IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED
(the *Securities Act*)

and -

IN THE MATTER OF
DOUGLAS G. RUDOLPH, PETER A.D. MILL, CFG*CN LTD. (also known as CANGLOBE FINANCIAL GROUP), AND CANGLOBE INTERNATIONAL CAPITAL INC.
(collectively the Respondents)

DECISION

Introduction

1. The Director of Enforcement of the Nova Scotia Securities Commission alleges the Respondents contravened the Nova Scotia *Securities Act*. The Director of Enforcement alleges unregistered activity, illegal distributions, unfair practices, illegal undertakings as to future value, misrepresentation, untrue statements, and fraud. Each of these allegations are premised on the trading, advising and issuance of securities. The evidence shows that Douglas Rudolph and Peter Mill, both in their personal capacities and through the corporate Respondents, defrauded many people of hundreds of thousands of dollars. The testimony before us of these many people in proof of the fraud was sincere, unaffected by any extraneous considerations, fair-minded, and thoroughly credible. The oral testimony was corroborated by bank records and transaction documents, some of which was provided by the Respondents, themselves, in disclosure. Upon hearing the totality of the evidence presented, we accept the oral testimony. We refer to the people who actually testified before us and to those whose statements come into evidence through statements they made to Securities Commission's officials in Nova Scotia and New Brunswick collectively as "witnesses".

2. By comparison, the Respondents presented no evidence that contradicted the oral testimony provided by the witnesses. Neither Mr. Rudolph nor Mr. Mill presented themselves to rebut the testimony. Mr. Mill did not participate in the hearing at all. Mr. Rudolph appeared through counsel at the last pre-hearing conference and by himself at the outset of the hearing but departed after opening submissions and before any witnesses gave testimony. He appeared again through counsel to make closing arguments which focused primarily on attempts to limit the scope of the evidence reviewed or to challenge the jurisdiction of this panel. His objections have been procedural and technical. While much of this opinion will then be, of necessity, technical, we all agree that our most important function is to allow these many people to tell their stories and we will begin with them. We wish, at the outset, to acknowledge their considerable courage and their public service in coming forward and subjecting

themselves to this public process. In the circumstances, our ability to impose effectual remedies is limited. We can only hope the stories themselves may instruct us all.

3. We heard through the evidence presented to us, and through the decision of the Nova Scotia Barristers' Society disbarring Mr. Mark David, of other people who Mr. Mill and Mr. Rudolph also defrauded. The witnesses, we learned, were not the only ones.

4. Douglas G. Rudolph was the principal of CanGlobe International Capital Inc. ("CanGlobe International") and Peter A.D. Mill was the principal of CFG*CN Ltd. ("CFG*CN") CFG*CN Ltd. (also known as CanGlobe Financial Group). Each company lists others as directors on the public record, but none of them were ever mentioned in the testimony of the witnesses. For all the purposes of these hearings, and on the evidence, Mr. Rudolph and Mr. Mill were the only guiding minds and agents of CanGlobe International and CFG*CN respectively.

5. The Director of Enforcement of the Nova Scotia Securities Commission, through counsel, presented the allegations against Mr. Rudolph, Mr. Mill, CFG*CN and CanGlobe International. We refer to the Director of Enforcement as "Enforcement", and to the lawyers presenting the case as "Enforcement Counsel". We, the panel, as members of the Commission itself, are separate and apart from the Director and act as independent judges of the allegations the Director presents.

6. We note that the rules of evidence in proceedings before the Securities Commission are not the rules of evidence in a criminal or a civil trial. The Commission's *General Rules of Practice and Procedure* provide:

> 14.1 The Commission shall not be bound by rules of evidence. The primary test for the admission of evidence is its relevance to the allegations in the Statement of Allegations.

Evidence

AB

7. AB is a senior and well qualified stationary engineer, still working in high pressure steam plants at age 70. A mutual friend introduced AB to Mr. Rudolph to help with his bookkeeping and his income tax returns. AB was very satisfied with Mr. Rudolph's services. AB became a part of a circle of friends who met regularly and often discussed business ideas.

8. Prominent in the circle was Douglas Rudolph and his brother, Gordon Rudolph. Gordon Rudolph was spoken of in these proceedings and appears to have been the principal behind the ownership of a valuable 60 acre block of land in Bedford (the "Bedford Lands"). The Bedford Lands crop up repeatedly in evidence and testimony as it was tied to a number of development projects and Douglas Rudolph's interest was used as security. We will make reference to the Bedford Lands again through this opinion.

9. Mr. Douglas Rudolph also had a company called Gravel Ridge which he shared with his then common law partner. The men discussed investments in Gravel Ridge, Keltic Chemicals which proposed to establish a petrochemical plant at the Straits, a dentist office, a denturist business, a quarry and in the Bedford Lands. AB said he was, because of his trade, particularly interested in an idea of incorporating a power plant in the development of the Bedford Lands. They also discussed ways to manage properties and ways to reduce income taxes. Mr. Rudolph, he said, was something of a specialist in ways to reduce income taxes. He, himself, is not sophisticated, he said, but he found these discussions very interesting and he liked listening and learning.

10. Mr. Rudolph suggested that AB invest money with Mr. Rudolph to fund Mr. Rudolph's own receivables on Mr. Rudolph's promise to repay him with a premium once the receivables were paid. AB agreed and quite often provided Mr. Rudolph with funds for this purpose. The two men agreed upon an amount, a date upon which the money would be repaid, and the rate of return on it. These initial investments worked out satisfactorily.

11. While Douglas Rudolph did AB's books, he also provided him with advice on other investment activities not disclosed at the hearing. As a result of the services he provided, Douglas Rudolph was intimately familiar with AB's financial affairs and the total amount of equity and borrowing power that AB had.

12. Then, in the summer of 2006, Mr. Rudolph suggested that they meet with Peter Mill at the offices of CanGlobe Group of Companies. They went to Mr. Mill's offices in Purdy's Wharf and AB met him for the first time. The offices impressed AB. At the meeting, Mr. Rudolph and Mr. Mill presented AB with an opportunity to invest money with the Respondents. AB said the discussions for the investment fitted into the discussions he had with Mr. Rudolph and the others over the years as they related to major local development proposals. Mr. Rudolph and Mr. Mill told AB that the Respondents needed money to facilitate the transfer of approximately $600,000,000.00 from Germany for investment in the projects the circle had been discussing. The idea was to compensate a financial representative who was arranging for the transfer of money from Germany to Canada.

13. When questioned on his motivations for the investment, AB indicated that Mr. Rudolph said they needed his help and AB wanted to help. More importantly, AB testified that Mr. Rudolph already owed him certain outstanding amounts in connection with other investments he had made with him and that this investment opportunity was presented as an opportunity to clear the slate and make him whole. AB also testified that his wife had become anxious for the outstanding amounts owed by Mr. Rudolph to be paid and he felt pressure to resolve it. Mr. Rudolph asked AB for $220,000.00 and AB agreed to provide that amount. AB also testified that this was the total maximum amount that he could borrow at that time as Mr. Rudolph was well aware.

14. Mr. Rudolph presented AB with a "loan agreement". The agreement, dated August 24,

2006, provided for AB to loan an entity called CFG*CN the sum of $220,000.00 and for CFG*CN to repay the sum of $554,000.00. AB said he was impressed with the document. The document says in part:

> Borrower also agrees to repay funds due to AB from Douglas G. Rudolph. The calculations provided indicate that at October 31, 2006, the full principal sum (inclusive of this $220,000) will be **Five hundred fifty-four thousand, four hundred and fifty dollars ($554,450.00)** of lawful money of Canada. At that time, a return on said funds negotiated by Mr. Rudolph and AB will also become payable. This amount is **Three hundred and sixty thousand dollars ($360,000.00)** of lawful money of Canada and represents a percentage of Mr. Rudolph's personal share of land holdings in Bedford, Nova Scotia.
>
> Borrower agrees to pay the Principal Sum as set out above to Lender on or before October 31, 2006 (the "**Maturity Date**").
>
> If Borrower predicts any delays in providing the funds by the maturity date, Borrower may offer a bonus to the Lender to defer the closing. If Lender is not satisfied with offer, it is our understanding that Mr. Rudolph will take steps to provide the funds to Lender based on a sale of the lands discussed above.

15. The agreement defines the "Principal Sum" as being $220,000.00.

16. AB says he understood CFG*CN to be a bank, "like the Bank of Montreal".

17. On the same day, Mr. Rudolph arranged for AB to meet with AA of TD Bank immediately upon leaving the meeting with Mr. Mill at the CanGlobe offices.

18. Clearly, Mr. Rudolph and AA had some pre-existing business relationship, as the investment financing documents were processed within hours. Mr. Rudolph not only referred AB to AA, but nearly every other witness who came before us as well. AA seemed always to be well prepared for the meetings and quickly facilitated the receipt of money from the witnesses, the placement of security in favour of the bank for the money when needed, and the transfer of the money.

19. AB, himself, had his mortgages with TD already. AB borrowed the $220,000.00 from TD, taking $180,000.00 of equity out of two homes he owned, one he occupied and the other occupied by his daughter and family. He was already doing business with TD so the loans were just draws on the lines of credit. AB made up the balance through a draw on a MasterCard line of credit. TD provided AB with a bank draft in the amount of $180,000.00 payable to Mark David In Trust. AB provided the balance of $40,000.00 to Mr. David on his own through a separate line of credit without the assistance of AA.

20. Mark David was a lawyer. The Nova Scotia Barristers' Society disbarred him for his conduct in the affairs of Mr. Mill. He, too, appears in the narratives of many of the witnesses.

21. AB, on top of the $220,000.00, also advanced a substantial amount of money out of his Retirement Savings Plan and the RRSPs of his wife and mother. AB did not understand how the transaction actually worked, but he acknowledged he had never received an income tax T-slip for a withdrawal from his own RRSP. He says that he still receives Bank of Montreal statements showing a nil balance in his RRSP. It appears that, as in the case of one other witness, Mr. Rudolph arranged the transfer of the money from the Bank of Montreal into a self-administered RRSP and the money passed into the control of Mr. Rudolph. The amount of the money passing out of the RRSP is not clear on the evidence before us, nor is there evidence about where it went. He did say, however, that there had been a meeting on January 6, 2006 with Douglas and Gordon Rudolph at the home of the man who had first introduced him to Douglas Rudolph. Their discussion involved trying to raise money to invest in a project on the Bedford Lands. The discussion also turned to a discussion of the old Mid-Town tavern site in downtown Halifax, and in Keltic Chemicals. AB agreed to invest $150,000.00.

22. AB invested a large amount of money from a number of sources. It is difficult to understand from the evidence how the $554,000.00 promised in the loan agreement was calculated. AB did say, however, that the payment of the $554,450.00 would have "squared them up".

23. October 31, 2006 came and went. No repayment. Years passed, no repayment. AB was never repaid his $220,000.00. AB said that, under the agreement, the interest on the lines of credit and the carrying charges on his loans, were in fact to be paid by the Respondents. These loans were secured by the mortgages on his personal properties. For a period of time, it appears that the payments to service the debt borrowed to cover the investment were paid. In September and October, 2008, however, AA of TD Bank contacted him to say that the payments were in arrears and had to be addressed. Mr. Rudolph told him they were no longer in a position to cover the interest costs.

24. AB had to cover payments on his mortgages. He scrambled. He talked to banking specialists, accountants and friends. He contemplated bankruptcy, but in the end, he was able to put together enough money to keep all the balls in the air.

25. AB pursued Mr. Rudolph and Mr. Mill. They came up with excuses and continued to promise repayment. They said the delay in bringing the money to Nova Scotia was due to the 2008 downturn, they were running into problems in New York and China, or the delay arose because the money was linked to funds stolen in World War II. AB dropped into Mr. Mill's office twice and talked with him. Mr. Mill said that things were moving along, assuring him that things were simply slowed down, that he should be patient and not worry. Mr. Mill told him they were working with China on the transfer of 50 billion dollars. AB said he challenged that number, and Mr. Mill reacted as if he had been slapped in the face and repeated the amount. AB spoke with AA who told him the money was forthcoming. Despite the inordinate delay, AB continued to trust that he would be repaid by the Respondents based on his long history and friendship with Douglas Rudolph.

26. In February, 2009, AB received a telephone call from Mr. William "Mick" Ryan, Q.C. to discuss the affairs of Mr. Rudolph. Mr. Ryan, AB said, described Mr. Rudolph as a "con artist". AB called Mr. Rudolph. Mr. Rudolph assured him things were going to work out. He told AB that Mr. Mill was over in China as they spoke. Mr. Rudolph advised Mr. Mill would call. Mr. Mill called at 23:30 that evening saying there were delays because of the economic meltdown, that things were proceeding and that he would receive full payment plus interest by the end of March.

27. In a later concrete example, Mr. Rudolph wrote AB on September 22, 2009. The email is headed **WITHOUT PREJUDICE**. It opens "We have been informed funds will be available shortly" although it goes on to say timelines are provided as best estimates. The email closed by saying that the information is strictly confidential. Attached to the email was a statement saying that AB was to be returned his principal of $220,000.00 less an "adjustment" of $13,200.00 plus a "return" of $155,100.00.

28. AB last spoke with Mr. Rudolph sometime during the winter of 2010. In August 2010, he sued Douglas Rudolph, Gordon Rudolph, CFG*CN Ltd., CanGlobe International Capital Inc., A. Mark David and 322578 Nova Scotia Limited. AB claimed the sum of $861,956.00 as against Douglas Rudolph. This proceeding has yet to be concluded.

29. AB described the impact of Mr. Rudolph's depredations as "devastating". The depredations had a huge impact on his then wife and his two kids, especially his daughter. He could not service the debt he had taken on. He jeopardized the roof over his own head. He had taken money out of the home his daughter lived in, jeopardizing the roof over her head and the heads of his grandchildren. He said he is fortunate that his health is pretty good, that he has a good job, and his employer still wants him to work. He has been able to keep things under control. He had hoped that he could, with the amounts he expected to have from his investments through Mr. Rudolph and a partial pension, retire at 60. Plans for structuring his retirement were part of the endless talk with Mr. Rudolph. At 70 years of age, he now has no plans to retire. He just hopes he stays healthy enough to do his job.

CD

30. CD had a career in radio advertising sales before retiring six years ago. He is now 80. CD, later in his career, needed someone to provide tax accounting and advice. A colleague recommended Douglas Rudolph. CD retained him. CD found Mr. Rudolph's services to be very satisfactory and they became good friends. CD trusted him. They would talk about what was going on generally and about investments. Mr. Rudolph came to know CD's financial status and affairs well. Mr. Rudolph asked CD to make short term, low value, investments with him. CD agreed to the short-term investments and two or three times advanced $5,000.00. Each time, within 30 days, Mr. Rudolph would return $6,000.00 to him. CD had no idea, however, how the money had actually been invested.

31. In 2003-04, Mr. Rudolph began to talk about possible long term higher value investments for CD, investments that would require CD to move the entire value of his RRSP. Mr. Rudolph told CD that if he invested his RRSP with him, then Mr. Rudolph would return its principal, together with a further $60,000.00, within 90 days. Mr. Rudolph had CD transfer his RRSP from RBC to TD through AA. Mr. Rudolph did not tell CD what the money was for except that the money was going to Europe. CD's wife advised against the investment, as did his RBC advisor, but he thought that the income he would receive would enable him to properly fund their two daughters who were both away in university.

32. We have no evidence before us of where CD's money actually went.

33. Mr. Rudolph did not pay CD the promised money within 90 days. They lunched regularly. CD always asked for his money back. Mr. Rudolph talked of millions of dollars but was never forthcoming with any. CD said that Mr. Rudolph always had the most wonderful excuses and "was an expert at it."

34. Mr. Rudolph and CD exchanged correspondence. CD wrote Mr. Rudolph an email dated December 31, 2006, that is more than two years after the money was due to be repaid, saying in part:

> I may have a couple more months here so I need my money.
>
> The $50,000 you promised is vital now.
>
> Help me Doug...I hate losing sleep over this...

35. Peter Mill got involved through a letter headed CanGlobe Financial Group dated August 27, 2008 which said in part:

> I am pleased to report that we have reached the final stages of our European Capital Enhancement Process. We expect to have access to the funds in our European accounts on or before the 15th of September.
>
> As this occurs, we will arrange for you a flow of funds, which once started, will continue weekly until all outstanding amounts are repaid. ...
>
> I also want to assure you again that the flow of funds is imminent and will allow you meet (sic) your financial obligations.

36. This letter was reinforced with a copy of a letter addressed to Mr. Rudolph of the same date from AA. AA said:

> Dear CD,
>
> I wanted to inform you that I have been in contact with members of the CanGlobe

Group of Companies as well as their Corporate Lawyer, A. Mark David.

TD Canada Trust will be assisting with the flow of funds into Mr. David's Trust Account which in turn will be advanced to you facilitating the repayment of your outstanding obligations.

