BRITISH COLUMBIA SECURITIES COMMISSION
Securities Act, RSBC 1996, c. 418

Citation: Re Application 20211028, 2023 BCSECCOM 313 Date: 20230615

Re Application 20211028

Panel	Gordon Johnson	Vice Chair
	Karen Keilty	Commissioner
	Marion Shaw	Commissioner
Submissions Completed	June 16, 2022	
Date of Decision	June 15, 2023	
Appearing		
Patrick Sullivan Gurpal Sandhu	For the Applicant	
Stacy Robertson	For the Investment Industry Regulatory Organization of Canada	
Jorie Les	For the Executive Director	

Decision

I. Introduction

[1] This is an application by an individual (Applicant) for a hearing and review under section 165 of the *Securities Act*, RSBC 1996, c. 418 (Act).

[2] The Applicant asks the Commission to rectify a factual error in Reasons for Decision issued by a hearing panel of the Investment Industry Regulatory Organization of Canada (IIROC).

[3] IIROC, following a merger with the Mutual Fund Dealers Association, is now the Canadian Investment Regulatory Organization (CIRO). Because IIROC was the organization in existence at the time of the Reasons for Decision, we refer primarily to IIROC in this decision.

[4] IIROC's Reasons for Decision accepted a settlement agreement (Settlement Agreement) between the Applicant and IIROC staff (IIROC Staff). The Applicant says that those reasons must be rectified because in assessing and accepting the Settlement Agreement, the IIROC hearing panel proceeded on an incorrect principle and made an error of law. The Applicant submits that the IIROC hearing panel did so by including within its

reasons a fact that was not in the Settlement Agreement and not otherwise properly before the panel (Disputed Fact).

[5] Pending the Commission's decision, IIROC has not published the Reasons for Decision. The Applicant requested that this hearing and review be resolved *in camera* and on an anonymized basis. The panel granted that request, has proceeded *in camera* and now releases this decision on an anonymized basis.

[6] To be clear, the result of our order will be that CIRO, successor to IIROC, will publish the Reasons for Decision without anonymizing them, but with the changes we order below.

II. Factual Background

[7] This is an unusual proceeding in that the parties agree on the desired outcome, but they differ on the appropriate mechanism to get there.

[8] In August 2021, the Applicant and IIROC Staff executed the Settlement Agreement. In it, the Applicant agreed that he had contravened specific provisions of IIROC's Dealer Member Rules by:

(a) executing discretionary trades in clients' accounts; and

(b) preparing sales literature not approved by his supervisor prior to that literature being sent to clients.

[9] The Applicant agreed to pay a fine of $15,000 and costs of $2,000.

[10] On August 12, 2021, the IIROC hearing panel heard oral submissions from the Applicant and IIROC Staff. At the conclusion of that hearing, the hearing panel accepted the Settlement Agreement and advised the parties that the panel's reasons would follow in due course.

[11] On September 3, 2021, IIROC published the accepted Settlement Agreement and a related news release on the IIROC website.

[12] On September 20, 2021, the IIROC hearing panel issued its Reasons for Decision to the parties.

[13] In the Reasons for Decision, the IIROC hearing panel noted that Rule 8215(5) of IIROC's Rules of Procedure (Procedural Rules) circumscribes the jurisdiction of a hearing panel considering a settlement agreement. Because that rule provides that a hearing panel "may accept or reject a settlement agreement", IIROC panels do not have jurisdiction to substitute an outcome they might prefer over the one agreed by the parties through negotiations.

[14] Instead, as the IIROC hearing panel pointed out in paragraph 12 of the Reasons for Decision, "…a panel's task is to determine whether the proposed outcome falls within a reasonable range of appropriateness. If it clearly does not, a settlement may properly be rejected; otherwise, it is incumbent on the panel to accept it."

