2009 LSBC 17
Report issued: May 25, 2009
Oral decision on facts and verdict:
Citation issued: July 15, 2005

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Michael Lee Seifert

Respondent

Decision of the Hearing Panel on Facts, Verdict and Penalty

Hearing dates: February 4 and 19, 2009

Panel: Gavin Hume, QC, Chair, Ralston Alexander, QC, Robert Brun, QC

Counsel for the Law Society: Maureen Baird and Julien Dawson
Counsel for the Respondent: David Gruber and Marvin Storrow, QC

Background

[1] On July 15, 2005, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Corporate Secretary of the Law Society of British Columba on the direction of the Chair of the Discipline Committee.

[2] The citation directed that the Panel inquire into the Respondent's conduct as follows:

> 1. That you, in June and or July, 1995, in contravention of Chapter 7, Ruling 1 of the *Professional Conduct Handbook,* performed legal services for your client AEC in a matter, that of a proposed acquisition of shares in AEC by the A Group and associates, when you had a financial interest in that matter through your holding of shares in AEC.
>
> 2. That you, in June and or July, 1995, in contravention of Chapter 7, Ruling 2 of the *Professional Conduct Handbook,* performed legal services for a client, AEC, when you had a financial interest in AEC which would reasonably be expected to affect your professional judgment.

[3] The Schedule to the citation was amended on March 31, 2006 to provide as follows:

> 1. That you, between January, 1994 and July, 1995, in contravention of Chapter 7, Ruling 1 of the *Professional Conduct Handbook,* performed legal services for your client, Arakis Energy Corporation (" AEC") in a matter, that of a proposed acquisition of shares in AEC by the A Group and associates, when you had a financial interest in that matter through your holding of shares in AEC.
>
> 2. That you, between January, 1994 and July, 1995, in contravention of Chapter 7, Ruling 2 of the *Professional Conduct Handbook,* performed legal services for a client, AEC, when you had a financial interest in AEC which would reasonably be expected to affect your professional judgment.

[4] The requirements for service of the citation upon the Respondent, pursuant to Rule 4-15 of the Law

Society Rules, were admitted by counsel for the Respondent.

[5] A Statement of Agreed Facts (" SAF") was filed as Exhibit 2 in these proceedings. The Panel was advised that the SAF was the result of a collaborative effort between counsel for the Law Society and counsel for the Respondent. The SAF included an admission of professional misconduct by the Respondent on the basis of the facts and matters described in the SAF.

[6] The Law Society provided written and oral analysis whereby it sought to demonstrate that the facts set out in the SAF were sufficient to support a finding by the Panel that the Respondent had professionally misconducted himself. Counsel for the Respondent confirmed the admission by the Respondent of the facts and confirmed that the Respondent acknowledged that the facts set out in the SAF demonstrated a serious conflict of interest on the part of the Respondent. Counsel confirmed that the Respondent was sincerely regretful for the misconduct and that the Respondent supports the submissions of the Law Society.

[7] The material facts set out in the SAF are reproduced here:

Mr. Seifert

1. On May 10, 1978, the Respondent was called to the Bar of British Columbia. He has been a member of the Law Society of British Columbia (" Law Society") since that time.

2. The Respondent is a partner of Maitland & Company, a law firm in Vancouver, British Columbia.

3. The Respondent has practised securities law in British Columbia for more than 22 years. He has extensive experience advising private and public companies domestically and internationally in various transactions, including public offerings, stock exchange listings, mergers and acquisitions, reverse takeovers, and other corporate combinations of public and private companies.

Maitland & Company's Retainer for AEC

4. Maitland & Company, including the Respondent, was among the legal counsel to AEC from January 1992 to December 1995. AEC also had counsel in Alberta and New York.

5. Lawyers at Maitland & Company, including the Respondent personally, performed various legal services for AEC, including advising on its reporting and filing obligations under the *Securities Act* as a reporting issuer in British Columbia.

6. In 1994 and 1995, the Respondent, through his ownership of shares as described herein, had a direct and indirect financial interest in AEC.

7. In April, 1994, in connection with the acquisition by AEC of State Petroleum Corporation, AEC issued Anthem International Incorporated (one of the shareholders of State Petroleum Corporation) one million shares of AEC (the " Anthem Issuance"). AEC did not publicly disclose that among the reasons for the Anthem Issuance was the fact that certain European financiers would endeavour to secure financing for AEC (the " Undisclosed Fact"). The potential financing did not ultimately materialize.

8. The Respondent was aware of this potential financing and did not advise AEC to disclose it to the public.

9. The Respondent's direct and indirect interests in AEC had the potential to affect his professional

judgment.

10. AEC, including its successor, has never complained to the Law Society, to Maitland & Company or otherwise, regarding the legal services that it received from Maitland & Company.

Direct and Indirect Interest in AEC of the Respondent and his Family

11. Between April 18, 1995 and July 25, 1995, the Respondent, through two personal accounts that he maintained at Pacific International Securities, sold, in 12 trades, 34,979 shares of AEC for proceeds, net of commissions, of $331,259.60 and USD$366,319.63. These trades occurred one year after the Respondent became aware of the undisclosed potential financing.