It is my understanding that the Group will have access to the funds in their European accounts on or before the 15th of September. Once started, the flow will continue weekly for a period of approximately twelve weeks.

If you have any questions or concerns, feel free to contact me at your convenience.

37. Mr. Rudolph wrote on September 4, 2008:

> Hi CD, we were informed last night, our Financial Manager has been contacted and told to return to close the deal. He flies out on Sunday to be there for Monday. Your 60k will come from this closing. ...

38. CD followed up on September 19:

> Another week has passed us by Doug and I am looking...

39. Mr. Rudolph replied within the hour:

> ...The Financial Manager has been advised funds will be placed in his accounts next week - week of September 22...Upon access to funds here in Canada, you will get the 60k and I'm trying to get the small mortgage in your RRSP paid in full with accumulated return - that would be approximately 134k in your RRSP on top of the 60k outside - 194k total based on what I have requested.

40. CD followed up again on September 25. Mr. Rudolph replied:

> We have reached an agreement to do so, but with the markets and the rules governing the movement of funds, it is hard to estimate a closing...
>
> The release is in the final stages as per Financial Manager. Bank still has to pull trigger and move funds from existing account to FM's account with Client approval. Our funds are part of a 2 billion dollar release.

41. CD was able at the outset, however, through his own lawyer, to obtain mortgages on the Bedford Lands through what became a TD-Canada self-directed retirement savings plan. The mortgagors, that is to say, the then owners of the property, were Gordon Rudolph, Douglas Rudolph, Henry Rudolph, Richard Connolly and Archie Hattie. The mortgages were both dated July 22, 2004, one in the amount of $115,000.00 and the second in the amount of $245,000.00. The Bedford Lands contained 59.6 acres and with frontage on

Rocky Lake in Bedford. Through the mortgages, CD finally got his principal back but he never got any of the promised $60,000.00.

42. CD said that the whole affair had caused him great embarrassment and being without his capital through the years of delay made it difficult for him to fund his daughters' education. Aside from the stress of the ordeal, CD is the only witness fortunate enough to recover his initial investment from the Respondents.

EF

43. EF appeared through video link. She is now living in Ontario. She had lived in Halifax for five years between 2005 and 2010. EF is a dental hygienist by profession. She owned her own home free of any mortgage. A neighbour introduced her to Mr. Rudolph saying that her family had invested money with him satisfactorily for years and that she should consider investing with him too. EF described Mr. Rudolph as being very sure of himself. He referred to multiple people who had invested with him, and although he was very vague about the actual nature of the investments, he said the investments were very safe and would garner a rate of return of 2% per month. He encouraged her to invest as much as she could but left it to her to decide how much. He knew that she had no mortgage on her home. EF considered Mr. Rudolph's proposal and decided to go with it.

44. EF met Mr. Rudolph in his office at Purdy's Wharf early in December, 2006 to sign documents and then go to the bank. She had decided she could afford $100,000.00 and she told him she would invest that amount. Mr. Rudolph told her the money would be a "bridge loan" but said he could not, for confidentiality reasons, give details. He said the investment would return 2% per month and mature in one year. She trusted that he was honest, and she trusted that her friend had steered her over to someone honest and trustworthy.

45. Peter Mill joined the meeting. He signed a promissory note on behalf of both CanGlobe Financial Group and CFG*CN Ltd. Mr. Rudolph signed personally as guarantor. EF knew nothing about the companies.

46. Counsel for the Director referred EF to a promissory note in the amount of $100,000.00 dated December 15, 2006. EF identified the note as being the one Mr. Rudolph provided to her. The note provided that the undersigned promised to pay:

> ...the principal sum of one hundred thousand dollars ($100,000.00) in lawful money of Canada, payable on or before 14th December 2007 together with simple interest at a rate of 2.00% per month, payable each month until repayment of the principal sum...

47. EF and Mr. Rudolph left his office and went to TD Bank branch on Barrington Street. There they met with AA. Mr. Rudolph seemed to know AA very well. AA seemed to know exactly what was going on and was expecting them. EF had always dealt with the Bank of Montreal, but Mr. Rudolph encouraged her to go to TD. AA arranged a new

mortgage on EF's home and a bank draft payable to CanGlobe International Capital Inc. in the amount of $100,000.00. The draft is dated December 15, 2006.

48. TD Bank records presented in evidence through the Director's investigator, Mr. William MacDonald, provide a copy of the monthly statements for December, 2006 of a CanGlobe chequing account upon which Mr. Rudolph had signing authority. The statement shows the December 15 deposit of a "TDCT DRAFT" for $100,000.00. The following debit entries are all of the same date. The first is a draft for $8,006.50. Then there is a credit of $6.50. Next is a debit of a TD draft in the amount of $20,000.00, then a cash withdrawal of $10,000.00 and a further debit of a TD draft for $10,000.00.

49. Mr. MacDonald presented copies of a number of Toronto-Dominion Bank drafts all of the same date, December 15, 2006. Each draft is identified by a number which corresponds with a reference on the account statement. The first for $8,000.00 was, as will be explained, a rebate to EF. The draft for $20,000.00 was payable to an Ottawa law firm, Perley Robertson Hill and MacDougall In Trust. The $10,000.00 draft was payable to someone named Rodolpho Meloni. Then, the last for December 15, there is a further draft of $2,000.00, a copy of which is not in evidence.

50. The bank statements also disclose three transfers in the amount of $5,000.00, $25,000.00 and $2,500.00 dated December 18th, 28th and 29th respectively to Mr. Rudolph's own Toronto-Dominion personal chequing account. There is also a transfer out of the CanGlobe account without particulars for $8,000.00 dated December 19th and a debit in favour of an Ottawa firm of accountants in the amount of $10,000.00. By December 29, $1,163.58 remained in the CanGlobe chequing account.

51. Mr. Rudolph immediately, on December 15, 2006, rebated $8,000.00 to EF, effectively from her own money, but that was all Mr. Rudolph, CanGlobe Financial Group and CFG*CN Ltd. ever paid EF. Neither Mr. Rudolph nor the companies ever paid any more of the promised 2% per month interest, nor any of the principal of $100,000.00.

52. The promissory note came due in December, 2007. EF pursued Mr. Rudolph to no avail. She called him. She met with him. She wrote him emails. She received vague explanations why the money was not being paid back to her. Mr. Rudolph told her that the money was hung up in Hong Kong, that there were issues with banks, or with the Canada Revenue Agency. He told her the money was immediately forthcoming, and then she would hear nothing.

53. Commission counsel presented copies of email correspondence EF had with Mr. Rudolph. These manifest what Mr. Rudolph was telling her personally. We quote parts from a number of them. On August 20, 2008, Mr. Rudolph wrote saying:

> ...Last week, our CEO travelled to Toronto to meet The Financial Manager. He was shown the Client assignment letter that directs the bank to place funds in the accounts of the Financial Manager during the week of August 25th to August 29th, when the client returns to Hong Kong after the Olympics. Once completed we will

have immediate access to funds allowing the return of all bridging capital and returns on same. We expect to make these payments the week of September 1, 2008.

54. On September 19, 2008 he wrote:

> ...The funds due to us have been sitting in a bank and simply have not been allocated to us as yet. ...For you and all other bridge funders - our deal is completed, the money is sitting in the bank. We just have to wait for the banks to place the funds in the accounts of our FM. This they have said will be done this week...

55. On November 13, 2008 he wrote:

- We have been *finally informed* capital will be forwarded to our lawyer's trust accounts to be **evidenced imminently**
- **Receipt** of Capital will be provided **to each of you when it arrives - expected next week**
- We are **advised** all necessary arrangements toward a conclusion will be made or indeed concluded by the end of this month (November 2008)
- Individual meetings at Purdy's Wharf will be scheduled to complete the necessary paperwork to release funds. A lawyer will be present to witness the signing of all documents.

56. On December 18, 2008, Mr. Rudolph wrote:

- CEO and Financial Manager are in Hong Kong
- Along with Clients and HK lawyers they have been meeting with Banks this week
- Banks state funds will begin to move Monday and continue through Holiday period;
- Funds will accumulate in appropriate accounts and are to be accessible to HK lawyers immediately after the Holidays

57. And on April 1, 2009:

> As of 10:00 pm Halifax time, 31 March, 2009 we were advised we will receive verification of closure this week. Upon receipt of this verification, resolution to all bridge loans will follow immediately thereafter.

58. EF had known nothing of any "Financial Manager" or of Hong Kong or anything else of which Mr. Rudolph was speaking and writing.

59. EF never got her money, but still had the $100,000.00 mortgage to the Toronto-Dominion Bank. She described tearfully the impact of the loss of her money and the cost of repaying the amount she had borrowed. She described herself as having been a confident, independent woman able to live a life of her own choosing. This included being able to travel to Mexico during the winter to live simply and inexpensively. She had to give that up, sell the home and retreat to her sister's in Ontario. Her dreams and her confidence in herself were shattered.

GH and IJ

60. GH is a retired lawyer. He and his wife, IJ, who testified after him, live in the same home in west end Halifax that they moved into in 1971. They have two grown children, a son who lives in Toronto and a daughter who lives in Halifax.

61. GH is an alumnus of Saint Mary's University. In 2001, Saint Mary's played in the Vanier Cup football game in Toronto for the intercollegiate championship of Canada. GH went to Toronto for the game. Douglas Rudolph had done his son's income tax returns. The son and Mr. Rudolph were friends. Mr. Rudolph provided GH and his son with free box seat tickets to the game and first met GH Sr. there. GH had no contact with Mr. Rudolph in the ensuing year, but Saint Mary's returned to the Vanier Cup in 2002 and they met there again.

62. Afterwards, Mr. Rudolph came to GH proposing a charitable donation which provided a net advantage by reducing the income tax payable. GH took advantage of that proposal in 2002 and 2004 to his immediate benefit. Subsequently, the Canada Revenue Agency disallowed the deductions and reassessed GH. GH said that, in retrospect, he believes Mr. Rudolph was using the tax proposal as an opportunity to "groom" him for the later call to invest and used the financial information he gained to exploit him and others later on. Mr. Rudolph also knew how much equity GH and IJ had in their home.

63. Mr. Rudolph had said to GH that he had other investment opportunities available when discussing the charitable donation plan. Mr. Rudolph came to GH and suggested GH invest $200,000.00. Mr. Rudolph offered to return $250,000.00 after one year. GH was looking for an investment. The mortgage on the family home had approximately $50,000.00 owing. IJ was suspicious, but GH thought it was a good deal and they decided to go ahead. Mr. Rudolph also wanted GH and IJ to draw on their RRSPs, but they would not go that far.

64. Mr. Rudolph came to GH's office several times, on one occasion for the purpose of signing a promissory note in favour of IJ. The note, dated June 29, 2006 provided in part;

> **CFG*CN Ltd. ("CFG")** promises to pay to GH and IJ ...the following sums

1. **$12,000.00 forthwith** after the making of the said loan; and

2. **$250,000.00 on June 30, 2007**

65. Peter Mill executed the note on behalf of CFG*CN. CanGlobe International Capital Inc and Douglas G. Rudolph personally guaranteed the note.

66. Mr. Rudolph said he would deliver a cheque for $12,000.00 to pay the monthly installments on the mortgage GH and IJ were putting on their family home to fund the investment. GH said he did not realize then that they were just giving him back his own money.

67. GH and IJ's mortgage had been with the Bank of Montreal. Mr. Rudolph, however, introduced them to AA of the Toronto-Dominion Bank. GH and IJ refinanced their home with the Toronto-Dominion. AA, GH said, made the transaction sound pretty legitimate.

68. Mr. Rudolph did not go into details about where the money was to go. He just said he had some offshore opportunities. Obviously, we were naive, GH said. They trusted Mr. Rudolph as their son's friend. The CRA tax scheme was still all right and they had no reason to doubt at that point. GH said he should have got a back-up mortgage as security from Mr. Rudolph, but he figured no one would give a personal guarantee if the deal was not right.

69. Mr. Rudolph said that he personally had resources and there would not be a problem. Mr. Rudolph kept talking about the Bedford Lands. GH researched it. Mr. Rudolph was an owner with three others including his brother Gordon. This backed up GH's belief that he could go after Rudolph personally if the loan fell into default. GH subsequently tried to get a mortgage on the Bedford Lands and actually drafted one, but Mr. Rudolph refused to sign it.

70. GH said he knew virtually nothing of CFG nor anything of Mr. Mill's role. He only knew that Mr. Mill was a colleague of Mr. Rudolph.

71. Documents presented in evidence by Mr. Will MacDonald show a June 29, 2006 deposit $200,000.00 to the CanGlobe International account and a debit the same day in the form of a Toronto-Dominion Bank draft made out to "A. Mark David In Trust". GH had no idea why the money went to Mr. David's trust account.

72. GH simply expected the note to be paid when it came due. When the note became due, however, Mr. Rudolph started making various excuses and just kept stalling and putting them off. The excuses were foolish and extraordinary. One excuse that stood out was to the effect that the money was invested in China, that the generals who were to advance the return of the money were involved in the Olympics and could not sign the cheque. GH said the line has become something of a family joke in reference to things that would never happen.

73. GH and IJ decided to sue CanGlobe Financial Group (CFG*CN Ltd.), CanGlobe International Capital Inc. and Douglas Rudolph. The action, with IJ as plaintiff, is dated August 25th, 2008. A defence was filed. GH and IJ applied to the court to strike the defence and enter judgment. This application was not contested. On October 23rd, the court granted IJ judgment in the amount of $267,974.01 inclusive of interest and costs.

74. On December 11, 2008, IJ then obtained an order requiring Mr. Rudolph to testify and produce documents disclosing his assets to aid her in recovering her money. Mr. Rudolph did not comply with the order and in October, 2010, a Supreme Court justice found him to be in contempt of court. The court ordered Mr. Rudolph to pay costs and imposed a conditional penal sentence for his civil contempt.

75. On October 16, 2008, Mr. Rudolph and the other co-owners of the Bedford Lands had conveyed it to a numbered Nova Scotia company, the directors of which are Gordon Rudolph and another of the former co-owners. IJ applied to the Supreme Court to set aside this transaction as having been done to defeat their efforts to collect the money owing them. IJ also filed a lien against the Bedford Lands. Eventually, after more litigation, IJ was able to recover some money. IJ, also in March, 2010, sued Peter Mill.

76. GH explained the impact of the loss of so much money on him and his family. He said the loss and the ensuing litigation had severely affected his whole life. He and his wife are still paying the June, 2006 mortgage they placed to raise the money to invest with Mr. Rudolph. They were never able to buy a summer home to which they might retire as they had planned, and he doubts he will have money left for their kids. They have had to watch their bank accounts and live more modestly for the last ten years than they would have or should have expected to live, and or can expect to live in the future. He feels very guilty. The fraud impacted his ego and hurt his wife. The ordeal was not something she had signed up for. It has impacted her health.

77. IJ, GH's wife of 50 years, also testified. She confirmed her husband's testimony and spoke of the impact on the family plans of the loss of so much money. IJ is an R.N. Although she had loved her job, she had come to look forward to retirement. Their daughter had a set of twins and she was also looking forward to being a grandmother. She gave her notice, but then it became apparent they would not be getting their money back. She realized she had to keep working but could not get her job back. She would have had to reapply for the job she had held for 27 years. She was fortunate, however, to be able to work in the same department part-time and has done so. She saw the impact the whole affair had on her husband and the guilt he felt. She, herself, has heart issues. She said that these were clearly caused by the stress of going through what they were going through.

KL

78. KL is a police officer and one of a number of police officers who invested money with Mr. Rudolph. A fellow officer suggested that KL invest with Mr. Rudolph. In January,

2007, KL and his wife did meet with him at the Purdy's Wharf offices. Mr. Rudolph talked about investments, said they had equity in their home and suggested KL and his wife convert the conventional mortgage on it to a home equity line of credit loan secured by a mortgage to free the money to invest. Mr. Rudolph explained that the funds would be used for bridging funds to cover transactional costs in the European market. Mr. Rudolph offered an interest rate of 2% per month and said that while an investor had to be flexible, the investment could be withdrawn with accumulated interest at any time. Mr. Rudolph did not really say how the return would be generated.

79. KL's wife was suspicious of the office finding that it did not look right to her and suspicious of the investment. Nevertheless, KL and his wife decided to invest $50,000.00. Mr. Rudolph guided them to AA of the Toronto-Dominion Bank. AA internally processed the conversion of their Royal Bank conventional mortgage to the Toronto-Dominion line of credit. KL drew $50,000.00 from it in two TD drafts made payable to A. Mark David in Trust.