[15] Included under the heading "Agreed Facts" in its Reasons for Decision, at paragraph 4 the IIROC hearing panel set out statements of fact not referenced in the Settlement Agreement, including the Disputed Fact. The hearing panel then wrote at paragraph 5:

> These facts are not among those the parties agreed upon in the Settlement Agreement. However, in his oral submissions defense counsel on the Respondent's [Applicant's] behalf concurred with IIROC Staff's submissions, and did so without registering any qualifications. On that basis, the Hearing Panel accepts the above facts as having been entered into the record by consent.

[16] Three days later, counsel for the Applicant wrote to IIROC to request that the Disputed Fact be removed from those reasons.

[17] In making this request, the Applicant noted that the Disputed Fact was not one agreed to between the parties. To the contrary, counsel asserted that IIROC Staff's submissions to IIROC did not include the Disputed Fact and that had the Disputed Fact been raised in oral submissions, Applicant's counsel would almost certainly have objected to the hearing panel's use of it in considering the proposed settlement.

[18] On October 6, 2021 and through an email sent from its hearing office, the IIROC hearing panel denied the request to correct the Reasons for Decision and communicated to the parties the panel's views that:

(a) IIROC Staff referenced the Disputed Fact in paragraph 44 of its written submissions to the IIROC hearing panel;

(b) in the absence of express disagreement, in a settlement hearing the submissions made by the parties individually are presumed to collectively constitute the joint submissions of both parties; and

(c) the letter from Applicant's counsel requesting a change did not articulate a valid exception to the doctrine of *functus officio*.

[19] The same day, counsel for the Applicant wrote again to assert to the IIROC hearing panel that:

(a) the doctrine of *functus officio* did not apply because counsel sought only a correction to the Reasons for Decision, not a substantive change to the underlying Settlement Agreement which the panel had accepted; and

(b) the written submissions provided by IIROC Staff to the IIROC hearing panel were not joint.

[20] On October 15, 2021, the General Counsel and Corporate Secretary's Office of IIROC wrote to the parties to advise that:

(a) the hearing panel could not "…revisit the decision unless there are clear exceptions to the *functus officio* doctrine, which have not been identified in this case"; and

(b) IIROC had delayed publication of the Reasons for Decision until resolution of the outstanding issue.

[21] On October 27, 2021, counsel for the Applicant wrote to IIROC to advise that his client would be seeking a hearing and review before the Commission and to request that the Reasons for Decision not be published pending the resolution of the hearing and review.

[22] On October 28, 2021, counsel for the Applicant wrote to the Commission hearing office to request this hearing and review.

[23] On December 3, 2021, the Commission held a hearing management meeting to address procedural issues. At that meeting and throughout this proceeding, the parties have cooperated in trying to find an efficient resolution to the matter.

[24] At the hearing management meeting, the Vice Chair asked and the parties agreed to discuss among themselves a schedule for delivery of written submissions. They did so and provided written submissions to the hearing office in April, May and June 2022.

[25] Upon inquiry made in May 2023, no party sought oral submissions in this matter, and we have proceeded on the basis of the written record and written submissions.

III. Statutory Authority

[26] Sections 28 and 165 of the Act provide in relevant part:

> 28 (1)The executive director or a person directly affected by a direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of a clearing agency, exchange, quotation and trade reporting system, self-regulatory body or trade repository may apply by notice to the commission for a hearing and review of the matter under Part 19, and section 165 (3) to (9) applies…
>
> 165 …
> (3)Except if otherwise expressly provided, any person directly affected by a decision of the executive director may, by a notice in writing sent to the commission within 30 days after the date on which the executive director sent the notice of the decision to the person, request and be entitled to a hearing and a review of the decision of the executive director.
> (4)On a hearing and review, the commission may confirm or vary the decision under review or make another decision it considers proper.

> ...
> (6)The executive director is a party to a hearing and review under this section of any decision.
> ...
> (8)A self-regulatory body, an exchange, a quotation and trade reporting system, trade repository or a clearing agency is a party to a hearing and review under this section of its decision.
> (9)On application or on its own motion, the commission may extend the period in subsection (2) or (3) to a date the commission considers appropriate.