12. The Respondent was the settlor of the Michael L. Seifert Declaration of Trust (" Seifert Trust") established at Integro Trust (Jersey) Ltd. (" Integro").

13. The Seifert Trust was validly established in accordance with the law of Jersey, Channel Islands, United Kingdom.

14. The beneficiaries of the Seifert Trust were relatives of the Respondent.

15. The Trustee of the Seifert Trust was RYCO Trust Limited, situated in St. Helier, Jersey, Channel Islands, United Kingdom (" Trustee").

16. On August 9, 1990, Insco Holdings Limited (" Insco") was incorporated in the British Virgin Islands. Legal title to the shares of Insco vested in the Trustee.

17. At all material times, the assets of the Seifert Trust, including the shares of Insco, vested in the Trustee.

18. The Respondent, as well as others, gave advice to the Trustee, from time to time, with respect to the Seifert Trust and Insco's trading activities.

19. Insco, on the Respondent's advice to the Trustee, made the following trades:

(a) on January 25, 1994, two months prior to the Respondent becoming aware of the potential financing, sold 3,000 AEC shares;

(b) on July 27 and 28, 1994, approximately four months after the Respondent became aware of the potential financing, sold 10,000 AEC shares;

(c) approximately five months after the Respondent become aware of the potential financing, purchased, in two trades, on August 25 and 29, 1994, 26,500 AEC shares, at a total cost of $163,000; and

(d) between February 10 and 24, 1995, ten months after the Respondent became aware of the potential financing, sold 26,500 AEC shares,

for proceeds, net of commission, of $295,066.43.

Admission

20. The Respondent admits that he performed legal services for AEC at a time when he and his

relatives had direct or indirect financial interests in AEC that would reasonably be expected to have affected his professional judgment, contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook.*

21. The Respondent admits that his breach of Chapter 7, Rule 1 of the *Professional Conduct Handbook,* as described above, constitutes professional misconduct.

Law Society

22. This matter came to the attention of the Law Society by way of a self-report from the Respondent on December 17, 1999, advising that he had entered into an Agreed Statement of Facts and Undertaking with the British Columbia Securities Commission (" BCSC"). A copy of this Agreed Statement of Facts and Undertaking is attached as Schedule A. The trading to which the Respondent admitted was selling in the face of the undisclosed potential financing referred to in paragraph 7 above, beginning four months after it arose in April, 1994.

23. In subsequent litigation between BCSC and the Respondent, the Respondent repudiated the admission that the potential financing was material and alleged that this admission had been extracted from him in bad faith. BCSC defended the materiality of the potential financing and denied that the agreement had been obtained as a result of any bad faith. Pursuant to an agreement between the parties, the litigation was determined against the Respondent on other grounds, and the questions of whether the potential financing was material and whether the admission was extracted in bad faith were never determined by the Court.

24. On July 15, 2005, the Respondent was cited by the Law Society.

25. On March 31, 2006, the citation was amended by the Law Society.

26. On October 15, 2008, after the Respondent satisfied the judgment, the Executive Director of BCSC issued a Variation Order permitting the Respondent to trade in securities on certain conditions, following a finding that it would not be prejudicial to the public interest for him to be able to do so.

Issue and Analysis

[8] Section 38(4) of the *Legal Profession Act* states:

(4) After a hearing, a panel must do one of the following:

(a) dismiss the citation;

(b) determine that the respondent has committed one or more of the following:

(i) professional misconduct;

(ii) conduct unbecoming a lawyer;

(iii) a breach of this Act or the rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer;

(v) if the respondent is not a member, conduct that would, if the respondent were a member,

> constitute professional misconduct, conduct unbecoming a lawyer, or a breach of this Act or the rules;
>
> (c) make any other disposition of the citation that it considers proper.

[9] It is for us to decide whether the facts as established support a finding of professional misconduct as set out in s. 38(4)(b)(i).

[10] We begin with a consideration of the requirements of the burden of proof that rests upon the Law Society in matters such as those before this Panel. For many years it has been determined that the burden of proof in discipline matters was based upon a sliding scale where the burden of proof was more onerous in those circumstances where the consequences of an adverse finding against a Respondent were more serious. For example, a finding of misappropriation of trust funds would require a more demanding burden of proof than would a finding that a lawyer had failed to respond to a communication from the Law Society. The consequences of a finding of misappropriation could be disbarment while a failure to respond to the Law Society would likely lead to a reprimand or a fine.

[11] However, the ground rules regarding the burden of proof have changed recently with the publication of the decision by the Supreme Court of Canada in the recent decision of *F.H. v. McDougall*, 2008 SCC 53, 297 DLR (4th) 193. This was a civil case involving a plaintiff seeking damages for sexual and other physical abuse suffered in a residential school. The discussion in the lower courts considered the extent to which a sliding scale existed whereby proof on the balance of probabilities shifted in the civil standard where the allegations against the defendant are particularly grave.