80. KL and his wife also met with Mr. Mark David and Mr. Peter Mill. KL believes Mr. Rudolph was present through Skype. Mr. David had prepared a "Further Agreement" dated February 16, 2007 referring to an investment of $20,000.00. The agreement between KL and Canglobe International Capital Inc. and CFG*CN Ltd. provided in part:

> On the date hereof, KL will loan CICI **20,000.00 (the "Funds")**
>
> CICI will use the Funds to loan to Cantec Atlantic Limited for its use as bridging capital to cover its expenses in connection with certain European funding transactions in which it is involved.
>
> CICI will pay KL interest on the Funds at an annual rate of 24 % per annum, interest will be on a quarterly basis, the first such payment being due on April 30, 2007.
>
> CICI will repay the Funds to KL on April 30, 2007, together with any unpaid interest.
>
> At KL's option, it may extend such repayment date for **three months** at a time (with the latest maturity date being **February 1, 2009**) in which case CICI will continue to pay interest to KL at the aforesaid rate on a quarterly basis. If at any time KL wishes repayment of the Funds, it will give **one month's** written notice to CICI.

81. Mr. Rudolph signed on behalf of CanGlobe and Peter Mill signed on behalf of CFG*CN. KL and his wife signed too. KL testified that the parties also executed another, similar loan agreement for $30,000.00 and a corresponding bank draft. Neither the companies nor Mr. Mill nor Mr. Rudolph ever repaid KL and his wife a penny of their $50,000.00. KL and his wife did, however, because of Mr. David's involvement, receive a payment from the Nova Scotia Barristers' Society covering part of their loss.

82. It was not for want of trying that they received no money from the companies or Mr. Mill or Mr. Rudolph. KL and his wife made pleas to Mr. Mill and Mr. Rudolph for the return of their money beginning two months after they made the investment and continuing until they sued CanGlobe, CFG*CN and Mr. Rudolph in November, 2008. We use selected quotes from some of the emails Mr. Mill and Mr. Rudolph wrote in response to their entreaties. These emails are consistent with the oral and documentary evidence of the other witnesses testifying to the litany of excuses Mr. Rudolph and Mr. Mill gave them.

83. KL and his wife, on April 17, 2007, sent Mr. Rudolph an email advising him that they were looking to pull their investment out and requesting information about the process for doing so. Mr. Rudloph replied on April 19 saying:

> ...our CEO (Peter) is in Europe....On a personal note, please keep in mind that I had to fight to get this particular deal structured for you...In the past the basic process would be that when a request arrives, a portion of the next allocated block is delivered to you...

84. On July 3, 2007 Mr. Rudolph wrote:

> Still awaiting for word from the corporate lawyer on when the funds will be available. This is never an exact science, but your funds and the return come from this block when it arrives...

85. On July 15, 2007 Mr. Rudolph wrote:

> I have received an update from Europe. All seems to be in order and cash could flow into our accounts there as early as this week...As stated previously, you (sic) capital and return will come from this block so we are almost there.

86. On October 3, 2007 Mr. Mill wrote:

> ...To answer your question and simply put we are waiting emergence of funds into our accounts. We are instructed it will happen any day this week or next week. I shall be going to Europe to address these matters. Your capital is guaranteed for return before the end of the month. It could be next week!...

87. On December 1, 2007 Mr. Mill wrote:

> Thank you for your note and clarity of your feelings and frustration all of which are quite understandable. It is with deep regret if not annoyance that I read your words alleging wrong doing this is a very very silly accusation and I alert you to the implication of such defamation. ....
>
> Your capital was used as a bridging finance this you were clearly told when you invested. It was spent to unfold a financial transaction that is closing any day in

Europe....

...Your funds are safe and will be returned from the funds immediately they emerge this month. We expect to see funds no later than the 15th December....

88. On December 11, Mr. Rudolph wrote:

...Please be aware your funds are completely safe and although the delays are and were beyond our control, we are doing everything possible to get the deal closed...

...We all have money in the European arena and await the bank's release.

89. On February 21, 2008 Mr. Mill wrote:

...The dates for access to funds are slightly off from the given 31st January drop dead date of the contract which did happen, but we are informed the delay beyond that date was because of the bank which determined it will be taking, by its prerogative, until the 29th February to unfold all the business.

We are about to receive capital in Canada and you will have your returns this months end, if not then no later than the 15th of March and as early as the first week of March...

90. The next day, February 22, Mr. Mill wrote again:

...Our assurance that your capital is secure to be returned to you with the interest you have accrued is also a fact. Your funds and benefits are not in jeopardy....

91. On March 14, Mr. Mill wrote:

Good morning,

Yes, we have funds moving into Canada.

The likelyhood of capital distribution being on that day? No! Funds have been moving through Trusts then controller assignments thus we would assume you will see your cash the following week after the 24th.

This is the current report. ....

92. On April 2nd, Mr. Mill wrote:

As of 1530 today

1. Large and medium funds are assured to be definitely set for delivery next week

- we will have confirmed dates <u>tomorrow evening</u> for next week pay outs,

- this will be for both our HK deals
- the large and medium unfolding of capital will be told to morrow evening after connecting with HK at 0300

2. NY is still under the control of an arbitrator between both banks and the brokers. It is hoped to have it cleared today and will happen this week as a flow of capital.

93. On April 16th, Mr. Mill wrote in large print:

We HAVE JUST HAD confirmation about closure of HK business this week and received verbal assurances from the FM both transactions will commence showing funds! Schedules tomorrow!

We are assured by the FM that € flow will happen into Trust and continue to flow before this week ends.

94. On May 5, 2008 Mr. Mill wrote:

- Financial Manager called 1930 Monday
- Everything progressing as planned
- FM into HK tomorrow!
- Expect evidence of closure on Wednesday
- This means the final stage is underway thus:
  - We are expecting funds this week !
  - We will still know more definitely as each day of this week goes bye
  - We should be pretty confirmed for funds by Thursday
  - Bank preadvice notes are expected before funds arrive

95. On May 27, 2008 Mr. Rudolph wrote:

Hi guys, met with Peter this PM, Financial Manager confirms accumulation of funds complete...Funds (in excess of 100 million dollars) are to be shown tomorrow in client's bank account. They are to be under our Financial Manager's title and control by week's end - meaning our bank account. Pre-advice and fund flow expected next week when all bridging loans and returns are to be repaid.

I'll keep you posted.

96. On June 9, 2008 Mr. Rudolph wrote:

> ...We are informed the funds are now under control of our Financial Manager. The main reason for the delay was that the two banks involved had a six-hour time difference....

97. On June 24, 2008 Mr. Rudolph wrote:

> **Confirmation everything is set!**
>
> 1. Advised small internal baking paperwork expected to be signed off today;...
>
> **It is still anticipated funds will flow this month!**

98. On July 15, 2008 Mr. Rudolph wrote:

> In reference to the timeline of bridging capital repayment:
>
> Based on dialogue between Financial Manager and Releasing Bank, it is projected funds will be in The Group's Halifax bank accounts between July 18, 2008 and July 25, 2008.
>
> The protocol is as follows: ...

99. On July 19, 2008 Mr. Rudolph forwarded a long email to him from Mr. Mill addressed to "Ladies and Gentlemen". We quote the opening paragraph and then from a statement formatted rather as a poster might be.

> The following was prepared today after communication with Hong Kong where the ICBPO (Irrevocable Corporate Banking Purchase Order) transaction has been unfolding. This is now in its final stages of fund transfer to our accounts and has progressed according to schedules given four weeks ago...
>
> ....The personal benefit one receives by participating in these bridging fund exercises is constant even with the delays what were unperceived when we first became associated. Schedules, regrettably were proven to be beyond our control...
>
> **Friday 1400**
>
> **Just spoke with HK/FM-MM**
> **Schedules were given!**
>
> Funds tranche conclusion will be Tuesday....
>
> Scheduled Funds into Canadian accounts

This will start to be visible immediately after that date

That is from 25th
Transferring of funds will continue into our accounts until but not later than the 31st July! ....

100. On August 11, 2008 Douglas Rudolph wrote:

August 11, 2008

- **Deal is done;**
- All paperwork signed off by Chinese officials;
- Distribution approved by Bank, Province and Politicians;
- Capital assignments for release will be placed this week;
- Funds are to be released the week of August 25th;
- Chinese Generals must be present for release - currently attending Beijing Olympics;
- Lead General assures FM funds will be distributed before end of August

101. KL and his wife, as has been said, never received a penny. They sued in October 17, 2008.

102. Counsel asked KL about the impact the loss had on him. KL had to collect himself before replying and was emotional in doing so. He explained how hard the failed investment had been on him and his wife, how guilty he felt for having pushed his wife into it, and how he had to accept a nine-month United Nations mission overseas in order to recover from the loss.

MN and OP

103. OP is married to MN and has been for 31 years. They have two grown children. MN is an electrician and together they run their own electrical firm. OP runs the office, doing the books, answering the phone, and providing basic clerical and secretarial services. MN superintends the actual electrical contracts. Each one of them testified separately, but since the evidence is the same in substance it will be reported together.

104. MN and OP grew up with Douglas Rudolph in the 80's on the Eastern Shore but lost contact with him after high school. In 1996, on the recommendation of their insurance agent, they hired him as their accountant for both their business and their personal

affairs. They would meet with him at tax time and call on him when they had a question or a difficulty during the year. They found his services to be impeccable and were very pleased with them.

105. Mr. Rudolph came to know all about their business and personal finances. They thought, until relatively recently, that he was in fact a chartered accountant. They trusted him as someone they had known for years, who shared their roots, and they thought, their values as rural people dealing with people honestly and in good faith and always willing to help each other out.

106. Mr. Rudolph suggested that MN and OP invest money with him. Mr. Rudolph had told them the money was invested in "bridge financing", and there was some discussion of the development of the Bedford Lands, but little more. Mr. Rudolph never discussed any risk with them and always said they would get their money back.

107. In July 2006, MN and OP transferred the sum of $25,000.00 by electronic transfer to an account of Mr. Rudolph's through a line of credit which AA of the TD Bank had set up for them. In return, Mr. Rudolph provided them with a promissory note executed by him on behalf of Canglobe International Capital Inc. The note provided for a due date of July 20, 2007 with annual interest of 25%.

108. MN and OP had actually authorized the transfer on July 21st. The calendar shows July 21st to have been a Friday. Mr. Rudolph's bank record shows a deposit that day and then the following Monday, the withdrawal of two TD Bank drafts, copies of which are in evidence through Mr. MacDonald. The first for $10,000.00 was made payable to Perley Robertson Hill and MacDougall, the Ottawa law firm, in trust. The second in the amount of $15,000.00 was made payable to the Halifax lawyer, Mark David, in trust.

109. MN and OP never dealt with Mr. David nor Mr. Peter Mill. They only knew of them through their interactions with the Securities Commission's investigation. They only knew more of CanGlobe through subsequent news reports.

110. Neither CanGlobe nor Mr. Rudolph ever paid MN or OP a penny. They had conversations with him about the $25,000.00 owing, but while he always guaranteed repayment, he always had an excuse as to why it was not forthcoming. Always, Rudolph said, something else was going on.

111. Such was their faith, however, that Mr. Rudolph continued to do their accounting long after the note had come due. MN and OP maintained the confidence that they would be repaid when interviewed by Mr. MacDonald and until, as they put it, the Canada Revenue Agency "came knocking" in 2016 further to the tax scheme described below. Then the relationship soured.

112. Mr. Rudolph had MN and OP participate in a scheme for the 2010 and following tax years whereby their company could obtain tax deductions and incentives for "intellectual property". The management of an electrical contractor could not be thought

of as investments in research and technology. Clearly the Canada Revenue Agency thought so and reassessed MN and OP for a very large sum of money largely made up of penalties and interest. MN and OP have appealed the reassessment on the grounds of their ignorance of such financial matters and their reliance on Mr. Rudolph.

QR

113. QR gave sworn evidence at her New Brunswick home to a New Brunswick Securities Commission investigator on October 9, 2009. QR did not testify before us. The transcript and attached documents are, however, admitted in evidence by us under Rule 14.1. We accept the truth of the evidence. The evidence is entirely plausible, consistent with the evidence of the other witnesses and there is none which questions or contradicts it.

114. QR told the following story. She lived for a time in Dartmouth. She was very close to ST. Mr. Rudolph and ST lived together and built a house together. ST told QR that she and Mr. Rudolph had a very lucrative investment business involving "factoring" agreements through their company, Gravel Ridge Investments. QR had never heard of factoring, but she understood from Mr. Rudolph and ST that such investments were quite a normal thing. On January 12, 1999 she invested $11,000.00. Gravel Ridge, on the signature of Mr. Rudolph, agreed to pay QR $12,100.00 on April 12, 1999. The agreement was called a Factoring Agreement and purported to be based on QR's purchase from Gravel Ridge of a receivable from DGR Accounting Services. On February 7, 2000, having just sold her Dartmouth home, QR invested a further $48,310.00 in another so-called Factoring Agreement again based on the purchase from Gravel Ridge of a supposed receivable from DGR Accounting Services. The due date for payment was said to be August 5, 2000.

115. QR asked for and received $2,000.00 in August, 2000, $1,000.00 in October, 2001 and then $4,000.00 in August, 2002. She checked the corporate registry for Gravel Ridge in 2005 and was shocked to discover the company had been struck. She remained in regular contact with ST and accepted her assurances that Mr. Rudolph was a fine, upstanding citizen and she did not have to worry. Mr. Rudolph continued to assist her with her income tax and did a really good job with it. QR received two promissory notes from Mr. Rudolph. One was dated May 16, 2005. Mr. Rudolph promised to pay $69,390.11 on or about June 30, 2005. Then she received another for $70,269.03 "payable on or about 29 July 2005 or when lawyer receives fund in trust to liquidate debt." She also received two letters signed by Mr. Mill on behalf of CanGlobe Financial Group assuring payment and one from Mr. David. She had never heard of CanGlobe. Mr. Rudolph and ST split about this time.

116. QR spoke to Mr. Rudolph from time to time and received correspondence from him as well. She says that in his conversations Mr. Rudolph spoke of the money being hung up in offshore banking transactions. In February, 2009, for example, he sent her an email headed "**UPDATE**". The email spoke of bank meetings in Hong Kong, Chinese New

Year, global issues affecting all major banks as reasons for things moving slowly, but also gave assurances that money would flow during the first week of March. Their last contact was in July, 2009.

117. QR did not receive any more money than the $7,000.00 described above. QR wrote Mr. Rudolph in February, 2008 asking for money. She said she was very upset that none was forthcoming. She explained that her husband had hip surgery, was laid up for two months, that their farm was losing money and that they had been reassessed by Revenue Canada. QR did not testify, but this email shows something of the effects on Mr. Rudolph's and Mr. Mill's scams on her and her family.

UV

118. UV is now 66 years old. He met Mr. Rudolph through a work colleague. The colleague said his family knew Mr. Rudolph well and found him to be honest. UV said he continued to trust Mr. Rudolph because the colleague had spoken so well of him. The colleague told him about a good investment possibility, an investment with high interest and a quick return. The colleague spoke of CanGlobe and said that Mr. Rudolph was its agent. The colleague did not provide a lot of detail, but the colleague knew CanGlobe was looking for financial backing and a guy named Peter Mill was CEO.

119. UV called Mr. Rudolph and made an appointment to meet with him. Mr. Rudolph explained that CanGlobe had some financial arrangement with China that had not gone as smoothly as predicted. CanGlobe needed some money to carry them over. UV was looking at investing $17,000.00. Mr. Rudolph said the investment would turn around in a month or so and generate interest of 2% within that time. Mr. Rudolph told UV that if he was interested, then he had a contact at the Toronto-Dominion Bank, AA, who could expedite everything.

120. Mr. Rudolph set up a meeting with AA. UV and his wife went down to see her. AA was very positive about Mr. Rudolph. She said she had done a number of transactions with him and that he was trustworthy. She recommended that UV and his wife pay off their existing mortgage with Scotiabank and refinance with a Toronto-Dominion line of credit mortgage. AA was really quick in putting the transaction together. UV and his wife did not see a lawyer about it. TD processed the transaction internally.

121. UV called and set up another meeting with Mr. Rudolph. UV told him things had gone well with AA and that he wanted to invest $17,000.00. Mr. Rudolph had a promissory note prepared when they met.

122. The promissory note is dated April 18, 2007. CanGlobe Financial Group and CFG*CN Ltd. promised to pay UV and his wife the sum of $17,000.00 with interest at 2% per month until paid. Peter Mill signed on behalf of CanGlobe Financial Group and CFG*CN, Mr. Rudolph on behalf CanGlobe International.

123. UV said he did not ever meet or talk to Mr. Mill. Mr. Rudolph explained that Mr. Mill

had signed before the meeting and had left for China to close the deal. The due date on the note was said to be April 17, 2010, but Mr. Rudolph said the date was a formality.

124. Mr. Rudolph told UV and his wife there was no risk to the investment. He said things were really going really well over in China, and that he expected to hear anytime that the deal had gone through. Many millions of dollars would come through Halifax for investment in the projects he had online. He said he could not, for confidentiality reasons, disclose what those projects were.