[27] Although the Reasons for Decision are dated September 20, 2021, it was not until the October 15, 2021 letter from the General Counsel and Corporate Secretary's Office of IIROC that the Applicant received notice that the hearing panel did not accept that any exception to the doctrine of *functus officio* had been established.

[28] We find that the 30-day period in section 165(3) of the Act runs from October 15, 2021 and that the Applicant has met the requirements in that section to bring this application for a hearing and review. If we are incorrect on that point, we would in any event exercise the discretion granted to us by section 165(9) of the Act to extend the time period in section 165(3) to allow the Applicant this hearing and review.

IV. Factors to be Considered

[29] We find guidance in our approach to this matter in the Commission's policy on hearings, BC Policy 15-601 – *Hearings* (BCP 15-601). In general, Commission panels have wide discretion to conduct hearings that are fair, flexible and efficient. Sections 1.2 and 2.1 of the policy state:

> 1.2 General Principles – The Commission holds administrative hearings, which are less formal than the courts. The Commission's goal is to conduct its proceedings fairly, flexibly and efficiently. The procedures set out in this Policy are in furtherance of this goal and the provisions of this policy are to be interpreted in light of this goal. Where the circumstances require a variation of the procedures set out in this policy in order to achieve this goal, the Commission may do so.
>
> 2.1 Procedures – The Act and Regulation prescribe very few procedures the Commission must follow in hearings. Consequently, the Commission is the master of its own procedures, and can do what is required to ensure a proceeding is fair, flexible and efficient. In deciding procedural matters, the Commission considers the rules of natural justice set by the courts and the public interest in having matters heard fully and fairly, and decided promptly.

[30] BCP 15-601 also provides specific guidance with respect to a hearing and review considering a decision of a recognized entity like IIROC, in section 7.9:

> 7.9 Form and scope of reviews of a decision under sections 28 and 165
> (a) Where the review of a Recognized Entity decision proceeds as an appeal – The Commission does not provide parties with a second opinion on a matter decided by a Recognized Entity. If the decision under review is reasonable and

> was made in accordance with the law, the evidence, and the public interest, the Commission is generally reluctant to interfere simply because it might have made a different decision in the circumstances. For this reason, generally, the person requesting the review presents a case for having the decision revoked or varied and the Recognized Entity responds to that case.
>
> The Commission generally confirms the decision of the Recognized Entity, unless:
> • the Recognized Entity has proceeded on an incorrect principle
> • the Recognized Entity has made an error in law
> • the Recognized Entity has overlooked material evidence
> • new and compelling evidence is presented to the Commission or
> • the Commission's view of the public interest is different from that of the Recognized Entity

[31] Section 7.10 of the hearings policy addresses the scope of a Commission decision on a hearing and review:

> 7.10 Scope of decisions – The Commission may confirm, vary or revoke the decision under review or make another decision it considers proper, including referring the matter back to the decision maker. If a review proceeds on the Commission's own initiative or proceeds as a hearing de novo, the Commission may make a decision in the public interest.

[32] The principles in BCP 15-601, both the statements on general considerations and the specific categories detailing when a Commission panel might not confirm a decision of a recognized entity, are helpful in organizing the factors which should be taken into account, they assist panels in providing principled consistency, and they assist parties in providing a reasonable level of predictability of outcomes.

[33] That said, the general guidance as well as the specific factors set out in the hearing policy are designed to support achieving decisions in the public interest. They are not intended to impede efficient and practical results. Section 1.2 is clear that where circumstances require a variation of the procedures in the policy to achieve the Commission's goal of holding fair, flexible and efficient hearings, the Commission may do so.

V. Positions of the Parties

A. The Applicant

[34] The Applicant brings this hearing and review under sections 28 and 165 of the Act and submits that this is an appropriate case for the Commission to confirm the settlement result which was accepted by the IIROC hearing panel and to issue reasons that do not refer to the Disputed Fact.

[35] The Applicant relies on IIROC Procedural Rule 8215(5) for the proposition that an IIROC hearing panel can either accept or reject a settlement agreement. An IIROC panel does not have the authority to change an agreement negotiated between the parties. That rule reads: "After a settlement hearing, a hearing panel may accept or reject a settlement agreement."