[12] In the *F.H.* decision, the Supreme Court of Canada considered the same argument where the negative consequences to the reputation of an unsuccessful defendant in a sexual abuse case were significant and durable. Writing for the Court, Rothstein, J. noted as follows:

> [40] ... I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. ...
>
> [46] ... [E]vidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. ...
>
> [49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[13] It follows, therefore, that the burden of proof throughout these proceedings rests on the Law Society to prove, with evidence that is clear, convincing and cogent, the facts necessary to support a finding of professional misconduct or incompetence on a balance of probabilities. In considering its findings in this matter, the Panel has applied that test.

[14] We next consider what it is that constitutes professional misconduct, as that expression is found at s.

34(4)(b) of the *Legal Profession Act*, SBC 1998, c.9. The jurisprudence on this question has been clear and unequivocal for some time. In *Stevens v. Law Society (Upper Canada),* (1979), 55 OR (2d) 405 (Div. Ct.), Mr. Justice Cory stated that:

> What constitutes professional misconduct by a lawyer can and should be determined by the discipline committee. Its function in determining what may in each particular circumstance constitute professional misconduct ought not to be unduly restricted. No one but a fellow member of the profession can be more keenly aware of the problems and frustrations that confront a practitioner. The discipline committee is certainly in the best position to determine when a solicitor's conduct has crossed the permissible bounds and deteriorated to professional misconduct. Probably no one could approach a complaint against a lawyer with more understanding than a group composed primarily of members of his profession.

[15] As a result of the decision of the Benchers on their review of the hearing panel's decision in the *Hops* case (reported as *Law Society of BC v. Hops,* [1999] LSBC 29), it is no longer necessary for the impugned behaviour to be " disgraceful" or " dishonourable" in order to support a finding of professional misconduct.

[16] More recent decisions of the Benchers (*Law Society of BC v. Martin*, 2005 LSBC 16, *Law Society of BC v. Lyons*, 2008 LSBC 09) have established that the test for professional misconduct is:

> Whether the facts, as made out, disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

[17] In our consideration of this matter we have applied that test.

[18] Lawyers play an important role in the securities markets. Among other duties that they perform in this milieu, they are expected to advise issuers of securities of the safeguards for the public that are contained in legislation such as the *Securities Act.* It has been clearly demonstrated that, to a significant extent, the effective implementation of these public safeguards depends to a considerable degree upon legal counsel.

[19] In circumstances where the personal financial interests of a lawyer could reasonably be expected to affect his or her professional judgment in providing advice to publicly traded companies, the risk of harm to the investing public is raised.

[20] The *Professional Conduct Handbook* (the " *Handbook*") specifically addresses this issue. The Benchers, who retain ultimate legislative control over the content of the *Handbook*, have determined that lawyers must not act in circumstances where a personal financial interest in the subject matter of the retainer may reasonably be expected to affect their professional judgment. While the prohibition is properly one of general application, it is likely that it is confronted more regularly by lawyers practising in the securities field.

[21] The Law Society does not want lawyers who are shareholders of the companies that they represent to be unclear about their roles and responsibilities as counsel. If a lawyer's financial interest in a client would reasonably be expected to affect his or her professional judgment, then it must be expected that the lawyer will withdraw as counsel.

[22] In this case, the Respondent did not do so. Rather, he continued to act at a time when his direct or indirect financial interest in AEC would reasonably be expected to have affected his professional judgment. In particular, he did not advise AEC to disclose the Undisclosed Fact. Moreover, he traded his shares in AEC knowing that the Undisclosed Fact was not public.

[23] We have not been provided with evidence on the subject of whether the behaviour of the Respondent in this matter caused harm to the public. We have concluded that it is not necessary for there to be proof of harm to the public to support a finding that the rule has been breached or that the Respondent has professionally misconducted himself. Rather, what is at issue in respect of the Rule breach is simply whether the Respondent performed legal services for AEC when his financial interests would reasonably be expected to affect his professional judgment.

[24] We are satisfied that the Respondent did perform legal services for AEC in circumstances where his personal financial interest in the subject matter would reasonably be expected to affect his professional judgment. Does this behaviour constitute professional misconduct?

[25] We think that it does. A lawyer is often the last independent person standing between the investing public and the entrepreneurial promoters of publicly traded stocks. In these circumstances the public is entitled to nothing less than the utterly impartial review that independent oversight by a lawyer provides. The public trust requires that misconduct of this nature be treated with a severity that respects the importance that we feel is attendant upon the role played by the legal profession in this market place.

[26] We have determined that this conduct represents a marked departure from the conduct that the Law Society expects of its members. Accordingly, and to provide an appropriate condemnation of this behavior, we must find that the conduct constitutes the most serious of the options described in s. 38(4), namely, professional misconduct.

Decision on Verdict

[27] We accept the admission of the Respondent and determine that he has committed professional misconduct, pursuant to Section 38(4)(b)(i) of the *Legal Profession Act*.