125. In May, 2007, Mr. Rudolph called to see if UV and his wife were interested in investing any more. Mr. Rudolph offered 3% per month interest. The money was to be invested for the same purpose as before. He talked to his wife. They decided to invest another $50,000.00. UV and his wife had this sum available on the line of credit secured by the TD mortgage on their home. Mr. Rudolph said nothing about risk. Mr. Rudolph did say that matters had become more complicated in China, but he said that he still expected payment within a month.

126. Mr. Rudolph delivered a promissory note dated May 9, 2007. The note provided that Mr. Rudolph personally pay the principal sum with an interest rate of 2%. UV said that Mr. Rudolph later either amended the note to provide for the 3% or gave him a new one with that interest rate. The note carried no due date.

127. In July, UV and his wife invested yet another $25,000.00 and received another personal promissory note from Mr. Rudolph. This note is dated July 17, 2007 and promised a return of 2% percent per month to be paid on or before January 17, 2008. UV asked why Peter Mill was not signing the second note. Mr. Rudolph told him that he worked very closely with CanGlobe and that paying him the money was the same as paying it to CanGlobe.

128. That was the last time UV met with Mr. Rudolph. He pursued him thereafter by email. Mr. Rudolph told him that the deal had closed in China, but that Peter Mill was having difficulty getting the money out. Neither Mr. Rudolph, nor Mr. Mill, nor any of their associated companies ever repaid any of the $92,000.00 UV and his wife had invested.

129. There is no evidence whatsoever that the $92,000.00 was ever invested anywhere for anything. The evidence, on the contrary, shows on a balance of probabilities that it went to the personal purposes of Mr. Rudolph and Mr. Mill.

130. UV's initial investment of $17,000.00 was deposited the same day, that is April 18, 2007, to the CanGlobe account at TD. The same day a draft was issued from the account in the amount of $15,006.50 to the Ottawa law firm, Perley Robertson In Trust. Two thousand was immediately deposited to a personal account of Mr. Rudolph, from which $1,000.00 immediately went to another personal account of Mr. Rudolph. That third account then shows debits to Smittys Family Restaurant, to VISA and to Eastlink.

131. The $50,000.00 evidenced by the May 9th promissory note was deposited in the

CanGlobe account on May 15th. The bank statement shows an immediate cash withdrawal of $10,000.00 and a draft issued for another $10,000.00 payable again to Perley Robertson In Trust. The $30,000.00 balance of UV's $50,000.00 was that same day transferred to Mr. Rudolph's personal account. Twenty-one thousand dollars of that deposit went immediately to a payment on an MBNA Master Card and $7,500.00 was credited to Mr. Rudolph's TD line of credit.

132. The $25,000.00 evidenced by the July 17 promissory note was deposited in the CanGlobe account on July 18, but the money did not long remain there. The bank statement shows two cash withdrawals; one on July 18 for $5,000.00 and the second on July 19 for $10,000.00. There are also three drafts totalling $10,000.00 payable to CIBC and to the Bank of Montreal.

133. Counsel asked UV about the impact of the loss on him. He said he always had a simple plan for retirement and the plan had been looking pretty good. He did not think he would have to work after retirement, but he had to set up his consulting business to get some of it back. He is still working. As for emotional impact, he is now mostly angry with what happened and he is sorry that his colleague's in-laws "really got nailed".

WX

134. WX first met Douglas Rudolph in 1990-91 and maintained a casual friendship with him over the next two decades. For a time, Douglas Rudolph prepared WX's taxes but she had lost contact with him when she married. In the spring of 2008, she encountered him one day in a parking lot. She told him she was going through a divorce. He offered to help. She accepted thinking he could assist with its financial issues.

135. Mr. Rudolph did help her through the summer and they saw each other regularly. He was able to fill in gaps in the information she was getting from her estranged husband. He went to her lawyer's office twice with her and knew all about the negotiations. In the end, she agreed upon a divorce settlement and received the sum of $200,000.00.

136. Mr. Rudolph talked about this bridge financing transaction with CanGlobe over the summer, saying that it would be really easy for her to invest in and would provide her with easy money. The bridge funding, Mr. Rudolph said, was based on some big investments, transactions that were happening in Europe, and would serve to tide people over until the money came from the banks in Europe. Everything was almost done, he said. A little bit of money was needed to carry it through. He originally suggested she invest $75,000.00 but then reduced the request to $37,500.00.

137. Mr. Rudolph told her she would get her money back in four months. Mr. Rudolph was so positive that she thought there was zero risk. Through years of friendship, WX had come to trust Mr. Rudolph and he seemed to really want to help her.

138. WX was buying a home using part of the divorce settlement as the down payment. She had done business with the Royal Bank for 35-40 years, but Mr. Rudolph introduced her

to AA at the Toronto-Dominion Bank. Mr. Rudolph suggested she obtain a line of credit mortgage. In August, 2008 she met with Mr. Rudolph and AA. AA arranged a $200,000.00 line of credit. WX gave a bank draft payable to CanGlobe in the amount of $37,500.00 to Mr. Rudolph that same day. While she acknowledges that it now seems ridiculous to her, he gave her back $2,000.00 in cash. She used $80,000.00 of the line of credit as a down payment on the purchase of her new home.

139. Mr. Rudolph gave WX a promissory note dated August 15, 2008. The note has no date for payment. Mr. Rudolph signed it. The subscript says "CanGlobe International Capital Inc. and Douglas G. Rudolph".

140. WX did not know who Mr. Rudolph's partners were. She heard the name Peter Mill, but no more, and only heard about Mark David much later.

141. A month later, Mr. Rudolph asked WX for more money. He said he had been doing accounting for the Mid-Town Tavern in downtown Halifax and they would pay him soon. He would then repay her. She and Mr. Rudolph were continuing to see each other socially and given his role as trusted advisor during this vulnerable time, she wanted to help him in return and wrote him the cheque. Mr. Rudolph immediately returned $1,000.00 to her in cash. Mr. Rudolph gave her a document entitled "Factoring Agreement". It is dated September 22, 2008. It says that WX as purchaser agrees to buy from Mr. Rudolph as seller "the receivables listed in schedule "A" (in whole or in part)". Schedule "A" lists the Midtown Tavern c/o BDO Dunwoody and the sum of $59,325.00.

142. Later, as WX asked about her money, Mr. Rudolph, in emails and in conversations, gave various explanations why she was not being repaid; the Euro being bad, the state of the US economy, Hong Kong, the Chinese New Year. As early as October 16, 2008, he wrote WX:

> **UPDATE**
>
> October 16, 2008
>
> - CEO invited to travel late next week to oversee deposit to our accounts
> - Bridging Fund Repayment will commence immediately upon our access to funds

143. On December 19, 2008, he wrote WX:

> **UPDATE**
>
> - CEO and Financial Manager are in Hong Kong;
> - Along with Clients and HK lawyers, they have been meeting with Banks

this week;

- Banks state fund will begin to move Monday and continue through Holiday period;

- Funds will be accumulate in appropriate accounts and are to be accessible to HK lawyers immediately after the Holidays

144. WX said that at the time she advanced the $57,500.00 to Mr. Rudolph, she was feeling pretty good about things. By the summer of 2010, however, she was becoming rather desperate. We quote from a couple of emails. They are a poignant statement of her anxiety, her hopeful trust in Mr. Rudolph and of the impact of his machinations upon her.

145. On August 16, 2010 she wrote:

> Hi Doug,
>
> I was wondering if it was possible at all for you to help me out with some money. Anything would be helpful at this point. Since my last email, I have started to place items for sale for cash to help pay my fixed living expenses. So far, I've collected $500.00. I have a personal line of credit with the RB of $12,000.00 that is now at its limit and I am currently now borrowing money from my credit cards to make payments for living expenses, the latest being my mortgage.
>
> I have also sent my jewelry away to get appraised and hopefully it will be accepted to sell on consignment through Birks, I have no idea how long this process is going to take. I have my hot tub listed for sale as well as other items too...

146. On October 7, 2010 she wrote:

> Doug,
>
> I hate and I am worried that you haven't gotten back to me yet. I know because of your situation that you couldn't pay me the full $20,000.00 all at once but I thought you would at least be able to give me enough to carry through monthly. You are my fall back guy. You have always been a good friend to me and I've always believed in you. I have nobody else that I can go to.
>
> Here I am at 43, a single mom of a 3½ month old with no income or financial support system. I am just sick over this situation I have put myself into. I have no RRSP's left, $17.38 in my bank account, and $89.00 cash in my wallet. This really is all the cash I have in the world. I've got bills that I must pay, interest payments to make and things to buy like diapers, food and gas - and never mind about the property taxes this month...

147. Mr. Rudolph did indeed give her $1,000.00 in cash, with the injunction that she was not to tell anybody. She never received any more of her money back.

148. WX said this was a bad, bad, time in her life. She had had a baby whose father was providing no support. She was selling personal items to make ends meet. Her last contact with him was in January, 2011. She wrote on January 3 saying she was desperate, had run out of resources, and would really appreciate an update. Mr. Rudolph replied saying "Waiting for an update with the trust group ..."

149. Mr. MacDonald presented financial records showing what happened to the money WX handed over to Mr. Rudolph. The records show a deposit of $37,500.00 to the CanGlobe account on August 15, 2008. Then there are debits on the same date as follows:

TRANSFER	$5,000.00
CASH WITHDRAWAL	$2,500.00
JL562 TFR -TO 3201499	$30,000.00

leaving a balance of $29.07 in the account.

150. Mr. Rudolph's personal accounts show two different deposits to two of Mr. Rudolph's personal accounts; one a deposit of $5,000.00 and the second of $30,000.00 against his line of credit account. The $30,000.00 soon flows out of the line of credit account in the form of small bank drafts, a mortgage payment, a payment to Amex, transfers to other accounts and cash withdrawals. By September 22, 2008, that is within six weeks, the $30,000.00 was gone and the line of credit had returned to its former level of debt. Then there is the deposit of $20,000.00 from WX, which monies soon again flow out of the line of credit in a series of transfers and bank drafts so that by the end of October, the $20,000.00 had been spent. There is no sign whatsoever in the dissipation of WX's money of any "bridge financings" or other highfaluting international investments.

151. On September 22, 2009, Mr. Rudolph wrote WX a so-called "without prejudice" letter saying that she would be paid the sum of $45,000.00 with the best estimate of payments to begin at the end of the month. He asked her, however, to first sign documents attached to the email. One document, addressed to:

> The CanGlobe Group of Companies
> CanGlobe International Capital Incorporated
> Mark David
> Peter A.D. Mill
> Douglas G. Rudolph ("collectively "CFG")

provided that WX "shall not in any manner whatsoever...divulge ... any information...with respect to the bridging fund payouts ...to be received.." The document, in a second paragraph, provided that if she breached the agreement, then she "shall pay to CFG the sum of $25,000.00 ...as **liquidated damages.**"

152. A second document is a "Full and Final Release" of the above parties. A third document

provided that WX had taken independent advice and was signing "entirely of her own free will, and I am not acting under any coercion, duress or undue influence..."

153. WX, who is defined as being the "Bridge Funder", signed all three documents. She explained in her testimony that she did not have much discussion with Mr. Rudolph about the documents but she was desperate to get her money back. She said she was excited because it looked like everything was going to be over. She thought she would just sign the documents, get them back to him, and get her money.

154. Enforcement counsel asked WX about the impact of her loss on her. She said she went from a good lifestyle to the other extreme. She became emotional. She described herself, at the time, as a 43 year old single mom of a 3 ½ year old with no income, no financial support, selling couches, selling jewelry, nothing left and he was not helping. She said she is resilient and has now moved on, but what he did to her and to others makes her very angry.

YZ

155. Mr. and Mrs. YZ gave a combined oral statement to Enforcement's investigator, Mr. MacDonald, on January 6, 2011 and provided copies of their correspondence with Mr. Rudolph. The statement was transcribed and presented in evidence along with copies of the correspondence.

156. We accept this evidence. The evidence again presents itself as being sincere and honest. The evidence is entirely consistent with the testimony of other witnesses containing the same story of a gross breach of faith and trust followed by lies over years simply to obfuscate and delay any reckoning.

157. The YZs live in British Columbia. They had met Douglas Rudolph through their daughter, ST, who, it appears, was for a time a common law partner of his. They understood Mr. Rudolph to be an accountant. Mr. Rudolph, once he found out that they had a home, suggested they put a mortgage on the home and invest the proceeds with him. The YZs followed his advice and invested $198,000.00. Mr. Rudolph, in return, provided a personally signed "Installment Note" dated September 25, 1997 promising to pay annual instalments of $23,760.00 with interest at the rate of 12%. Mr. Rudolph immediately returned $23,750.00 to cover payments on the mortgage which then bore an interest rate of 7.25%. Mr. Rudolph did not explain what the money was for except to say that the money would help him get over a hurdle for a short time. The YZs received payments of $23,750.00 in 1998, 2000, 2001, 2002, 2003. The payments then stopped. They received no more money.

158. The YZs had made a second investment of $60.000.00. Mr. Rudolph provided another "Installment Note" dated December 2, 2002, again signed by him personally, promising to repay the money with interest at 15%. Mr. Rudolph, in a conversation recorded December 2, 2002, stated; "Yeah, no, I can guarantee you'll have your money back very shortly".

159. The YZs began to pursue Mr. Rudolph after the payments stopped. Mr. YZ wrote Mr. Rudolph on September 29, 2005 saying he suffered a heart attack and needed to get his affairs in order. Mr. Rudolph replied the next day saying he was just waiting for the bank to release funds. By February, 2006, Mr. Rudolph was going on about CEO's being in Europe and introducing Peter Mill and CanGlobe into their dealings. The YZ's had never heard of them. Mr. Rudolph continued with these such lines of a kind we heard or read many times. On December 21, 2006, he wrote:

> Hi YZ,
>
> I just got off the telephone with our CEO. He was in Toronto for meetings this week and awaiting the arrival of our Financial Manager from Europe. The meeting with the Financial Manager confirmed the banking transaction we have awaited.
>
> Given the Holidays, it is estimated that the first draw will occur around the 10th of January with all funds to be drawn down by the end of February.

160. Mr. Rudolph wrote on May 24, 2007:

> Hi YZ:
>
> Very good news on the European front.
>
> The corporate lawyer (A. Mark David, QC) is being dispatched to Europe to deal with the legalities of the block of the funds...

161. Peter Mill wrote Mr. Rudolph a letter on CanGlobe Financial Group letterhead dated August 18, 2007. Mr. Rudolph forwarded the letter to the YZs. The letter said in part:

> I am pleased to inform you that we are in the final stages of our European capital enhancement process. We have been informed that we will have a provision of funds first starting between the 30th of August and the 15th of September. We are then told this will be continuing through October. We anticipate that all Capital Bridging positioned with CIC as investments will be initiated up to the third week in September.

162. The YZs never had direct contact with Mr. David or Mr. Mill.

163. Mr. YZ wrote August 23, 2007 in reply to Mr. Rudolph's "very good news on the European Front":

> ...Well, it is now 3 months later and I'm still waiting the result. Next month (23 Sept) will be ten (10) years since I made "Loans" to you in good faith - lets get something done about re-payment - I need the money.

164. In February, 2008, Mr. Rudolph was writing:

> ... The primary investor is finalizing with the bank the return of the very large block of funds...

165. In September, 2008, Mr. Rudolph is writing:

> The deal the FM is working is done, just not released...., but China's climate is more political than business and many more people are needed to sign off to accomplish anything. Our funds are part of a 2 billion dollar block, so we did expect some...

166. And so it continued.

167. Mrs. YZ did get fed up and angry. In October, 2009 she wrote:

> I am finished with all the "bullshit" that has been going on for the last 10 years...

168. In February, 2010, Mr. Rudolph is writing:

> ...Things have progressed and the Corporate Bridge Funders are expected to be paid very soon. That really starts the project funding process. My concerns are and have always been with the bank and having them do what they say they will do in a timely manner.

169. The correspondence ceased, or at least they provided nothing further to Enforcement which came into evidence. Mrs. YZ, in her emails to Mr. Rudolph, expresses concern and anguish about Mr. Rudolph's refusal to say, if it was true, that there was no money to pay them back, how much the worry about the money was affecting him, and how it interfered with their plans to benefit their children and grandchildren. It is also apparent, reading between the lines of the correspondence, that Mr. Rudolph had caused stress in their relationship with their daughter.

170. Near the end of the correspondence, Mrs. YZ writes Mr. Rudolph about her relationship with her daughter "...I think we have gotten to a good place in our relationship, not as mother and daughter, but as friends..." revealing yet again the hidden havoc his behaviour caused in the lives of the witnesses.

Fraud

171. The specific provisions of the Nova Scotia *Securities Act* relating to fraud are complicated by the fact that the legislature amended the *Securities Act* during the years 1997-2008 when the Respondents were taking money from the witnesses.