[36] The Applicant also submits that an IIROC hearing panel can only consider facts contained in a settlement agreement, unless the parties consent to additional facts being presented. The Applicant relies on Procedural Rule 8428(6) for this proposition. That rule reads: "At a settlement hearing, facts that are not contained in the settlement agreement must not be disclosed to the hearing panel without the consent of all parties…"

[37] The Applicant points to *Clark (Re),* [1999] I.D.A.C.D. No. 40 as authority for the proposition that hearing panels must be cognizant of the importance of the settlement process and should not interfere lightly in a settlement reached through negotiation.

[38] As to the rationale for treading lightly with facts that have been agreed through negotiation, the Applicant points to paragraph 18 of *William Alan Heakes* 2019 IIROC 9:

> Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are often facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. Respecting settlements is particularly desirable in cases, such as this one, where experienced counsel were involved and where, we were told, there were "extensive negotiations."

[39] As set out above, counsel for the Applicant wrote to the IIROC panel three days after the Reasons for Decision were issued to point out that the Reasons for Decision contained two references to the Disputed Fact and to assert that the Disputed Fact was not included in any submission nor was it agreed between the parties.

[40] The Applicant relies on two categories from section 7.9(a) of BCP 15-601 in submitting that this is an appropriate case for the Commission to correct the Reasons for Decision:

(a) that IIROC proceeded on an incorrect principle; and

(b) that IIROC made an error in law.

[41] In support of both points, the Applicant submits that the IIROC panel:

(a) applied a presumption that the IIROC Staff's submissions were joint when there was no basis in law or fact to apply that presumption;

(b) went outside the facts agreed in the Settlement Agreement without the Applicant's consent, contrary to the Procedural Rules; and

(c) incorrectly applied the doctrine of *functus officio*.

[42] The Applicant submits that while the Commission could send this matter back to IIROC for reconsideration, various factors including the amounts involved, the severity of misconduct being at "the lower end of the scale" and the fine amount of $15,000, militate against doing so. Instead, the Applicant submitted, in his initial written submissions, that we should confirm the settlement and issue public reasons that do not refer to the Disputed Fact.

[43] The Applicant's position on the mechanism for correction evolved through the course of this hearing in response to the submissions of the other parties, and we address that evolution below.

B. IIROC

[44] IIROC points out that the Settlement Agreement contains a provision limiting the Applicant's rights of appeal:

> 21. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing appeal and review.

[45] However, IIROC submits that intervention is appropriate where failing to do so would result in "manifest unfairness": *Mark McQuillen*, 2014 ONSEC 30. On the facts of this case, IIROC Staff submits that the Applicant has satisfied the requirements of the *McQuillen* case and that intervention by the Commission is appropriate.

[46] IIROC agrees with the Applicant that the IIROC hearing panel fell into error when it included the Disputed Fact in the Reasons for Decision. IIROC denies that the oral submissions referenced by the IIROC hearing panel in paragraph 5 of the Reasons for Decision were made and points to Procedural Rule 8428(6), which establishes the requirements for putting before a hearing panel facts that are not contained in a settlement agreement.

[47] IIROC submits that the IIROC hearing panel justified including the Disputed Fact in its Reasons for Decision by relying on oral submissions that were not made at the settlement hearing and in doing so erred in law.

[48] IIROC points to other decisions in which IIROC hearing panels specifically sought the express consent of all parties before accepting into a hearing record additional facts that were not contained in a settlement agreement: *Re Buisson* 2017 IIROC 31, *Re Pace* 2019 IIROC 11.

[49] IIROC also submits that it is problematic for an IIROC hearing panel to apply concepts of implied or assumed consent in settlement proceedings because doing so could affect how parties approach a case. In particular, the possibility of implied or assumed consent might create incentive for parties to produce shorter and less detailed submissions to avoid any possibility of a panel presuming a fact that was not intended to be included.

[50] As to the remedy sought before us, IIROC notes that this panel could refer the matter back to the IIROC hearing panel to determine whether they would accept the Settlement Agreement without any consideration of the Disputed Fact. That, however, is not IIROC's preferred approach.