Hearing on Penalty

[28] At the conclusion of the hearing on Facts and Verdict, the Panel gave oral reasons for its finding that the Respondent had committed professional misconduct in respect of the events described in the citation issued on July 15, 2005. We noted that the SAF included an admission of professional misconduct by the Respondent.

[29] The Panel convened on February 19, 2009 to hear submissions from the parties on the question of penalty. By an unusual arrangement, the parties made a joint submission as to the appropriate penalty in the circumstances. The Law Society confirmed that the joint submission was not binding on the Panel but that it was the result of collaboration among respective counsel and represented the parties' best view of an appropriate penalty in all of the circumstances.

[30] The suggested penalty in the joint submission was a suspension of the Respondent's entitlement to practise law for a period of two months and an order that the Respondent pay costs to the Law Society in the amount of $25,000. It is for the Panel to determine if the penalty proposed is the correct penalty for this finding of professional misconduct.

Discussion

[31] The Respondent has admitted, and we have determined that the Respondent's and the Respondent's relatives' financial interests in AEC had the potential to affect his professional judgment. It is important for the public to appreciate that the Law Society understands the significant role played by lawyers in

safeguarding the integrity of world capital markets.

[32] The integrity of capital markets has recently been the subject of intense scrutiny as the result of some highly publicized financial scandals that resulted from malfeasance at the highest management level in the corporations. The role of the legal profession in advising clients with respect to their obligations under the relevant securities legislation cannot be overstated. In the particular circumstances of this case, BCSC found, inter alia, that there was a failure by the Respondent's client, to the Respondent's knowledge, to disclose material facts as required under the relevant legislation. In addition, the Respondent did not advise the client to make that disclosure. At the same time, the Respondent, directly or indirectly, traded in the same client's shares, again in breach of the relevant securities legislation.

[33] It is not the responsibility of the Law Society to regulate securities trading in British Columbia. The Legislature has assigned that responsibility to BCSC. However, the Law Society is responsible for the conduct of its members when they represent clients in whatever setting. In this case, the Respondent acted for a client and had a direct or indirect financial interest in the client. The Panel also found that that interest would reasonably be expected to affect the Respondent's professional judgment. This fell short of the standard that is expected of members of the legal profession in matters such as this.

[34] It is important for the Panel to clearly confirm, with the penalty to be imposed for this misconduct, that misbehaviour of this nature by lawyers in positions of responsibility will not be tolerated by the Law Society.

[35] Penalty decisions in Law Society discipline hearings have recently been guided by a series of considerations that were first described by a panel in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. In that decision, a panel set out a series of considerations as guidelines to assist subsequent panels in considering what penalties are appropriate for professional misconduct. We will detail the considerations outlined in *Ogilvie* and comment on their impact on our decision in this case. The " *Ogilvie*" headings are shown in italics.

The nature and gravity of the conduct proven

[36] The conduct that has been proven in this case is professional misconduct. That is the most serious of the findings of misbehaviour that are available to a hearing panel under Section 38(4) of the *Legal Profession Act*.

[37] The misconduct is of particular significance because of the important role that the legal profession plays in protecting the integrity of the capital markets described above. As was noted by the Ontario Supreme Court in *CC& L Dedicated Enterprise Fund (Trustee of) v. Fisherman*, [2001] OJ No. 4622 at para. 78:

> The several safeguards seen in securities legislation are grounded in important public policies designed to protect the interests of the investing public and, thereby, to enhance the mobility and formation of capital in a free market for the ultimate economic and social well-being of society. Effective implementation of these safeguards depends to a considerable degree upon the legal counsel who serves in an advisory capacity to the issuers of securities.

[38] A second important role played by counsel in the securities field is ensuring that their clients comply with the required standard of disclosure. The American decision of *FDIC v. O'Melveny and Meyers*, 969 F 2d 744 (1992, USCA) at 749 provided the following insight:

> The second problem with O'Melveny's approach is its sharp differentiation between a " duty to investors," which it concedes, and a " duty to the client," which it denies. Given a broad duty to protect the client, this distinction is a false one. Part and parcel of effectively protecting a client,

> and thus discharging the attorney's duty of care, is to protect the client from the liability which may flow from promulgating a false or misleading offering to investors. An important duty of securities counsel is to make a " reasonable, independent investigation to detect and correct false or misleading materials." (citation omitted) This is what is meant by a due diligence investigation. (citation omitted) The Firm had a duty to guide the thrift as to its obligations and to protect it against liability. In its high specialty field, O'Melveny owed a duty of care not only to the investors, but also to its client, ADSB.

[39] The Panel concluded that the conduct of the Respondent in this matter, by allowing himself to be in a conflict of interest position, would reasonably be expected to affect his personal judgment in providing the appropriate advice to his client, the issuer of the security.

Age and experience

[40] The Respondent was called to the Bar in 1978 and started practising securities law full-time in 1986. At the time of these events, the Respondent was well experienced in the field of securities law and was familiar with the provisions of the *Securities Act*, including the disclosure requirements. There can be no suggestion here that the Respondent is entitled to any leniency based on inexperience or lack of familiarity with the subject matter.