172. Section 44(2) of the Act, which was in effect throughout the relevant time, prohibits giving any undertaking about the future value of a security. Section 44A(2) of the

Securities Act prohibits "unfair practice". It became effective through Royal Assent on November 28, 2002 and thus applies to all the payments made by the witnesses except for the first investment made by YZ in September, 1997. Effective March 17, 2008, the legislature amended the *Securities Act* to add s. 50(2) prohibiting misrepresentation and section 132 (A)(b) creating the actual perpetration of fraud as a violation of the *Securities Act* itself. The law, however, provides that a penal statute is not to be applied retroactively. Thus, s. 132A making "fraud" as such a violation of the statute and section 50(2) cannot be applied to these facts except in the case of witness WX. We are bound by the law as it stood when the contraventions took place. *Re Sponagle and Hill* NSSEC 2011, *Thow v. British Columbia (Securities Commission)* [2009] BCCA 46.

173. With respect to WX, there was a clear violation of s.50(2) prohibiting misrepresentation and section 132 (A)(b) prohibiting the perpetration of a fraud. Douglas Rudolph clearly preyed upon WX during a vulnerable period of her life to defraud her of the money she received in her divorce settlement that he had assisted in negotiating. At the time that he solicited these funds from WX to invest in CanGlobe in August, 2008, he was already being pursued by the ten other witnesses for the return of their funds. CanGlobe International and CGF*CN were not operating with any legitimate purposes and there was no offshore deal about to be completed as Douglas Rudolph represented to WX. The entire 'investment' was a ruse to take her money.

174. Then, in addition to the actual provisions of the *Securities Act*, we have what securities law calls "National Instruments". Once a National Instrument is adopted by a province in accordance with its own legislation, the National Instrument becomes a rule or regulation in that province. The Province of Nova Scotia adopted and incorporated NI 23-101 into Nova Scotia law in July, 2003.

175. *National Instrument* 23 - 101 provides in section 3.1(1)(b):

> 3.1 Manipulation and Fraud
>
> (1) A person or company must not, directly or indirectly, engage in, or participate in any transaction or series of transactions, or method of trading relating to a trade in or acquisition of a security or any act, practice or course of conduct, if the person knows or ought reasonably to know, that the transaction or series of transactions, or method of trading or act, practice or course of conduct...
>
> (b) perpetuates a fraud on any person or company.

176. We focus our attention on those provisions in force during the relevant time. This means the *National Instrument* for the purposes of the fraud allegation. Enforcement's allegations are general and not specific to the individual witness whose evidence we have heard. In other words, there are not specific allegations of particular violations through a particular transaction with a particular witness.

177. All the witnesses were engaged with Mr. Rudolph and we can make findings that apply

to all of them in their relationship with him. Some of the witnesses, however, had nothing to do with Mr. Mill and so our findings will be adjusted accordingly.

178. There is a clear pattern to Mr. Rudolph's behaviour. Mr. Rudolph was a competent bookkeeper but held himself out to be an accountant and tax advisor. He gained the trust of the witnesses, most of whom were his clients and all of whom were his friends. He gained an intimate knowledge of their financial affairs. Then, abusing that knowledge and that trust, he took money from them on the lie that the money was to be "invested" and then returned within a short period of time. He promised a significant premium on the money invested, most often based on a calculation of a return of 2% per month. Mr. Rudolph lied about the destination of the money. The money, we are satisfied, was never "invested", but was immediately, upon the advance, misappropriated to the private use and schemes of Mr. Rudolph and Mr. Mill. The money of several of the witnesses may clearly be traced into Mr. Rudolph's pockets for his own personal use.

179. Some money also passed to the Ottawa law firm and into Mr. Mark David's trust account. There is no evidence that this money was ever put to an investment purpose on behalf of the witnesses and so, making the adverse inference in the absence of any explanation having been forthcoming from Mr. Rudolph, we conclude that money washed through the trust accounts to Mr. Rudolph. We note in particular, as an example, the one mention of Mr. Rudolph in the Barristers' Society allegations. The allegations were accepted as fact by the Society's disciplinary panel. The allegation records payment from Mr. David's trust account of $287,300.00 to Mr. Rudolph and a payment of $65,526.67 to CanGlobe International of which Mr. Rudolph was President and Director. We are satisfied on the basis of the facts as stated by each witness and accepted by us that Douglas Rudolph perpetuated frauds on the witnesses contrary to National Instrument, NI 23-101.

180. We conclude that Mr. Mill was an active partner of Mr. Rudolph and an active participant with him in promoting the lies about the destination of the funds the witnesses invested through them and the lies about the failure to honour the promissory notes and investment contracts.

181. We also conclude that Mr. Mill misappropriated funds for his own purposes from those flowing through the trust account of Mr. David and likely the trust account of Perley Robinson. There is no evidence that any money was applied to any purpose for the benefit of the witnesses. Unlike with Mr. Rudolph, there is not direct evidence of the flow of funds into Mr. Mill's personal accounts, but substantial amounts did flow into lawyers' trust accounts and, in the absence of any explanation being forthcoming from Mr. Mill, we conclude that the money flowed to his own benefit and not for any investment purpose on behalf of the witnesses. This conclusion is also supported by Mr. Mill's own failure to explain what happened to the money except through the obfuscation in what may be described as the bafflegab of his statement to the Commission and his correspondence with various witnesses. It would be unreasonable to conclude, taking the evidence of the witnesses as a whole, that Mr. Mill had ever

proceeded fairly, respectfully and in good faith as a trustworthy custodian of their funds. He must be found to have defrauded many of the witnesses, enriched himself and continuously over years lied to the witnesses about the fate of the money and the prospects for its return.

182. Mr. Rudolph dealt continuously and personally with all of the witnesses. Mr. Mill was more in the shadows as the man behind Mr. Rudolph. He never did meet MN and OP, nor EF, nor CD nor ever make written agreements with them or have correspondence with them.

183. The witness, UV, did not ever meet or talk to Mr. Mill either, but Mr. Mill signed the promissory note dated April 18, 2007 for $17,000.00 on behalf of CanGlobe Financial Group and CFG*CN.

184. The witness, AB, met with Mr. Mill in the summer of 2006. Mr. Mill signed a "loan agreement" dated August 24, 2006 agreeing on behalf of CFG*CN to pay AB $554,450.00. AB later dropped into Mr. Mill's office twice and talked with him. Mr. Mill told him things were moving along, that he should be patient and not worry. Mr. Mill told him they were working with China on the transfer of 50 billion dollars. Mr. Mill called AB at 23:30 one evening, as AB's impatience grew, saying he was in China, that there were delays because of the economic meltdown, that things were proceeding and that he would receive full payment plus interest by the end of March. We find all these statements to be unfair and to constitute a fraud. We find that Mr. Mill, in entering into the "loan agreement", became a party to perpetuating a fraud of AB contrary to the National Instrument and that Mr. Mill's subsequent statements were lies intended to perpetuate the fraud.

185. EF met Mr. Rudolph in the office at Purdy's Wharf early in December, 2006 to sign documents and then go to the bank. Peter Mill joined the meeting. He signed a promissory note on behalf of CanGlobe Financial Group and CFG*CN Ltd. We find that Mr. Mill was party to the actual fraud of EF.

186. GH knew only that Mr. Mill was a colleague of Mr. Rudolph, but Mr. Mill signed the June 29, 2006 promissory note on behalf of CFG*CN Ltd. Again, we find that Mr. Mill was a party to the actual fraud.

187. Mr. Mill's engagement with witness KL was not shadowy; it was overt and continuous. Mr. and Mrs. KL met with Mr. Rudolph and with Mr. Mill by "Skype". Mr. Mill signed an agreement on behalf of CFG*CN. Mr. Mill corresponded with the KLs from the end of 2007 through the middle of 2008 falsely promising immediate payment and repeating the fantastic tales of "Financial Managers", transactions in Hong Kong and Chinese Generals having to free themselves from the Olympics to be present. Mr. Mill, we find, was party to the frauds. He violated the National Instrument.

Unfair Practice; s. 44A of the *Securities Act*

188. We are also satisfied that Mr. Rudolph and Mr. Mill engaged in unfair practice with respect to all of the witnesses contrary to section 44A of the *Securities Act*. The applicable provision is as follows:

> 44A (1) In this Section, "unfair practice" includes
>
> (a) putting unreasonable pressure on a person to purchase, hold or sell a security;
>
> (b) taking advantage of a person's inability or incapacity to reasonably protect the person's own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security; or
>
> (c) imposing terms or conditions that make a transaction in securities manifestly inequitable.
>
> (2) No person or company shall engage in an unfair practice. *2002, c. 39, s. 3.*

189. We do not think we need elaborate on the meaning of "unfair" in the context of securities law. The whole scheme is "unfair". Mr. Rudolph and Mr. Mill, at the time of conning the witnesses out of their money, made no mention of any risk. On the contrary, they promised witnesses that a return on their money would be repaid quickly with a substantial premium and then, as the months and years went by, persisted in telling them extraordinary lies of international banking and Chinese Generals making false promises of payment in order to put off them off. Of course, in the end, except for the occasional drip of money to a few witnesses, Mr. Rudolph and Mr. Mill defaulted on their promises in the amounts of hundreds of thousands of dollars. Mr. Rudolph's lies throughout his financial engagement with the witnesses were clearly "unfair". Mr. Rudolph, we find specifically, took advantage of the lack of financial sophistication and the inability of EF, WX, MN, OP and QR to understand the character of their investments contrary to s.44A1(b).

190. The use of unfair practices by the Respondents was also documented in the CanGlobe template forms provided in the disclosure of Douglas Rudolph. The forms included the following:

> (i) A confidentiality undertaking addressed to The CanGlobe Group of Companies, CanGLobe International Capital Incorporated, A.Mark David, Peter A.D. Mill and Douglas G. Rudolph (collectively, "CFG") re: Confidentiality of bridge funding payouts in which the Bridge Funder agrees to not "divulge to any third party any documentation or information with respect to the bridging fund payouts received by the Bridge Funder, including, without limitation, the amount of same and the manner in which it was paid "**Confidentiality Undertaking**". The Confidentiality Undertaking also included a penalty clause whereby the

Bridge Funder agrees to pay CFG liquidated damages in the amount of $25,000 ("**Liquidated Damages Penalty**");

(ii) A Waiver of Independent Legal Advice addressed to The CanGlobe Groupd of Companies, CanGlobe International Capital Incorporated, A.Mark David, Peter A.D. Mill and Douglas G. Rudolph where Bridge Funder acknowledges and waives its right to independent legal advice ("**Waiver of Independent Legal Advice**").

191. In addition to the Confidentiality Undertaking and the Waiver of Independent Legal Advice, two of the victims provided written evidence of a Full and Final Release of All Demands ("**Release**") whereby the victim was required to sign the Release releasing A. Mark David, Peter A. D. Mill, Douglas G. Rudolph, CanGlobe International Capital Incorporated, CFG*CN Ltd and the CanGlobe Group of Companies from any claims and agreeing "not to make any complaint against any or all of the Releasees under any statue or otherwise, or voluntarily participate in any fashion in any such proceedings".

192. Both WX and EF were told that in order to receive their promised returns they would need to sign the Confidentiality Undertaking, the Waiver of Independent Legal Advice and the Release. Once these documents were signed, neither WX nor EF received their money. The use of confidentiality agreements, waivers of independent legal advice and releases are commonplace business tools for managing business risk. However, in the case at hand, they were used in a manner that further exploited the witnesses by imposing terms or conditions on the return of their investment that was manifestly inequitable. We find that the Confidentiality Undertaking, including the Liquidated Damages Penalty, Waiver of Independent Legal Advice and the Release were designed to intimidate the victims into silence, deny them of their rights to fair and independent legal advice and shield the Respondents from the consequences of their illegal behaviour. AB was also coerced into signing a Release on the false promise of the return of his investment. We find that the use of these documents by each and all of the Respondents was an unfair practice in breach of Section 44A(2) of the *Securities Act*.

193. While the frauds may be said to have occurred when the moneys were advanced, "unfair practices" may be said, in our opinion, to have carried on over time. Thus, in addition to saying that the circumstances of the advance were unfair, we also find that the continuing lies about what had happened to the money and about the prospects of its return from China, or Europe, depending on Chinese Generals, Olympic Games, mirages of Chief Financial Managers and so on were also engagements by Mr. Mill and Mr. Rudolph in unfair practices. The effect of the continuous deception, in effect, compelled the witnesses to hold the securities in question against their will.

194. The Respondents preyed upon the witnesses, betraying the confidence they had established by false statements of their business acumen, by false statements of the destination of the funds invested and by misappropriating the funds when the witnesses had advanced them. The false statements and the misappropriation of funds were all, in

our opinion, unfair practices within the common and ordinary meaning of the word "unfair" and the meaning and the intent of the *Securities Act* in forbidding them.

CanGlobe and CFG*CN

195. We are satisfied these two companies were mere shells created with grandiose names as a part of the manipulations and frauds being carried out by Mr. Rudolph and Mr. Mill. Both companies' corporate registrations were revoked years ago. Both were given notice of these proceedings in accordance with orders of the Commission, but neither responded nor participated in the hearings as such. Proceedings against the corporations are likely in vain, but for the record we find that each of the companies has violated the same provisions of securities laws as their respective principals, Douglas Rudolph and Peter Mill.

Legal Submissions of Douglas Rudolph and Peter Mill

196. Neither Mr. Rudolph nor Mr. Mill appeared to contest the evidence of the witnesses. Only Mr. Rudolph made submissions and these submissions did not contest the witnesses' evidence or even make reference to it. The submissions, made both at the opening before the hearing of evidence and at the end after the evidence had been heard, do argue, however, that the allegations Enforcement Counsel presented to this tribunal ought to be dismissed for procedural and technical reasons. Mr. Rudolph submits that Enforcement staff of the Securities Commission, in preparing the allegations against him, improperly obtained evidence in violation of his rights under the *Canadian Charter of Rights and Freedoms* and in violation of undertakings of confidentiality relating to oral and documentary discovery process in civil litigation. The evidence, he argues, is so tainted by these violations of his rights, that it should not be admitted as evidence and a stay of proceedings ought to be entered against the allegations effectively dismissing them.

197. Mr. Rudolph argued, at the outset, and indeed in a preliminary motion, that this tribunal should not have heard any evidence at all. We address those preliminary motions as a separate issue later in our opinion.

198. We shall first try to explain the legal context of Mr. Rudolph's arguments. The legal context consists of three proceedings; criminal proceedings against Mr. Rudolph and Mr. Mill, a proceeding before a discipline committee of the Nova Scotia Barristers' Society, and a civil suit in which IJ sued Mr. Rudolph and the companies.

Criminal Proceeding

199. The Crown charged Mr. Rudolph and Mr. Mill with many counts of fraud over the years 2004-2008 contrary to s. 308 of the *Criminal Code* of Canada. We refer to two Supreme Court decisions. In the first, the court found that Mr. Rudolph and Mr. Mill's rights under the *Charter* to solicitor-client privilege had been violated during the investigation of the frauds (*R v. Rudolph* 2017 NSSC 333). In the second, the court found that the

appropriate remedy for the *Charter* violation was to enter a stay of proceedings of the charges *(R. v. Rudolph* 2017 NSSC 334). Mr. Mill and Mr. Rudolph walked free.

200. The following description of the criminal proceeding is a summary based on an agreed statement of facts prepared by the Crown and defence lawyers and adopted by the court (*R v. Rudolph* 2017 NSSC 333 at paragraphs 4 pp. 2-7).

201. As the reader will know from the evidence, Mark David had been the lawyer for Mr. Mill and the companies. Mr. David's relationship with Mr. Rudolph, on the evidence before us, was more tenuous. The Nova Scotia Barristers' Society had done an investigation of Mr. David. The investigation led to the Society disbarring Mr. David in, July 2009. The police sought materials from the Society. Mr. David, after an initial refusal, gave two statements to the police in return for immunity from prosecution.

202. The Barristers' Society, itself, also provided the police with a box of their materials without any warrant or order requiring them to do so. These materials were taken and scanned into a police hard drive. Mr. Rudolph is listed in the bank journals and the client trust listings, one entry being described as noting a "retainer". No court approval or release had been given for the police interviews with Mr. David either.

203. The court said in its opinion:

> Solicitor-client privilege has long been recognized as a principle of fundamental justice within the meaning of s. 7 of the Charter (at par. 8).

204. Section 7 of the *Charter* provides:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

205. The court concluded that the interviews with Mr. David breached Mr. Mill's and Mr. Rudolph's rights contrary to section 7.

206. The court also concluded that the police reception and processing of the box of Bar Society materials constituted an unreasonable search and seizure in violation of section 8 of the *Charter*. Section 8 provides:

> Everyone has the right to be secure against unreasonable search and seizure.

207. The court, having decided that *Charter* rights had been violated, then moved on to decide the proper remedy to be granted Mr. Mill and Mr. Rudolph for the violation of their *Charter* rights under section 24. It provides:

> 24(1) Anyone whose rights or freedoms, as guaranteed by the Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such

remedy as the court considers appropriate and just in the circumstances.