[51] IIROC submits that the better approach is for the Commission to determine anew whether the Settlement Agreement should be approved. IIROC says that its submissions would remain the same if this matter were referred back to the original decision-maker and therefore the most efficient resolution is for this panel to revoke the decision of the IIROC panel and to consider anew whether to accept the Settlement Agreement.

Which panel releases reasons, and when?

[52] IIROC's view on process differs from the Applicant's original submissions in one important respect: which body (IIROC or the Commission) should issue corrected reasons. IIROC says that correction is a remedy only available to the original IIROC hearing panel. Because this matter is proceeding before the Commission as an appeal pursuant to section 7.9 of BCP 15-601, IIROC submits that our authority is to "confirm, vary or revoke" the IIROC decision or to make another decision we consider proper, including referring the matter back to IIROC, all as set out in section 7.10 of BCP 15-601. That is, the remedy of correction is not available to us.

[53] IIROC submits that IIROC has an obligation to publish the Reasons for Decision in the interests of transparency. While IIROC has not published the reasons pending the outcome of this hearing and review, IIROC submits that when our decision is issued, the underlying decision must also become public. Under that approach, two documents would be issued, the original Reasons for Decision by IIROC and the Commission's decision which comments on those Reasons for Decision. In IIROC's view, this would allow the Applicant to reference our decision, should he be successful, in response to any questions regarding incorrect information in the Reasons for Decision.

[54] In reply submissions to us, the Applicant highlights his concerns that if the Reasons for Decision are published uncorrected (that is, in the original form which includes the Disputed Fact) there will be a public decision about him which is untrue. Even if he explains to clients why the Reasons for Decision are untrue, the Applicant is concerned that clients may not accept his explanation because the untrue statement is contained in reasons issued by IIROC.

[55] While the Applicant submits that we should confirm the IIROC decision and issue our own reasons which do not include the Disputed Fact, he is content with the approach suggested by IIROC, which is for the Commission to determine anew whether the Settlement Agreement should be accepted pursuant to Procedural Rule 8215(5).

[56] If we do so, however, the Applicant disagrees with IIROC that the remedy of correction is not available to us. In reply submissions, the Applicant stresses that the goal of transparency can be achieved with redactions. The Applicant relies on the language of

section 165(4) of the Act, which allows the Commission to make "another decision it considers proper."

[57] In the context of what he calls "the singular unique circumstances of this case", the Applicant submits that the appropriate remedy is for the Commission to:

(a) determine anew whether the Settlement Agreement should be accepted pursuant to Procedural Rule 8215(5); and

(b) direct that prior to publication, IIROC remove references to the Disputed Fact from the Reasons for Decision.

C. Executive director

[58] The executive director agrees with the Applicant and IIROC Staff that the IIROC hearing panel committed an error of law by including the Disputed Fact in its Reasons for Decision. However, the executive director has different views on how this panel should remedy that error.

[59] In particular, the executive director disagrees with IIROC's submission that the Commission should adopt the "manifest unfairness" test from the *McQuillen* decision. The executive director submits that *McQuillen* was decided in different circumstances, an application to set aside a settlement, where here we are asked only to correct the Reasons for Decision, which approved a settlement that all parties accept.

[60] The executive director submits that adopting the manifest unfairness test would be an unnecessary modification to the standard of review in our hearings policy, set out in section 7.9 of BCP 15-601.

[61] The executive director submits that public interest considerations weigh in favour of correcting the Reasons for Decision. The executive director submits that settlement processes that are consistent, transparent and fair are to be fostered and that failing to correct the Reasons for Decision would undermine confidence in settlement processes because parties would not have certainty that future panels would consider only properly agreed-upon facts.

[62] As to remedy, the executive director submits that the Commission should confirm the settlement and remit this matter back to the IIROC panel with directions to remove the Disputed Fact from the Reasons for Decision. Doing so, says the executive director, would be procedurally efficient and would establish a helpful precedent for how self-regulatory organizations should address similar circumstances should they arise in future.