Character and discipline record

[41] The Respondent has no prior disciplinary record with the Law Society. Counsel provided to the Panel an extensive binder of letters of recommendation in support of the Respondent. We found those letters of reference to be helpful in that they disclosed that the impugned behaviour on the part of the Respondent was an aberration and an unprecedented break from an otherwise unblemished professional conduct record.

The impact upon the victim

[42] The Panel has no information as to the impact that the impugned conduct had upon any member of the public or the client. We do know that the client did not complain to the Law Society in respect of this matter. In the Agreed Statement of Facts and Undertaking entered into between the Respondent and BCSC, the parties agreed that the Respondent ought to have known that the transactions that gave rise to the material facts that were not disclosed, were contrary to public interest.

The advantage gained or to be gained by the respondent

[43] It has been previously noted that the Respondent received a financial benefit from his trading in the shares of AEC. The extent to which this benefit was attributable to his failure to disclose the information was not demonstrated to the satisfaction of the Panel. It is likely that the financial benefit accruing to the Respondent was a factor in the aggressive response to this behaviour by BCSC.

The number of times the offending conduct occurred

[44] We note in this respect that the offence was a continuing offence and that it carried on over a period of a year and a half. The Respondent could have stopped the offending conduct at any time by withdrawing as counsel. He did not do so.

Acknowledgement of the misconduct and other mitigating circumstances

[45] The Respondent has acknowledged his misconduct by the admission of misconduct contained in the

SAF. The Respondent has agreed to serve a two month suspension and has agreed to pay costs to the Law Society in the amount of $25,000. In addition, the admission of the Respondent and his cooperation with the Law Society in the later days of this matter has saved much cost and reduced the required energy to be devoted to the completion of this prosecution.

[46] It is to the Respondent's credit that he brought this matter to the attention of the Law Society by way of a " self-report" , although the benefit of that self-report is diluted by the fact that the circumstances disclosed to the Law Society would likely have come to their attention in any event due to the notoriety around the events before the British Columbia Securities Commission.

The possibility of remediation and rehabilitation

[47] The Respondent has practised law in the Province of British Columbia since 1978, a period in excess of 30 years, without any other disciplinary proceedings being taken against him. In the result, it appears that there is no particular need for a remediating penalty. In addition, the Panel has observed, in part from reviewing the laudatory letters of reference, that the Respondent is not in need of rehabilitation in these circumstances.

The impact on the respondent of criminal or other sanctions or penalty

[48] We note that, as a result of the hearing before BCSC, the Respondent was the subject of some aggressive penalty sanctions imposed by BCSC, including lengthy bans on his ability to trade in the market place and the payment of substantial financial penalties. It should also be noted that the trading bans imposed by BCSC were relaxed in 2008.

The impact of the proposed penalty on the respondent

[49] There can be no doubt that a two month suspension of a lawyer's entitlement to practise will have a serious impact upon that practice. This is particularly true of lawyers working in the securities area where the engagements tend to be of a more lengthy duration and a suspension for two months will inevitably require a considerable reassignment of responsibilities by the Respondent.

[50] It will also be clear that the suspension will have financial consequences for the Respondent as he will be prohibited from generating fee income during the period of time of the suspension from practice. There is always a fine balance to be drawn between the impact on the Respondent of a suspension and the impact of that suspension on the Respondent's clients, who ought not to be victims of penalties imposed by the Law Society. We understand in the circumstances that the advance notice of an intended suspension together with the agreement of the Respondent to the time frame of the process will have a minimizing effect on the negative impact that a suspension would otherwise have on the clients.

The need for specific and general deterrence

[51] We are of the opinion as a Panel that the primary focus of the deterrents in the circumstances of this hearing should be general deterrence rather than specific. In that regard we note that there is very little likelihood of any recurrence of this behaviour by the Respondent given the incredibly negative consequences that have followed him since the behaviour transpired. On the other hand, there is a need to send a clear message that this behaviour will result in serious consequences to an offending lawyer and, in our view, in order to communicate that message, something more than a fine is required. In these circumstances a period of suspension from practice is mandated, and we confirm that that is an appropriate consideration in terms of its general deterrent effect on other members of the profession who would consider this behaviour as part of a practice style.

The need to ensure the public's confidence in the integrity of the profession

[52] As indicated earlier in these reasons, it is our view that it is necessary to send a strong message of condemnation of this behaviour so as to communicate to the public the fact that the Law Society treats these events seriously. It is, in our opinion, necessary for that message to be properly communicated that a period of suspension be served by the Respondent. Events such as these have been relatively infrequent in the experience of the Law Society, but the lack of frequency does not diminish the significance of individual events when they occur. For that reason the Law Society must provide an appropriate message of condemnation, and in our view, a suspension accomplishes that goal.

The range of penalties imposed in similar cases

[53] There are a variety of authorities for the proposition that lawyers who act in conflict of interest ought to receive a suspension penalty for their behaviour. In *Law Society of BC v. Coglon*, 2006 LSBC 14, a case most factually similar to that before us, a panel found that a suspension of one month was appropriate for behaviour that the panel determined was not motivated by self-interest.