(2) Where, in the proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by the Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

208. The court, in the criminal proceeding, concluded solicitor-client privilege had been breached to the extent that the fairness of the trial was seriously compromised and this unfairness could not be remedied in any way which allowed the prosecution to continue (*R. v. Rudolph* 2017 NSSC 334 (CanLII par. 104). The court also concluded that allowing the prosecution to continue in these circumstances would bring the administration of justice into disrepute and ordered a stay on that ground as well (at par. 105). The court entered a stay of proceedings. Mr. Mill and Mr. Rudolph walked free of the criminal charges.

209. Mr. Rudolph argues that these provisions and the remedy of a stay of proceedings apply in this Securities Commission case. A stay means that a case will not be heard on the facts. The legal analysis of the *Charter* provisions as they apply to the facts in Mr. Rudolph's case will follow. Beyond the *Charter* analysis though, the criminal proceeding unfolded separately from the investigation initiated by Enforcement for breaches under the *Securities Act*. Commission Investigator, William MacDonald, testified that Enforcement "did our work separately from the Mounties." Enforcement would have likely looked at the conviction but, otherwise, considered the investigation arising from the complaints received by the Commission to be an administrative action.

The Bar Society's Discipline of Mark David

210. The Society proceeded through a statement of facts agreed to by the lawyer presenting the case on behalf of the Society and Mr. David's own lawyer. The disciplinary panel of the Society hearing the matter, in a written decision dated July 15, 2009, accepted the facts as agreed and also ruled in its written decision "that all of the charges set out in the formal complaint against Mr. David had been proven." The Society, also with Mr. David's agreement, disbarred him. The written decision became a public document (*Nova Scotia Barristers' Society v. David,* 2009 NSBS 3).

211. The formal complaint and the agreed statement of facts say that in April, 2008, someone the Society denoted as AD, filed a complaint with the Society. This led the Society to investigate "various failed loan and investment transactions entered into by one of Mr. David's clients, PM and companies controlled by PM, the CG Group of Companies". Mr. David's relationship with PM is the focus of the agreed facts and the complaint.

212. "AD" is the sole investor the Society mentioned in the agreed statement of facts. There is no mention of Douglas Rudolph or a "DR".

213. The Society's allegations list a number of investors denoting them all by initials. The allegations mention a "DR" once, saying at paragraph 5(f) that Mr. David had failed:

> ...to determine the purpose of payments he was instructed by his client and associates of his client to make from his trust account. These payments included:..
>
> (ii) $287,300.00 to DR a business associate of PM and further $65,526.27 to CGI, of which DR was President and a Director

214. Commission Investigator, William MacDonald, early in his work, reviewed the Bar Society's decision, but the investigation of Mr. Rudolph and Mr. Mill really began with the complaint of QR in May 2009, and the work of Mr. MacDonald's superior in Enforcement, Scott Peacock. Mr. Peacock did not testify, but his notes provide evidence which we accept. In July, 2009, Mr. Peacock reviewed the Bar Society decision. He makes a note; "Who is P.M. and C.G." Then there is a note; "John Handrahan called - P.M. is Peter Milne or Mellish". Another note, apparently emanating from a call with the electronic news source, *All Nova Scotia*, states the names of Peter Mill and Douglas Rudolph. Mr. Peacock, in early August, spoke to Mr. David's lawyer in the Bar Society proceeding. The lawyer, according to the notes, advised Mr. Peacock:

> ...Mr. David represented Mr. Mill. Douglas Rudolph involved in most of the transactions through Canglobe companies in their various forms. ... most N.S. activities set out in the pleadings of KL, GH and IJ proceedings. Mr. David did not act for Mr. Rudolph but may have represented one or more of the Canglobe companies...

215. Mr. Peacock, in January 2010, assigned the investigation to Mr. MacDonald and directed him to go to the courthouse to look at the filings and obtain copies of the litigation against Mr. Mill, Mr. David and Mr. Rudolph. Mr. MacDonald did so. He found two statements of claim issued by IJ, the wife of GH, against CanGlobe companies and Mr. Rudolph dated August 25, 2008 and by Mr. and Mrs. KL against CanClobe companies and Mr. Rudolph dated October 17, 2008. Neither proceeding named Mr. Mill as a defendant. The KL statement of claim is long, quoting agreements and much correspondence from Mr. Rudolph. It mentions Mr. Mill only once. The IJ claim is short, simply reciting the promissory note and stating that it had been dishonoured. The IJ claim does not mention Mr. Mill at all although IJ did later sue Mr. Mill as well.

216. Mr. Rudolph submits that Mr. MacDonald availed himself of information in the Barristers' Society's decision re Mark David and used it as the springboard to his investigation of Mr. Rudolph and Mr. Mill. In doing so, Mr. Rudolph says, Mr. MacDonald violated his *Charter Rights.*

The Transcript of the Discovery of AA

217. The witness, GH, gave Commission Investigator, William MacDonald, a transcript of the pre-trial oral "discovery" evidence given by AA of TD Bank in IJ's suit against Mr. Rudolph and the associated companies. "Discovery" takes place pre-trial under the *Nova Scotia Civil Procedure Rules* with the purpose and expectation that the parties to a lawsuit will make full disclosure of relevant information to each other. Exceptionally, oral and documentary disclosure may be required of third parties.

218. GH spontaneously gave Mr. MacDonald a copy of the transcript of AA's evidence. He reviewed the transcript and filed it away. Enforcement did not present the transcript in evidence.

219. The *Nova Scotia Civil Procedure Rules* govern the conduct of litigation. One of the *Rules* reiterates what is commonly referred to as the "implied undertaking" by parties "not to use information disclosed or discovered in a proceeding for a purpose outside the proceeding, without the permission of a judge". (Rule 14.03(1))

220. Mr. Rudolph argues that GH's delivery of the transcript to Mr. MacDonald in violation of the *Rule* and Mr. MacDonald's availing himself of it also violated his rights.

Did Enforcement's use of the Bar Society decision violate Mr. Rudolph's and Mr. Mill's rights under the *Charter*?

221. Mr. Rudolph submits that Mr. MacDonald used the Barristers' Society's opinion in January 2010 to figure out that Peter Mill and Douglas Rudolph were clients of Mr. David and that this alone violated solicitor-client privilege and their rights.

222. We dismiss Mr. Rudolph's argument. First of all, as a matter of fact, the investigation commenced with the complaint of witness QR. She sent an email to Mr. Abel Lazarus of the Securities Commission at the end of May, 2009 describing her investment with Douglas Rudolph and ST in January, 1999. The Society's decision is dated July 15, 2009. QR says in part:

> ...Since then I have not been able to get any money or much info. Tues. May 10th 2005 I have a letter saying that an agreement had been signed with Canglobe Financial, and that Doug would get funds from them via QC Mark David and he would then be sending out funds to his various investors. Since then all I get that the banks are holding things up -first overseas and then now in Canada.

223. That, in a nutshell, is what happened to everyone.

224. The next mention in the record is found in the notes Mr. Peacock made in July, 2009 while reading the Society's decision. Mr. Peacock, according to the notes, may not have

learned who PM was from the decision at all. A contact appears to have initially misidentified PM to him. According to the notes, it was a journalist who properly identified PM and DR. This information was confirmed by Mr. David's own lawyer. Figuring out who PM and DR were was not the result of Mr. MacDonald's decoding the Barristers' Society' s decision on Mr. David. It was in the public domain already. Thus, the investigation did not begin with Mr. MacDonald's perusal of the decision in January, 2010.

225. Investigators may undertake informal inquiries to see if there might be a violation of the Act. The law does not require investigators to resort immediately and always to the use of the formal investigatory tools the *Securities Act* provides under section 27(1). We refer to the Supreme Court of Canada's decision in *Brosseau v. Alta. Securities Commission,* 1989 CarswellAlta 19, particularly at paragraph 31. We are satisfied that perusing the Barristers' Society's decision as a preliminary step falls well within the scope of what an investigator can, and indeed, should do to determine whether a deeper investigation is warranted.

226. Secondly, in our view, no exception could be taken, even if Mr. Peacock or Mr. MacDonald did learn from the decision itself who PM and DR were. The decision is a public document. Investigators may, in our opinion, examine public documents and draw reasonable conclusions from them without being haunted by the spectre of solicitor-client privilege.

227. Thirdly, "DR" is mentioned only once in the Society's statement of allegations and the agreed statement of facts and that mention does not suggest "DR" was a client of Mr. David's. The other initials used in the decision scarcely corelate to the witnesses who appeared before us. The decision, in fact, does not provide much of a lead.

228. Fourthly, any breach of solicitor-client privilege on these facts would not, in our view, invoke a stay of proceedings under the law. Justice Boudreau, in her remedy opinion, does an extensive analysis of the balancing of interests which takes place in the consideration of a remedy. She says:

> [24] A stay of proceedings is clearly a remedy of last resort. A stay means that the case will not be tried on its merits, which is never a desired outcome; therefore, a stay is reserved for those most rare and unusual cases where a court believes that a prosecution should not continue. There are very serious competing values at stake.
>
> [25] The leading case relating to stays of proceedings is R. v. Babos 2014 SCC 16 (CanLII), [2014] 1 SCR 309:
>
> > 30 A stay of proceedings is the most drastic remedy a criminal court can order (R. v. Regan 2002 SCC 12, [2002] 1 SCR No. 297, at para. 53) It permanently halts the prosecution of an accused. In doing so, the truth-seeking function of the trial is frustrated and the public is deprived of the opportunity to see justice done on the merits. In many cases, alleged

victims of crime are deprived of their day in court.

31 Nonetheless, this Court has recognized that there are rare occasions - the "clearest of cases" - when a stay of proceedings for an abuse of process will be warranted (R. v. O'Connor 1995 CanLII 51 (SCC), [1995] 4 SCR 411, at para. 68). These cases generally fall into two categories: (1) where state conduct compromises the fairness of an accused's trial (the "main" category); and (2) where state conduct creates no threat to trial fairness but risks undermining the integrity of the judicial process (the "residual" category) (O'Connor, at para. 73). The imputed conduct in this case does not implicate the main category. Rather, it falls squarely within the latter category.

32 The test used to determine whether a stay of proceedings is warranted is the same for both categories and consists of three requirements:

(1) There must be prejudice to the accused's right to a fair trial or the integrity of the justice system that "will be manifested, perpetuated or aggravated through the conduct of the trial, or by its outcome" (Regan, at para. 54);

(2) There must be no alternative remedy capable of redressing the prejudice; and

(3) Where there is still uncertainty over whether a stay is warranted after steps (1) and (2), the court is required to balance the interests in favor of granting a stay, such as denouncing misconduct and preserving the integrity of the justice system, against "the interest that society has in having a final decision on the merits" (ibid., at para. 57).

229. The breach of Mr. Rudolph's and Mr. Mill's *Charter* rights which gave rise to the stay of the criminal proceedings arose from the sharing of the Nova Scotia Bar Society's records with the police, not the resulting decision in the disciplinary hearing. The decision was a public document but the seized records were protected by solicitor-client privilege. Enforcement never had access to the seized documents that gave rise to the breach by the police of the Respondents' *Charter* rights. Without these seized documents protected by solicitor-client privilege, there was no breach of the Respondents' s.8 *Charter* rights by Enforcement.

230. Concrete and detailed information was to be easily found in the public records of legal proceedings obtainable over the counter in court offices. The information gleaned led to a veritable avalanche of witness evidence of Mr. Mill's and Mr. Rudolph's callous exploitation of good people over years. The tidbit of information that Mr. David's representation of "PM" led to his downfall had no appreciable impact on the investigation that we can see from the voluminous documentary and oral evidence provided to us and admitted by us. The fairness of this hearing was not compromised

nor the integrity of the justice system undermined. Except to the extent that the Respondents made an issue of it, the Barristers' Society decision is irrelevant.

231. Mr. MacDonald's and Mr. Peacock's investigation, even if it can be said to have violated solicitor-client privilege by its examination of the Bar Society's decision, did so in such a trivial way that it does not even reach the threshold of any serious consideration of the remedy Mr. Rudolph seeks. Indeed, throwing out the allegations and allowing Mr. Rudolph and Mr. Mill to walk free again would make a mockery of the witnesses and the other people whose money was taken by Mr. Rudolph and Mr. Mill. Throwing out the allegations would be a denial of the witnesses and truly undermine the administration of justice.

232. We can offer the witnesses little enough, but at least we can say they have had an opportunity to be heard and that the *Securities Act* did allow some justice to be done on the merits.

Discovery and the Implied Undertaking Rule

233. To repeat, our *Civil Procedure Rule* 14.03(1)) provides that there is an implied undertaking:

> not to use information disclosed or discovered in a proceeding for a purpose outside the proceeding, without the permission of a judge.

234. The purpose of the implied undertaking rule is to enable discovery to take place fully and truthfully without fear of repercussions through the use of the discovery for other purposes while at the same time protecting the privacy of the witness giving the evidence. As Justice Joshua Arnold of our Supreme Court succinctly put it in *Langille v. Nova Scotia (Attorney General)* 2019 NSSC 340 at paragraph 14:

> The implied undertaking rule is intended to balance the public interest in encouraging full disclosure so that the truth maybe discovered against a desire to minimize invasions of privacy.

235. Justice Arnold cites *Doucette (Litigation Guardian of) v. Wee Care Day Care Systems Inc. [2008]* 1 S.C.R. 157.

236. AA and the Toronto-Dominion Bank, we acknowledge, do have a privacy interest in the discovery evidence it produced which is no different than that of a party. One could imagine that a different party might attempt to use the information in the GH discovery in a civil action against the Bank and that the information could be sheltered by the *Rule*. The purpose of the implied undertaking rule is to prevent someone suing the Bank from using the AA discovery in the suit without the permission of the court.

237. We also acknowledge that, as he himself testified, Mr. MacDonald did receive and review the AA discovery. Mr. MacDonald had, however, already retrieved her name

from the court documents as a banker with TD who had done business with Mr. Rudolph. He called AA. AA called him back. She told him of the CGI account and about a $200,000.00 draft from GH and IJ payable to Mr. David In Trust. He proceeded to summons AA. Enforcement did not present the discovery as evidence in the proceeding before us nor did Enforcement make any reference to the contents of it. We are satisfied that Mr. MacDonald and Enforcement did not "use" the discovery transcript for the purposes of this proceeding against Mr. Rudolph and Mr. Mill within the meaning of *Rule* 14.03(1).

238. The crucial point, however, is that a purpose of the implied undertaking rule is to protect the interest the person giving the evidence has in preventing their truthful evidence being used against them in a later proceeding and in protecting their own privacy. AA, for herself and on behalf of the Bank, gave the evidence on discovery. The interest attaches to the witness. The interest in the discovery evidence belongs to AA and the Bank. Only AA or the Bank can have made an issue of a breach of the implied undertaking to exclude the discovery evidence. The privacy interest did not belong to Mr. Rudolph. He cannot, in our opinion, claim the benefit of it.

239. GH, or nominally his wife, IJ, were the ones who received the discovery transcript in the litigation. Theirs was the implied undertaking to the court. The undertaking cannot, in our view, be transferred to Enforcement by GH's delivery of it.

240. The Commission, in receiving the evidence, was not bound by any implied undertaking. It may be argued that GH, in his enthusiasm, did breach the implied undertaking by delivering the documents to Enforcement, but that is something apart from the passive reception of third party evidence by an unrelated investigative agency such as the Enforcement arm of the Securities Commission.

241. A review of the law makes it clear, in our view, that the implied undertaking rule does not apply. We refer to the decision of Justice Moir in *McIntyre v. Cape Breton District Health Authority,* 2008 NSSC 305. In this case, Dr. McIntyre sought to exclude a report prepared for an insurer which had been disclosed in discovery during another proceeding. The insurer took no objection to the use of the report by the Health Authority. Justice Moir dismissed Dr. McIntyre's application to exclude the report. He said:

> 9. The undertaking not to make collateral use of a document disclosed under compulsion of the *Civil Procedure Rules*, or evidence given on discovery under the Rules, is the undertaking of each party who receives disclosure, and not the party who makes disclosure...
>
> 17. To extend the undertaking to the party who gives disclosure is really to convert this into a general privilege. Further, it diminishes the disclosure obligation and undermines the rationale by putting the protection for privacy, the undertaking, ahead of the obligation to make full disclosure in the present

proceeding.

242. Mr. Rudolph's argument, in our opinion, does precisely what Justice Moir warned against; it converts the implied undertaking into "a general privilege". In other words, in our opinion, the implied undertaking rule does not attract the presumption of privilege that solicitor-client information does.