[63] Although the Applicant took issue in his reply submissions with the executive director's position on remedy, we understand the executive director's position to be consistent with what the Applicant is now content to accept, at least to the extent of remitting the Reasons for Decision to IIROC with directions for specific changes. There remains a difference of opinion on whether we should "confirm" the IIROC decision or "determine

anew" whether to accept the Settlement Agreement, and we address that difference in our analysis below.

[64] Finally, the executive director invites the Commission to comment on the IIROC hearing panel's determination that it was *functus officio*. The executive director submits that the application of the doctrine is flexible in administrative proceedings, relying on *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC) at paras. 21-22. The executive director also submits that corrections may be made that extend beyond typographical or technical errors if the correction sought is in the interests of justice and fairness: *Grant v. City of Vancouver and others (No. 4)*, 2007 BCHRT 206 at para. 14, relying on *Zutter v. British Columbia (Council of Human Rights)*, 1995 CanLII 1234 (BCCA).

[65] The executive director submits that the circumstances of this case satisfied the approach in the *Grant* decision and justified corrections to the Reasons for Decision. The executive director submits that we should confirm this approach so that self-regulatory organizations do not unduly constrain their jurisdiction in future cases by concluding they are *functus officio* in circumstances where corrections could properly be made.

D. Summary of consensus and differences among the parties

[66] Although they differ on the mechanism through which the Commission should remedy the Reasons for Decision, all parties agree that we have the jurisdiction under the Act to do so.

[67] The executive director tracks the language of section 7.9 of the Act and submits that we should "confirm" the decision of the IIROC hearing panel but provide a mechanism to correct it. In his original submissions, the Applicant also asks us to "confirm" the IIROC decision.

[68] IIROC advocates a different approach. IIROC notes that the Disputed Fact appears in two places in the Reasons for Decision but stresses that it is not clear what weight the IIROC hearing panel placed on it. IIROC submits that we should revoke the IIROC decision and determine anew, without any consideration of the Disputed Fact, whether the Settlement Agreement should be accepted pursuant to Procedural Rule 8215(5).

[69] In his reply submissions, the Applicant advises that he is content with the approach suggested by IIROC, that is, for us to determine anew whether to accept the Settlement Agreement. As set out above, however, the Applicant makes the further submission that the Commission's jurisdiction under section 165(4) to "make another decision it considers proper" enables us to require that IIROC redact the Reasons for Decision before publishing them.

[70] The executive director does not support this panel "deciding anew" whether to accept the Settlement Agreement. To the contrary, the executive director submits that it would be procedurally confusing and inefficient for this panel to issue new reasons approving the Settlement Agreement. Further, the executive director notes that neither the Applicant nor

IIROC requested that this matter proceed as a new hearing and submits that the approval of the settlement is not the true question before us.

[71] The executive director submits that this panel can simply confirm that the result reached by the IIROC panel was reasonable and should not be changed, while providing directions to remedy the error in the Reasons for Decision. In brief, the executive director submits that our approach should be to "confirm" rather than to "determine anew".

VI. Analysis

A. The Applicant has a right to this hearing and review

[72] In *McQuillen,* the Ontario Securities Commission commented at paragraph 31:

> I do note, however, that both IIROC and the Commission have the authority to impose substantial sanctions on market participants that can have very far-reaching and negative consequences for the persons involved. It would seem to me that, if neither IIROC nor the Commission has jurisdiction to reconsider the Settlement Approval in any circumstances, that would be a material and unfortunate defect in our securities regulatory regime and one that could undermine confidence in that regime.

[73] We agree with that sentiment but find ample authority to hold this hearing and review in the provisions of the Act. There is no doubt that the Applicant is a person directly affected by a decision of a self-regulatory body who was entitled to apply for this hearing and review under section 28(1) of the Act. The Applicant did so.

[74] To the extent paragraph 21 of the Settlement Agreement is any impediment to the Applicant's right to have this hearing and review, we exercise our discretion pursuant to section 165(4) of the Act to order that it proceed. Having made that determination, we turn to the other questions before us.