[54] In our view that penalty is not determinative in the circumstances of this case. The Respondent's misconduct appears to have been motivated, in part, by financial self-interest. In addition, we have determined that the conflict of interest endured over a period of some 18 months.

Conclusion and Decision on Penalty

[55] In the result of all of the foregoing, the Panel finds that the penalty recommended by the joint submission of counsel is an appropriate penalty and accordingly order that the Respondent's entitlement to practise law be suspended for a period of two months commencing on June 1, 2009. We further order that the Respondent pay costs to the Law Society in the amount of $25,000 within a period of 30 days from the date of the issuance of these reasons.

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Schedule A

IN THE MATTER OF THE SECURITIES ACT
R.S.B.C. 1996, c. 418

AND

IN THE MATTER OF MICHAEL LEE SEIFERT

Agreed Statement of Facts and Undertaking

The following agreement has been reached between Michael Lee Seifert (" Seifert") and the Executive Director.

1. As the basis for the orders and undertakings referred to in paragraph 7 of this agreement, Seifert makes the following representations and admissions:

1.1 At all material times, Seifert was a barrister and solicitor licensed to practice law in the Province of British Columbia;

1.2 From time to time, Seifert was an insider of reporting issuers in the Province of British Columbia, as follows:

1.2.1 Delgratia Mining Corporation (" Delgratia") (now Central Minera Corp.) ? a director and thereby an insider, from June 29, 1994 until September 25, 1995;

1.2.2 Consolidated Dencam Development Corporation (" Dencam") ? an officer and, thereby, an insider, from June 30, 1994 until September 13, 1995; and

1.2.3 Allied Strategies Inc. (" Allied") (now Sleeman Breweries Ltd.) ? a director and, thereby, an insider, from June 12, 1992 until April 26, 1994.

1.3 Seifert was legal counsel to, and, thereby, in a special relationship with, Arakis Energy Corporation (" Arakis") from January, 1992 until December 1995;

1.4 State Petroleum Corporation (" State") was a non-reporting issuer incorporated under the *Company Act*, R.S.B.C. 1996, c. 62 (the " Company Act");

1.5 Anthem International Incorporated (" Anthem") is a company incorporated in the British Virgin Islands (" BVI");

2. The Trust

2.1 During 1989 and following, RYCO Trust Limited and related companies (collectively, " RYCO") provided trust investment and related services from offices located in St. Helier, Jersey, Channel Islands, United Kingdom;

2.2 In or about September 1989, a trust was established named the Michael L. Seifert Trust (the " Trust"), of which RYCO was the trustee;

2.3 On August 9, 1990, Insco Holdings Limited (" Insco") was incorporated in the BVI. Legal title to the shares of Insco thereafter was vested in RYCO as trustee of the Trust;

2.4 On or about January 14, 1994, RYCO was sold to Integro Trust Holdings (Jersey) Limited;

2.5 Hereinafter, unless otherwise specified, RYCO/Integro will be used to refer to the activities of the RYCO Group and Integro Trust (and associated companies) in relation to Seifert, the Trust or Insco as appropriate;

2.6 During September 1989 to September 1995, Seifert, from time to time gave instruction or direction to RYCO/Integro respecting the trading activities of Insco. From September 1989 to September 1995, Seifert had control or direction over the shares held by Insco from time to time in reporting issuers in British Columbia;

3. Failure to File Insider Reports

3.1 Trading in Delgratia:

3.1.1 Prior to June 29, 1994, Seifert had taken steps to relinquish legal control or direction over all shares of Delgratia held by Insco. Those steps were insufficient to effect a change in control or direction for the purposes of the Act;

3.1.2 Between June 29, 1994 and September 25, 1995, while under Seifert's control or direction, Insco, through an account maintained at Pacific International Securities Inc. (" Pacific"):

3.1.2.1 purchased, in two trades, 2,000 shares of Delgratia, at a total cost of $4,300;

3.1.2.2 sold, in 26 trades, 83,000 shares of Delgratia for proceeds, net of commission, of $385,555; and

3.1.2.3 Insco, in addition, received into the account 2,000 shares of Delgratia;

3.1.3 Between June 29, 1994 and September 25, 1995, while under Seifert's control or direction, Insco, through another account maintained at Pacific, sold, in five trades, 44,000 shares of Delgratia for proceeds, net of commission, of $182,428.50;

3.1.4 Seifert failed to file insider reports disclosing his control or direction over the aforesaid shares in Delgratia, contrary to section 87 of the Act;

3.2 Trading in Dencam:

3.2.1 Between June 30, 1994 and September 13, 1995, while under Seifert's control or direction, Insco, through an account maintained at Pacific:

3.2.1.1 purchased, in three trades, 30,666 shares of Dencam, for a total cost of $24,599.44;

3.2.1.2 sold, in 15 trades, 412,858 shares of Dencam for proceeds, net of commission, of $312,866.46; and