243. Whether Enforcement's receiving the transcript and the documents violates the *Charter* is a separate issue. A "...clear purposes of the *Charter* is the protection of the individual's reasonable expectation of privacy" from unreasonable search and seizure. (*British Columbia (Securities Commission) v. Branch,* 1995 CarswellBC 171 par. 54) The individual, in this case however, is AA or the Toronto-Dominion Bank, not Mr. Rudolph. AA or the Bank had the reasonable expectation of privacy. Again, in our view, Mr. Rudolph may not claim the benefit of it.

244. There are remedies arising from a breach of the Rule including the disallowance of evidence and a finding of contempt of court. However, no authority in support of the proposition that a breach of the implied undertaking Rule could also be a breach of s. 8 of the *Charter* has been presented to us.

245. In any event, in our opinion, the *Charter* remedies sought by Mr. Rudolph to exclude evidence or to enter a stay of proceeding, should not be granted even if Enforcement's perusal of the AA discovery transcript could be said to have been used in violation of Mr. Rudolph's *Charter* rights. The remedies of exclusion or a stay would be draconian relative to any violation of them.

Knowledge House

246. Mr. Rudolph also argued that this tribunal should not continue because of some connection with what might be described as "The Knowledge House" proceedings. The Knowledge House proceedings continued with many parties, in many courts, over a decade. There were also, especially at the outset, some proceedings before the Securities Commission. The proceedings were complex and wide ranging, but there was no evidence emanating from any of the witnesses who testified before us of any connection between Knowledge House and the allegations or with any connection between them personally and Knowledge House. There is no reason, in our view, to suspend the proceedings before us because of whatever may have transpired with respect to Knowledge House or indeed may still be proceeding. All of those proceedings are, in our opinion, irrelevant.

Commencing Hearing Regardless of Preliminary Motion

247. Mr. Rudolph argues that this tribunal ought not to have proceeded to hear evidence in the face of his preliminary motion to enter a stay of proceedings or dismiss the allegations against him. We do not accept the argument. In our view, we have the power to control our own procedures and, if we think it proper, direct that issues raised as

preliminaries be heard and resolved as a part of the trial itself. We refer to Part 18 - General of the *Nova Scotia Securities Commission General Rules of Practice and Procedure.*

> 18.1 The Commission may exercise any of its powers under the Rules on its own initiative or at the request of a Party.
>
> 18.2 The Commission may issue general or specific procedural directions at any time, including before or during any Hearing....
>
> 18.5 The Rules shall be construed to secure the most expeditious and least expensive determination of every Hearing before the Commission on its merits, consistent, however, with the requirements of natural justice.

248. Mr. Rudolph has submitted no authority in support of the proposition that a preliminary motion to stay imposes a legal obligation upon a tribunal to adjudicate upon it before hearing evidence or that it is inconsistent with "the requirements of natural justice" to proceed with a hearing while still allowing the motions to be made.

249. Furthermore, the motion was made long after the time set for preliminary motions in the agreed upon order of March, 2020 had expired. The public interest in finally allowing the witnesses to speak in a public forum of the frauds they experienced exceeds any risk to the fairness of the proceeding that might be said to exist through an adjudication of Mr. Rudolph's motions as a part of the adjudication of the allegations themselves.

250. The tribunal convened a pre-hearing conference in this matter on November 18, 2019. Mr. Rudolph's counsel was in touch with Enforcement counsel advising he anticipated being retained by Mr. Rudolph although he did not actually attend the conference. Mr. Mill's counsel did attend. The tribunal, at the conference set dates for the hearing beginning November 16, 2020.

251. Counsel for Mr. Mill, Mr. Rudolph and Enforcement, in March, 2020, agreed to an order of the tribunal directing, among other things:

> The parties will bring any pre-hearing motions on or before August 7, 2020

252. The tribunal had set October 14, 2020 for a further conference. Counsel for Mr. Rudolph wrote the tribunal the day before advising that Mr. Rudolph intended to make pre-hearing motions submitting Enforcement's allegations should be stayed or dismissed because of violations of Mr. Rudolph's rights under the *Charter* and because the allegations had been laid outside the limitation period. Mr. Rudolph also requested that the hearing set to begin November 16 be adjourned to permit submissions to be made by the parties and an adjudication made upon them.

253. The tribunal heard oral submissions at the scheduled conference on October 14th. The tribunal adjourned briefly to consider its decision and then returned to the conference to

say that in its opinion, while the issues raised were undoubtedly of importance and had to be heard and considered, the better course was to have the motions heard as a part of the hearing itself rather than adjourn the weeks of hearing dates already set. Mr. Rudolph reiterated his request to adjourn through counsel's submissions and again in person at the beginning of the hearing on November 16th. The tribunal decided that its opinion remained unchanged and called upon Enforcement to present its evidence.

254. Enforcement's allegations are dated April 9, 2013. The Securities Commission proceedings had already been long delayed by the consented to adjournment for the resolution of the criminal proceedings against Mr. Rudolph and Mr. Mill. Dates for the hearing had been set in October, 2019. A time period in which preliminary motions might be made had been set in March, 2020. To have granted a further adjournment a month before the actual hearing was to begin on the basis of a forthcoming motion that in itself was months late would not further the goal of an "expeditious and least expensive determination" and, by giving Mr. Rudolph a full opportunity to present his arguments, the procedure would still be consistent with the requirements of natural justice.

255. Mr. Rudolph argued that forcing the parties through a hearing only to dismiss the allegations on a matter of law that could have been preliminarily determined would be expensive. We agree that if, in the end, the tribunal found sufficient merit in the arguments to dismiss the allegations or enter a stay of proceedings, then evidence might have been heard in vain, but we prefer that risk to the long delay and confusion to Enforcement's case presented by yet another extended delay. We are particularly mindful of the work involved in organizing the witnesses to present evidence, the inconvenience and anxiety caused to them by a further delay, and the personal and public interest in their being able to publicly tell their stories.

256. Mr. Rudolph also argued that somehow there might be a reasonable apprehension of bias in a tribunal decision to dismiss his motions because the tribunal had been made fully aware of the facts. Mr. Rudolph did not submit authority in support of the proposition that hearing the evidence on the merits may taint a decision that might have been preliminarily made without evidence. We think it an odd proposition that a tribunal must be ignorant of facts. In our view, the better argument would be that appreciation of a preliminary motion would be enhanced by a complete understanding of the factual context, but in any event we are not persuaded that hearing the evidence created any reasonable apprehension of bias in this case.

257. Some evidence would probably have been required in any event. Mr. Rudolph's arguments are to a large extent dependent upon an analysis of how Enforcement responded to the decision of the Barristers' Society in the matter of Mark David and to GH's delivery of AA's discovery evidence. Evidence would probably have been required from Mr. MacDonald at the least. A full-blown separate hearing on the preliminary motion would have carried its own expense and would, by Mr. Rudolph's argument, also carry a risk of creating a bias through enabling the tribunal to actually

hear some facts.

258. We sustain our decisions to proceed with the evidence on the merits as we did and to consider Mr. Rudolph's arguments that Enforcement violated his *Charter* rights as a part of our whole decision.

Delay

259. Mr. Rudolph also submits that Enforcement's delay in bringing the proceeding to a hearing constitutes an abuse of process and that the allegations ought to be dismissed.

260. Mr. Rudolph and Mr. Mill's fraudulent activities continued until August – September, 2008. The Director of Enforcement laid the allegations on April 9, 2013. Delay ensued. At the beginning, the delay was a function of counsel representing Mr. Rudolph and Mr. Mill being unavailable, or ill or raising objections to interim orders and routine pre-hearing disclosure procedures. Then, in October, 2015, with the agreement of all, pre-hearing procedures were adjourned without delay due to the criminal charges then facing Mr. Rudolph and Mr. Mill. The criminal proceeding ended with the Crown, in November 2018, abandoning its appeal of the decision staying the criminal charges. The Director of Enforcement then reconfirmed their witnesses and began to deal with new counsel for Mr. Mill and Mr. Rudolph towards a pre-hearing conference. One was eventually agreed upon for November 18, 2019, but then Mr. Rudolph changed his counsel forcing another adjournment. The pre-hearing conference finally convened in March, 2020, and dates were set for the hearing in mid-November with deadlines for disclosure and pre-hearing motions. Then, on the very eve of an organizational conference less than a month before the hearing, and months after the agreed upon date for preliminary motions, Mr. Rudolph sought what would have been a long adjournment to hear and adjudicate upon his argument that a stay should be entered on the allegations because of the violation of his rights. Mr. Rudolph continued to reiterate these submissions through the hearing itself.

261. We are satisfied, having reviewed the volumes of correspondence between counsel for the Director of Enforcement and counsel for Mr. Rudolph and Mr. Mill, that Director's counsel diligently pushed the proceeding forward and that delay resulted from reasons largely beyond their control. The delay was considerable, but neither Mr. Rudolph nor Mr. Mill submitted any evidence or argument of any prejudice that might have arisen from the delay and, having heard the entire matter, we are at a loss to find any in the great volume of evidence before us. We find no causal connection between the actions of the Director of Enforcement and the delay or any prejudice to Mr. Mill and Mr. Rudolph.

262. Delay may constitute an abuse of process. We refer to *R. v. Regan* [2002] S.C.R. 297 speaking of the proper standard in considering an abuse of process argument in the administrative context:

> 52 Finally, this Court's most recent consideration of the concept of abuse of

process arose in the administrative context. In *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 SCC 44, it was held that a 30-month delay in processing a sexual harassment complaint through the British Columbia human rights system was not an abuse of process causing unfairness to the alleged harasser. For the majority, Bastarache J. came to this decision on the basis that abuse of process has a necessary causal element: the abuse "must have caused actual prejudice of such magnitude that the public's sense of decency and fairness is affected" (para. 133). In Blencoe's case, it was held that the humiliation, job loss and clinical depression which he suffered did not flow primarily from the delay, but from the complaint itself, and the publicity surrounding it (*Blencoe*, at para. 133; see also *United States of America v. Cobb*, [2001] 1 S.C.R. 587, 2001 SCC 19).

48. The issue in *Blencoe* was a 30 month delay between the laying of a British Columbia human rights complaint and the beginning of the hearing. Supreme Court of Canada said at paragraph 120:

> 120 In order to find an abuse of process, the court must be satisfied that, "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted" (Brown and Evans, *supra*, at p. 9-68). According to L'Heureux-Dubé J. in *Power*, *supra*, at p. 616, "abuse of process" has been characterized in the jurisprudence as a process tainted to such a degree that it amounts to one of the clearest of cases. In my opinion, this would apply equally to abuse of process in administrative proceedings. For there to be abuse of process, the proceedings must, in the words of L'Heureux-Dubé J., be "unfair to the point that they are contrary to the interests of justice" (p. 616). "Cases of this nature will be extremely rare" (*Power*, *supra*, at p. 616). In the administrative context, there may be abuse of process where conduct is equally oppressive.

263. We accept this as a standard in this case for the purposes of assessing the public interest jurisdiction under our *Securities Act* and within the context of administrative law in general. We find no actual prejudice let alone prejudice of "such magnitude that the public's sense of decency and fairness is affected" (para. 133). In any event, the public interest in giving the witnesses the respect due them to tell their story and in holding Mr. Mill and Mr. Rudolph accountable as dealers in securities committing frauds greatly exceeds any suggestion that the fairness of the proceeding was tainted by abuse of process resulting from delay.

Other Breaches of the *Securities Act*

264. The Director of Enforcement alleges the Respondents contravened the Nova Scotia *Securities Act*. The Director of Enforcement alleges unregistered activity, illegal

distributions, unfair practices, illegal undertakings as to future value, misrepresentation, and fraud. Each of these allegations are premised on the trading, advising and issuance of securities.

265. During closing arguments, counsel for Mr. Rudolph challenged the jurisdiction of the Commission to even hear the allegations saying there was no trade in securities. Mr. Rudolph's argument was that the transactions in question were commercial loans and not "securities" for the purposes of the *Securities Act*. Mr. Rudolph's counsel further claimed that the default on the commercial loans may give rise to civil remedies but are not properly the subject of this Panel's review.

266. The Nova Scotia *Securities Act* defines "security" broadly and provides an exhaustive list of forms of security. The list includes "any bond, debenture, note or other evidence of indebtedness" (s. 2 (aq)) and "any investment contract" (s.2 (xiv)).

267. We are satisfied that Mr. Rudolph and Mr. Mill provided the witnesses with "securities" within the meaning of the Nova Scotia *Securities Act*. In some instances, the "security" in question was a note or an evidence of indebtedness and in others the "security" may be more properly considered to be "an investment contract". In some, there was both a promissory note provided as evidence of indebtedness and an investment contract.

268. The specific question of whether a loan or promissory note is properly considered 'evidence of indebtedness' within the meaning of a 'security' was definitively answered by the Ontario Court of Appeal in the recent case of *Ontario Securities Commission* v *Tiffin*, 2020 ONCA 217 (*Tiffin*). The central issue in the *Tiffin* case was whether the promissory notes issued by Tiffin to clients for his personal use and to keep his business operating were securities as defined in the Act. The court determined that a loan is a *prima facie* security but may be subject to exemptions. The court held at paragraph 4:

> In brief, the definition of security in the Act is sufficiently broad to capture the promissory notes at issue here. While American law is a useful source of persuasive precedent in the securities context, the family resemblance test applied by the trial judge does not assist in the interpretation of the Act. The definition of security adopted by the appeal judge is supported both by the plain text of the Act and the logic of the regulatory scheme.

269. In the CanGlobe schemes, each of the victims was issued a promissory note from one or both of the corporate Respondents that was signed by either or both of Douglas Rudolph and Peter Mill in exchange for their investments. The continued references to "bridge funding" and "lending" does not save the transactions from being subject to the *Securities Act*. Whether the Respondents or even the witnesses considered the promissory notes as loans outside the scope of the *Securities Act* is immaterial.

270. In the lower court decision of *Tiffin, Ontario Securities Commission* v. *Tiffin*, 2018 ONSC 3047, which was affirmed on appeal, the Ontario Superior Court of Justice quoted with approval the Alberta Court of Appeal decision in *R. v Stevenson*, 2017

ABCA 420 (CanLII). In *Stevenson*, the appellant was charged with a number of offences under the Alberta *Securities Act*, RSA 2000, c. S-4, arising out of the raising of money from the public through short-term (6 months) loan agreements:

> It is, however, impossible for those raising funds from the public to contract themselves out of the Securities Act, and this inclusion in the documentation is ineffective and irrelevant.
>
> As noted, the fact that the loans might be described as "personal" is not decisive. Equally irrelevant is whether the lenders are happy with their investment, feel that they were fairly dealt with, or believe that full disclosure was made to them. An issuer must comply with the Act even if the investors make a fortune. As P. T. Barnum noted: "There's one born every minute"; the Securities Act is designed to protect them, along with all investors. The Act regulates all raising of money from the public, not just situations where the outcome of the investment is negative or the purchasers of the securities are unhappy.
>
> Likewise, the definition of a "security" is a question of statutory interpretation, and the opinions of individual lenders and investors as to whether they were dealing in such an instrument is irrelevant. The interpretation of statutes is a question of law, and evidence on this subject is not admissible. [Citations omitted and emphasis added]

271. Further on in the same decision, the Ontario Superior Court of Justice stated:

> I find the analysis of the Alberta Court of Appeal to be persuasive on this appeal, and I adopt it for the purposes of this decision. The Court should not be creating exemptions that are not found in the statute. The Ontario Securities Act, like its Alberta counterpart, has its own built-in exemptions, and it is neither necessary nor appropriate to formulate additional exemptions by applying a judicially constructed test. The trial judge recognized that a loan arrangement is a "note or other evidence of indebtedness" under s. 1 of the Act. The clear intent of the legislature is that loan arrangements are not to be excluded from the definition of "security" unless they fall within a specific statutory exemption. Altering the meaning of a definition that is fundamental to a complex and carefully balanced regulatory regime is not a judicial function. [...]
>
> There is nothing in the Ontario Securities Act to exempt promissory notes on the basis of what the parties "understood". As a general proposition, it is unlikely that most of the investing public has any understanding what kind of lending transactions fall within the ambit of the *Act* and which do not. The purpose of the Securities Act is "to provide protection to investors from unfair, improper or fraudulent practices" regardless of whether the investors understand the nature of the transactions protected or even want the protection of the Act.
>
> In addition to the basic principle that judicial innovation is inappropriate and

> undesirable in the face of clear and unambiguous statutory language, the OSC takes the position that the "family resemblance" test is particularly inappropriate in Ontario because of fundamental policy differences between the securities regulatory regimes in Ontario and United States. [...]
>
> This distinction is relevant, but not determinative in Ontario's securities law. Ontario's system of definitions and exemptions make it clear that the legislature intended the Securities Act to include commercial as well as investment instruments. Some commercial notes are exempt from certain provisions in the Ontario legislation, but subject to others.

272. Nova Scotia has a comparable definition of 'security' as both the Alberta *Securities Act* and the Ontario *Securities Act*. On their face, the promissory notes fall within the definition of a "security" for the purposes of the *Securities Act*. In the absence of judicial precedence to the contrary, we also believe that it would be inappropriate and undesirable in the face of clear and unambiguous statutory language to interpret the definition of 'security' to exclude the promissory notes.

