the contravention;

(h) that a person referred to in subsection (7) submit to a review of its practices and procedures;

(i) that a person referred to in subsection (7) make changes to its practices and procedures;

(j) that a person be reprimanded.

(2) If the commission or the executive director considers that the length of time required to hold a hearing under subsection (1), other than under subsection (1) (e) (ii) or (iii), could be prejudicial to the public interest, the commission or the executive director may make a temporary order, without a hearing, to have effect for not longer than 15 days after the date the temporary order is made.

(3) If the commission or the executive director considers it necessary and in the public interest, the commission or the executive director may, without a hearing, make an order extending a temporary order until a hearing is held and a decision is rendered.

(4) The commission or the executive director, as the case may be, must send written notice of every order made under this section to any person that is directly affected by the order.

(5) If notice of a temporary order is sent under subsection (4), the notice must be accompanied by a notice of hearing.

(6) The commission or the executive director may, after providing an opportunity to be heard, make an order under subsection (1) in respect of a person if the person

(a) has been convicted in Canada or elsewhere of an offence

(i) arising from a transaction, business or course of conduct related to securities or exchange contracts, or

(ii) under the laws of the jurisdiction respecting trading in securities or exchange contracts,

(b) has been found by a court in Canada or elsewhere to have contravened the laws of the jurisdiction respecting trading in securities or exchange contracts,

(c) is subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person, or

(d) has agreed with a securities regulatory authority in Canada or elsewhere to be subject to sanctions, conditions, restrictions or requirements.

(7) An order under subsection (1) (h) or (i) may be made against

(a) an exchange or a quotation and trade reporting system,

(b) a self regulatory body,

(c) a clearing agency,

(d) a registrant,

(e) a partner, director, officer, insider or control person of a registrant,

(f) a person providing record keeping services to a registrant,

(g) a person that manages a compensation, contingency or similar fund formed to compensate clients of dealers or advisers,

(h) an issuer,

(i) an investment fund manager, or custodian of assets or securities of an investment fund,

(j) a transfer agent or registrar for securities of an issuer,

(k) a director, officer, insider or control person of an issuer,

(l) a general partner of a person referred to in this subsection, or

(m) a person that the commission has ordered is exempt from a provision of this Act or the regulations.

** Editor's Table **

Provision	Changed by	In force	Authority
161	2006-32-51	2009 Sep 29	BC Reg 223/09
161(1)(a)	2006-32-51	2007 Dec 21	BC Reg 396/07
161(1)(a)(iii)	2003-24-14	2003 Apr 10	R.A.
161(1)(b)	1999-20-29	1999 Jun 29	R.A.

161(1)(d)	2007-37-32	2007 Nov 22	R.A.
161(1)(e)(ii)	2007-37-33	2007 Nov 22	R.A.
161(1)(f)	2007-37-33	2007 Nov 22	R.A.
161(1)(g)	2007-37-33	2007 Nov 22	R.A.
161(1)(h)	2007-37-33	2007 Nov 22	R.A.
161(1)(i)	2007-37-33	2007 Nov 22	R.A.
161(1)(j)	2007-37-33	2007 Nov 22	R.A.
161(6)	2006-32-51	2006 May 18	R.A.
161(6)	2007-37-34	2007 Nov 22	R.A.
161(7)	2007-37-35	2007 Nov 22	R.A.

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RSBC 1996-418-161; SBC 1999-20-29; SBC 2003-24-14; SBC 2006-32-51; SBC 2007-37-32, 33-35.