3.2.1.3 Insco, in addition, received into the account 342,033 shares of Dencam;

3.2.2 Between June 30, 1994 and September 13, 1995, while under Seifert's control or direction, Insco, through an account maintained at Marleau Lemire Securities Inc.(" Marleau Lemire") delivered or otherwise transferred out 6,267 shares of Dencam;

3.2.3 From his appointment as an officer and, thereby an insider of Dencam on June 30, 1994 to his formal resignation on September 13, 1995, Seifert played no active role in the management or direction of Dencam;

3.2.4 Seifert failed to file insider reports disclosing his control or direction over the aforesaid shares in Dencam contrary to section 87 of the Act;

3.3 Trading in Allied By Seifert Through Insco:

3.3.1 Between November 1, 1993 and April 26, 1994, while under Seifert's control or

direction, Insco, through an account maintained at Marleau Lemire:

3.3.1.1 purchased, in two trades, 5,000 shares of Allied, for a total cost of $4,000;

3.3.1.2 sold, in one trade, 376,000 shares of Allied for proceeds, net of commission of $451,200; and

3.3.1.3 Insco, in addition, received into the account 400,000 shares of Allied;

3.3.2 Between November 1, 1993 and April 26, 1994, while under Seifert's control or direction, Insco, through an account maintained at Marleau Lemire:

3.3.2.1 purchased, in two trades, 31,500 shares of Allied, for a total cost of $39,050; and

3.3.2.2 sold, in six trades, 34,500 shares of Allied for proceeds, net of commission, of $50,550;

3.3.3 Between November 1, 1993 and April 26, 1994, while under Seifert's control or direction, Insco, through an account maintained at Yorkton Securities Inc.:

3.3.3.1 sold, in one trade, 150,000 shares of Allied for proceeds, net of commission, of $178,200;

3.3.3.2 received into the account 200,000 shares of Allied; and

3.3.3.3 delivered, or otherwise transferred out, 50,000 shares of Allied;

3.3.4 Seifert failed to file insider reports disclosing his control or direction over the aforesaid shares in Allied held by Insco, contrary to section 87 of the Act;

3.4 Trading in Allied By Seifert Through Other Entities:

3.4.1 Trading in Allied by Anthem:

3.4.1.1 Between November 1, 1993 and April 26, 1994, Seifert had control or direction over 10,000 shares of Allied held in the name of Anthem;

3.4.2 Seifert failed to file insider reports disclosing his control or direction over the aforesaid shares of Allied held by Anthem contrary to section 87 of the Act;

4. Allied Filing Violations

4.1 On or about December 31, 1993, Allied made a total distribution of 11,201,015 special warrants at $1.20 per warrant. Insco purchased 372,866 special warrants;

4.2 In respect of the aforesaid purchase of special warrants by Insco, Seifert caused to be filed with the Vancouver Stock Exchange (" VSE") a private placement questionnaire and undertaking (Form VSE 11-1 A). This document contained the following statement: " The purchaser has only bearer shares outstanding and is controlled by the Ryco Trust Executor & Trustee Company, a Jersey corporation controlled by its' [sic] directors namely Michael Sampson, Kerry Carter, Michael Fielding, John Gamlin and Rodger Young" ;

4.3 Seifert ought to have known that the said statement failed to accurately and fully state the beneficial ownership of Insco and the control and direction exercised by Seifert over Insco, and that the statement was thereby, made contrary to the public interest;

5. Distribution of One Million Shares in Arakis Energy Corporation to Anthem

5.1 On or about June 26, 1992, Arakis entered into an agreement with State, whereby, upon State acquiring certain oil and gas concessions located in the Republic of the Sudan, Arakis would acquire all of the issued and outstanding shares of State in exchange for five million common shares of Arakis (the " Purchase Agreement");

5.2 At the time of the Purchase Agreement, the shareholders of State were Lutfur Khan, Dr. Asif Ali Syed, Nadeem Khan, Waseem Rahman (Pvt.) Ltd. And Westrim Enterprises Ltd. (collectively, the " Original State Shareholders");

5.3 Prior to the acquisition of State by Arakis, the Purchase Agreement was revised such that Arakis would acquire State in consideration of the issuance of six million common shares of Arakis (the " Revised Purchase Agreement"). The additional one million shares were issued in favour of Anthem (the " Anthem Issuance"), which became a State shareholder shortly prior to the closing of the Revised Purchase Agreement and solely for the purpose of receiving such shares;

5.4 On or about February 11, 1994, in order to facilitate approval of the Revised Purchase Agreement, and on instructions from Terry Alexander, the then president of Arakis, Seifert represented to the VSE that the additional one million shares issued by Arakis under the Revised Purchase Agreement were being issued to the State shareholders, due to the value of State's interest in the concessions exceeding both the company's and State's expectations;

5.5 The representations above (at paragraph 5.4) were incomplete and, therefore, inaccurate in that said representations failed to disclose Seifert's understanding that the Anthem Issuance was made to accommodate a group of European financiers. This was a material fact with respect to Arakis, which material fact had not been generally disclosed;