[75] Given our conclusion that we have clear authority to address the issue before us without making reference to the manifest unfairness test, we have chosen not to rule on the circumstances in which that test might apply. Similarly, we do not need to determine whether the IIROC hearing panel erred in concluding that it was *functus officio* in order to decide the application before us, and we make no ruling on that matter.

B. On what basis do we make our decision?

[76] Fundamentally, the parties have asked us a simple question: Will you make a correction that we all agree should be made? The parties differ on mechanism, but not on result. All seek the same correction to the Reasons for Decision, which is the deletion of the Disputed Fact from the two places it appears in those reasons.

[77] The broad language in section 165(4) of the Act provides ample jurisdiction for us to decide whether or not to confirm the IIROC decision in these circumstances. That sub-section reads: "On a hearing and review, the commission may confirm or vary the decision under review or make another decision it considers proper." Based on that

language, it is clear that we have jurisdiction to "confirm" the IIROC decision or make another decision we consider proper.

C. Is approval of the Settlement Agreement appropriate absent the Disputed Fact?

[78] We have reviewed the Settlement Agreement, the written submissions provided to the IIROC hearing panel, an affidavit of the Applicant, correspondence among the parties and IIROC, and the transcript of proceedings before the IIROC panel. We have also read the Reasons for Decision and considered whether the acceptance of the Settlement Agreement is appropriate in the absence of the Disputed Fact.

[79] In our view, the Disputed Fact need not be included for the acceptance of the Settlement Agreement to be appropriate.

[80] We conclude that it is appropriate to confirm the acceptance of the Settlement Agreement by the IIROC hearing panel, and we do so.

D. Should the Disputed Fact be deleted from the Reasons for Decision?

[81] In his affidavit within this hearing and review, the Applicant set out his concerns about the Disputed Fact. If the Reasons for Decision are published in their current form, the Applicant is concerned that his clients may not accept his explanation that those reasons contain incorrect information. The Applicant is also concerned about the impact the incorrect information could have on his ability to retain and attract clients. In our view, those are valid concerns.

[82] The Applicant points to two categories from section 7.9(a) of BCP 15-601 as bases for our correction of the Reasons for Decision:

(a) that the IIROC hearing panel proceeded on an incorrect principle; and

(b) that the IIROC hearing panel made an error of law.

[83] Section 7.9(a) of BCP 15-601 is clear in its own language that it is addressing what the Commission "generally" does when reviewing a decision of a recognized entity. The Commission generally confirms that decision unless the circumstances in issue fit into one of the listed categories. In that case, the Commission can intervene.

[84] The Applicant's submissions with respect to the IIROC hearing panel having proceeded on an incorrect principle and having made an error of law are persuasive, and we accept them. We conclude that IIROC hearing panel erred by:

(a) considering facts that were not contained in the Settlement Agreement, without obtaining the consent of the parties as required by Procedural Rule 8428(6); and

(b) misconstruing the oral submissions of the parties.

[85] In addition, this matter results from a unique set of circumstances and even if BCP 15-601 did not clearly support our intervention, we would intervene pursuant to our jurisdiction under section 165(4) of the Act.

[86] The IIROC hearing panel should not have made reference to the Disputed Fact. The decision to approve the settlement was justified whether or not the Disputed Fact was referenced. The circumstances that exist justify an efficient solution.

[87] We conclude that the proper decision is to confirm the acceptance of the Settlement Agreement and to remit this matter to CIRO with directions to correct the Reasons for Decision by removing the Disputed Fact from them.

VII. Conclusion and Order

[88] We confirm the acceptance of the Settlement Agreement by the IIROC hearing panel. We remit this matter to CIRO and direct that before the Reasons for Decision are published, CIRO:

(a) delete paragraph 4(b);

(b) renumber paragraph 4(c) as 4(b); and

(c) delete the last sentence of paragraph 19.

June 15, 2023

For the Commission

Gordon Johnson
Vice Chair

Karen Keilty
Commissioner

Marion Shaw
Commissioner