5.6 Further, in order to facilitate the Anthem Issuance, Seifert:

5.6.1 made arrangements with RYCO/Integro and prepared necessary documentation on behalf of Arakis to enable one million shares to be issued to Anthem, along with the remaining five million shares to be issued to other State shareholders;

5.6.2 acted, on occasion, as the spokesman and instructing party for Anthem, in respect of its affairs in British Columbia; and

5.6.3 gave, on occasion, instructions to RYCO/Integro on behalf of Anthem;

5.7 By virtue of the facts set out in paragraphs 5.1 to 5.6, Seifert ought to have known that the Anthem Issuance was a transaction or series of transactions contrary to the public interest and that, with respect to Arakis, material facts had not been properly disclosed;

6. Trading in Arakis with Knowledge of Undisclosed Material Facts

6.1 Between January, 1994, and July 26, 1995, under Seifert's control or direction, Insco, through accounts maintained at Pacific:

6.1.1 purchased, in two trades, on August 25 and 29, 1994, 26,500 Arakis shares, at a total cost of $163,000;

6.1.2 sold out of one account, in 15 trades,

6.1.2.1 on January 25, 1994, 3,000 Arakis shares,

6.1.2.2 on July 27 and 28, 1994, 10,000 Arakis shares, and

6.1.2.3 between February 10 and 24, 1995, 26,500 Arakis shares,

for proceeds, net of commission, of $295,066.43; and

6.1.3 in addition, Insco received into the accounts 10,000 Arakis shares;

6.2 Between April 18, 1995 and July 25, 1995, Seifert, through two personal accounts maintained at Pacific:

6.2.1 sold, in 12 trades, 34,979 shares of Arakis for proceeds, net of commission, of $331,259.60 and US$366,319.63;

6.2.2 delivered out of the accounts 2,000 shares of Arakis; and

6.2.3 received into the accounts 36,979 shares of Arakis; and

6.3 The said trading activity was carried out while Seifert had knowledge of material facts or material changes in the affairs of Arakis which had not been generally disclosed, contrary to section 86 of the Act, and, in particular, that the nature or purpose of the Anthem Issuance was not fully disclosed.

7. Seifert consents to an order by the Executive Director (the " Order") that:

7.1 under section 161(1)(c) of the Act, the exemptions described in sections 44 to 47, 74, 75, 98 and 99 of the Act do not apply to Seifert in respect of the trading of securities of any reporting issuer or any issuer that provides management, administrative, promotional or consulting services to a reporting issuer for a period of 12 years from the date of the Order;

7.2 notwithstanding paragraph 7.1, Seifert may trade securities of any reporting issuer or any issuer that provides management, administrative, promotional or consulting services to a reporting issuer

beneficially owned by him at the date of the Order, subject to the following conditions;

7.2.1 that before any trade takes place, Seifert must deliver a sworn declaration to the Executive Director listing all of the securities beneficially owned by him at the date of the Order;

7.2.2 that any such trade must take place within one year of the date of the Order through a single registered dealer (the " registered dealer") designated in writing by Seifert and approved by the Executive Director;

7.2.3 that before any such trade takes place, Seifert must deliver to the registered dealer a copy of the Order; and

7.2.4 that Seifert will instruct the registered dealer to provide the Executive Director with a copy of the confirmation slip evidencing the trade within four days of the date of the trade;

7.3 under section 161(1)(d) of the Act, Seifert resign any position that Seifert holds as a director or officer of any reporting issuer or any issuer that provides management, administrative, promotional or consulting services to a reporting issuer and is prohibited from becoming or acting as a director or officer of any reporting issuer or any issuer that provides management, administrative, promotional or consulting services to a reporting issuer for a period of 12 years from the date of the Order; and

7.4 under section 161(1)(d)(iii) of the Act, Seifert is prohibited from engaging in investor relations activities for a period of 12 years from the date of the Oder.

7.5 Seifert has paid to the British Columbia Securities Commission the sum of $75,000, and has promised to pay the further sum of $75,000 on each of April 30, and November 30, 2000, April 30, and November 30, 2001 and April 30, 2002, for a total of $450,000, of which $200,000 represents a portion of the costs of the investigation.

7.6 Seifert undertakes not to act as a filing solicitor, with respect to any filings customarily made with the British Columbia Securities Commission or the Canadian Venture Exchange or its successors, for a period of 12 years from the date of this agreement.

7.7 Seifert undertakes to comply with the Act and the Securities Rules, B.C. Reg. 194/97 and all-applicable regulations, policies and guidelines, from the date of this agreement.

7.8 Seifert waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with or incidental to this agreement and related orders. Notwithstanding the foregoing, Seifert does not waive any right he may have under section 171 of the Act (or any successor section) to apply for an order revoking in whole or in part or varying the terms of the Order in respect of the matters dealt with in sub-paragraph 7.2.2 above.

DATED at Vancouver, British Columbia, on December 9, 1999.