273. Efforts by the Respondents to characterize the transactions as loans do not exempt it from the securities regime. More importantly, it is unlikely the witnesses had any understanding of whether the investments characterized as loans would fall within the ambit of the *Securities Act* or not. Regardless of what the parties' intentions or knowledge at the time of the investments, the parties quite simply cannot contract out of the application of the *Securities Act*. The witnesses are entitled to the protection provided to investors under the *Securities Act* from unfair, improper and fraudulent practices.

274. Even if the promissory notes were not securities as "notes", then they, as well as the loan agreements and the factoring agreements tendered in evidence were "investment contracts" which also fall within the definition of a "security". In the case *Pacific Coast Coin Exchange of Canada v Ontario (Securities Commission)*, 1977 Carswell Ont 50 (SCC) at paras 46-49, the Supreme Court set out a four-part test to determine whether a contract is an investment contract. The elements to be satisfied are as follows:

> (i) an investment of money;
> (ii) in a common enterprise;
> (iii) with an expectation of profit;
> (iv) from the efforts of others.

275. Each of the transactions documented by either promissory note, loan agreement or factoring agreement would constitute an investment contract. By their own admission, the CanGlobe Companies were set up for the purpose of soliciting funds from investors to fund offshore activities and local development projects. The capital raised was termed an investment and the investors had an expectation of profit based on the investments. Although the actual projects and activities of CanGlobe International and CFG*CN

were illusory, the witnesses believed that they were investing in real companies with an expectation of profit from the efforts of others. We find that the promissory notes, the loan agreements and the factoring agreements sold to the witnesses in connection with investments in either CanGlobe International or CFG*CN were "securities" for the purposes of the *Securities Act*.

Registration

276. The Director alleges the Respondents breached section 31(1)(a) and (c) of the *Securities Act* by engaging in unregistered activity. The section reads as follows:

> 31(1) No person or company shall act as a dealer or act as an underwriter unless the person or company is registered as
>
> (a) a dealer;
>
> (b) a representative of a registered dealer and is acting on behalf of the registered dealer.

277. Prior to 2008, Section 31(1)(a) read as follows:

> 31(1) Subject to any exemption in Nova Scotia securities laws, no person or company shall
>
> (a) Trade in a security unless the person or company is registered as dealer, or is registered as a salesman or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer; [...]
>
> (c) act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is actinon on behalf of the adviser,
>
> and the registration has been made in accordance with this Act and the regulations and the person or company has received written notice of the registration from the Director and where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

278. Arguments on the presumption against retroactivity become moot on the allegations regarding unregistered dealing in securities as the prohibition against unregistered dealing existed in both versions of the *Securities Act*. Accordingly, unregistered dealing was prohibited for the duration of the material period.

279. Mr. Brian Murphy, Manager, Registration, for the Nova Scotia Securities Commission certified in an affidavit that Peter Mill, Douglas Rudolph, CFG*CN Ltd., CanGlobe International Capital Inc., and CanGlobe Financial Group were not, as of January 31, 2020, "currently registered in any capacity with the Commission, nor have they ever

been registered with the Commission", nor have they been registered in any capacity in any Canadian jurisdiction. There is no evidence before us to suggest the contrary and certainly none was forthcoming from the Respondents.

280. We quote, with approval, the following from the Ontario Securities Commission decision *Re Money Gate Mortgage Investment Corporation,* 2019 ONSEC 40 lest we undervalue the significance of the above:

> 140 The registration requirement is a cornerstone of the securities regulatory framework. It is an important gate-keeping mechanism that protects investors and capital markets by imposing obligations of proficiency, integrity and solvency of those who seek to be engaged in the business of trading in securities with or on behalf of the public.

281. The question then becomes whether the Respondents were "dealers" within the meaning of the Nova Scotia *Securities Act.*

282. For the purposes of the Act, a 'Dealer' is "a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities or derivatives as a principal or agent" (s. 2(1)(i)). "Trade" or "trading" is then defined in Section 2(1)) (as) to include:

> (i) Any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in subclause (iv), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a bona fide debt, [...] and
>
> (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing;

283. Mr. Rudolph and Mr. Mill raised over $1,000,000.00 of capital through their solicitations of the witnesses and others ostensibly in, for the most part, "bridge funding". The bridge funding was the business activity, but the bridge funding loans, regardless of whether they were documented and secured by promissory note or investment contract, were the securities sold.

284. The business of trading in securities was also considered in *Re Money Gate Mortgage Investment Corporation* 2019 ONSEC 40 decision. The decision (at par. 145) identifies a number of factors to be considered including the following:

> (1) Trading with repetition, regularity or continuity, whether or not that activity is the sole or even primary endeavor;
>
> (2) directly or indirectly soliciting securities transactions;

(3) receiving or expecting to receive compensation for trading; and

(4) Engaging in activities similar to those of a registrant, including setting up a company to sell securities or by promoting the sale of securities.

285. The trading of securities evolved over time from basic factoring agreements. By the time Douglas Rudolph and Peter Mill began soliciting investments for CanGlobe International and CFG*CN, the parties were clearly trading on a more coordinated and organized level. Some of the transactions which predated the material period may be part of the continuous trading activity, such as with AB, but with others it began with the CanGlobe scheme.

286. Various CanGlobe promotional materials and communications to investors were submitted into evidence at the hearing. These documents include various diagrams of corporate structures and outlines of funding programs which appear at best as aspirational and at worst nonsensical. The materials are riddled with inconsistencies and lack some of the most basic terms that would be expected in standard documents for transactions of the purported scale and size proposed by the Respondents. Some of the materials refer to either the CFG Indenture/Debenture Program also called the CFG Trust Project Loan Funding Program and others refer to the Bridge Funding Program, also called Bridge Lender Financing Program or the Project Bridging Lenders. The witnesses participated in the Bridge Funding Program which according to some of the evidence was intended to fund the CFG Trust Project Loan Funding Program or CFG Indenture/Debenture Program with the solicited investments.

287. The CanGlobe promotional material describes the CFG Trust Project Loan Funding Program as a "diversified Funding Program in order to permit the owner (Client/Borrow) of a project and/or site development initiative to access Project Loan Financing." The Program was targeted for proposed projects requiring up to $36 million USD. The material also states "[t]he sole objective of CFG providing this assistance is to enhance the projects profitability and competitive market entry. Through the Program, the innovative methodologies, proprietary technologies and advanced products for use within their project and/or site development initiatives. This network functions under the collective designation of The CANTEC Group of Companies."

288. The "Memorandum of Understanding" included in the Douglas Rudolph disclosure documents the purpose of CanGlobe International Capital Incorporated inArticle 3 titled MANDATE OF THE CORPORATION (CanGlobe International) which states:

> It is agreed by all parties that the sole mandate of CIC will be to act as an exclusive "investment" provider for CANTEC Financial Group Inc. "Syntonic projects and/or site development initiatives in the Maritime Provinces.

289. In Article 8 of the MOU titled RESPONSIBILITES OF CIC (CanGlobe International)

> CIC would be committed to provide a minimum of 12 million United States

Dollars every 12 months to fund CFG Indenture/Debenture Initiatives assigned to the Maritimes based on the receipt of the 15% proceeds from CIC as follows:

(a) CIC Inc. receives 15% of the proceeds generated from their CIC Indenture/Debenture Initiatives from which it will pay any agent fess (sic) of 2% and the balance of which in turn is reinvestment into the Indenture/Debenture Programs.

(b) That for every deposit investor raised by CIC, CIC receives a 100% bonus per transaction separate from CIC funding initiatives or renumeration agreements.

290. This documentation supports the witness testimony. A number of the witnesses testified about attending meetings where investments were solicited from the attendees to finance via the CanGlobe scheme a variety of local large-scale proposed projects including a power cogeneration site, a quarry and, in one instance, the construction of an NHL Stadium on the Bedford Lands based on the plans of the Tampa Bay stadium. The legal terms and details of how the Bridge Funding Program worked and related to the projects were unclear to the witnesses but each was clearly led to believe by the Respondents that by purchasing the promissory notes or loan agreements that they were investing in the CanGlobe scheme.

291. The promissory notes issued by CanGlobe International or CFG*CN to the witnesses are evidence of indebtedness tendered for the purposes of establishing a traded security and each of named Respondents is involved. The details are as follows:

(i) the first promissory note issued to UV in the amount of $17,000 named CanGlobe Financial Group(CFG), CFG*CN and CanGlobe International Capital Incorporated and are signed by Peter A.D. Mill on behalf of CanGlobe Financial Group and CFG*CN Ltd. and by Douglas Rudolph on behalf of CanGlobe International Capital Inc. The second in the amount of $50,000 was signed by Douglas Rudolph personally.

(ii) the Promissory Note issued to MN and OP dated July 21, 2006 in the amount of $25,000 was signed by Douglas Rudolph on behalf of CanGlobe International Capital Inc.

(iii) the Promissory Note dated December 15, 2006 issued to EF in the amount of $100.000 was signed by Peter Mill on behalf of CanGlobe Financial Group and CFG*CN Ltd. and signed by Douglas Rudolph as Guarantor;

(iv) the Promissory Note dated August 15, 2008 issued to WX in the amount of $37,500 was signed by Douglas Rudolph both on behalf CanGlobe International Captial inc. and himself, Douglas Rudolph; and

(v) the Promissory Note dated June 29, 2006 issued to IJ was signed by Peter Mill on behalf of CanGlobe Financial Group and CFG*CN Ltd. and signed by Douglas

Rudolph on behalf of CanGlobe International Capital Inc. as Guarantor and Douglas Rudolph personally as Guarantor.

292. The loan agreements between CanGlobe International and/or CFG*CN and the witnesses are investment contracts tendered for the purposes of trading a security and each of the named Respondents is involved. The details are as follows:

(i) the Loan Agreement dated August 24, 2006 between AB and CFG*CN LTD. For the Principal Sum of $220,000 with
the "full principal sum (inclusive of this $220,000) will be Five hundred fifty-four thousand, four hundred and fifty dollars ($554,450) of lawful money of Canada" due on or before October 31, 2006;

(ii) The agreement dated February 16, 2007 among KL and spouse and CanGlobe International Capital Inc. and CFG*CN Ltd. for a loan in the amount of $20,000 to CICI for Cantec as bridging capital due and payable on April 30, 2007; and

(iii) The agreement dated April 9, 2008 among KL and spouse and CanGlobe International Capital Inc. and CFG*CN Ltd. for a loan in the amount of $50,000 to CICI for Cantec as bridging capital due and payable on April 30, 2007;

293. We note that Douglas Rudolph and Peter Mill signed interchangeably for each of the corporate Respondents. In some instances, Douglas Rudolph signed CanGlobe International Capital Inc. and Peter Mill signed for CanGlobe Financial Group and CFG*CN Ltd. In other instances, Douglas Rudolph signed for CanGlobe International Inc. alone but in any event, the promissory notes and investment contracts demonstrate that each of the named Respondents participated in the CanGlobe scheme.

294. Mr. Rudolph and Mr. Mill certainly, in their dealings with the witnesses, directly solicited securities transactions. They traded with repetition, regularity and continuity with many people over a period of years. We conclude from the analysis of the flow of funds to them from the witnesses that they received compensation. They set up the Respondent companies to promote and sell securities. They even converted investments which some witnesses had made to Mr. Rudolph personally into investments with the Respondent companies without the consent or even the knowledge of the witness.

295. We find that the sales of these promissory notes and the investment contracts by Mr. Rudolph and Mr. Mill by themselves and on behalf of the Respondent corporations to the witnesses constituted trading in securities by unregistered dealers in breach of section 31(1)(a) of the *Securities Act*. We also find that the corporate Respondents never filed any prospectuses nor ever filed for exemptions of the regulation of their distribution or sale of securities.

Unregistered Advising

296. The Director's allegations also allege a contravention of the prohibition on unregistered advising activity. Section 31(2) of the *Securities Act* states that no person or company shall act as an adviser unless the person or company is registered as

> (a) An adviser; or
>
> (b) A representative of a registered adviser and is acting on behalf of the registered adviser.

297. An 'adviser' means a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to the investing in or the buying or selling of securities or derivatives.

298. Prior to 2008, the corresponding section, Section 31(1)(c) (R.S.N.S. 1989, c.418), read as follows:

> Subject to any exemption in Nova Scotia securities laws, no person or company shall
>
> (a) Trade in a security unless the person or company is registered as a dealer, or is registered as a salesman or as a partner or as an officer of registered dealer and is acting on behalf of the dealer;
>
> (b) Act as an underwriter unless the person or company is registered as an underwriter or
>
> (c) Act as an adviser unless the person or company is registered as an adviser, or is registered as a partner or as an officer of a registered adviser and is acting on behalf of the adviser ....
>
> And the registration has been made in accordance with the Act and the regulations and the person or company has received written notice of the registration from the Director and where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

299. Again, arguments on the presumption against retroactivity become moot on the allegations regarding unregistered advising as the prohibition against unregistered activity existed in both versions of the Act. Accordingly, unregistered advising was prohibited for the duration of the material period. Mr. Murphy certified, and we accept, that the Respondents never registered themselves in any capacity anywhere in Canada. The question then becomes whether the Respondents, not being registered, engaged in advising.

300. In the Nova Scotia Securities Commission decision in *Germeil and FPE Trading,* 2019

CanLII 146217, the Commission found that advising means providing investment advice that is tailored to an investor's specific needs and circumstances (at par. 58). This was consistently the case in these circumstances. Mr. Rudolph knew the financial situation of the witnesses through his personal connections with them or through the accounting work he had done for them. Mr. Rudolph exploited his familiarity with the financial situation of the victims. He tailored his advice, albeit with the intent to defraud, to the witnesses' specific circumstances.

301. AB testified that he attended a couple of meetings at the home of Mr. Rudolph, along with his wife, where upwards of 15 to 20 people also attended for the express purpose of being pitched on investments. At these meetings, the attendees were advised on how they could extract the equity built up in their homes to give to Douglas Rudolph where he could make money for them on that money. AB believed that many in attendance participated in the scheme after the pitch.

302. In AB's case, the investment solicited was for the exact total amount of money available in AB's home equity and personal line of credit that he was asked to invest in CanGlobe in August, 2006. Even though AB met with Peter Mill when he invested in CanGlobe, it was Douglas Rudolph that had been his advisor until then. AB relied on and was continuously represented by Douglas Rudolph from 1995 until 2008 for his bookkeeping, tax advice and investment advice. In fact, AB believed that he had a retirement plan devised by Douglas Rudolph that involved three income streams built around (i) the $113,000.00 worth RRSPs which Douglas Rudolph had advised and facilitated the liquidation of for investments, (ii) investments held in the numbered company 232320 Nova Scotia Limited and personal investments. Although able to document these transactions with bank records and other documents, AB was unable to explain with any detail how the investments worked because he trusted Douglas Rudolph and testified that he relied on his expertise and advice.

303. Similarly, CD testified that Douglas Rudolph also advised him on investments beginning with low dollar amounts for a short term. CD regularly participated in these investments for a couple of years until Douglas Rudolph began to solicit CD for a much larger investment equal to the total amount of his RRSPs. The previous investment history with Mr. Rudolph was one of the reasons why CD trusted Mr. Rudolph and relied on him when he participated in another much larger investment equal to the total amount of his RRSPs.

304. EF was contacted initially by Douglas Rudolph for the express purpose of investment advice. He advised her to mortgage the house she owned free and clear to invest in the CanGlobe scheme.

305. After receiving tax advice from Douglas Rudolph, GH and IJ were advised by him to mortgage their house to invest in the CanGlobe scheme and leverage the entire $200,000.00 worth of equity they had built up over 30 years.

306. KL and UV were colleagues that had been referred to and solicited by Douglas Rudolph for the express purpose of investment advice. Douglas Rudolph advised each of KL and UV to convert their traditional mortgages into home equity lines of credit for the purpose of participating in the CanGlobe scheme.

307. Like AB and CD, MN and OP were initially bookkeeping clients who Douglas Rudolph solicited investments from and provided investment advice to. As a result of providing these services, Douglas Rudolph had intimate details of the financial circumstances of MN and OP. Douglas Rudolph advised the couple to invest in the CanGlobe scheme.

308. WX relied on Douglas Rudolph initially to assist in navigating the financial arrangements related to her divorce. In the course of that process, Douglas Rudolph advised her on the investment in CanGlobe including the amount which was taken out the line of credit that he advised her to set up.

309. There are troubling similarities in each of these instances. The advice was not only tailored to the individual witnesses, it was tailored to maximize the amount that the Respondents could get from each of them. The sale of RRSPs and the leveraging of personal residences had far-reaching effects on the financial security and retirement plans of these individuals.

310. In *Autorité des marchés financieres c Lemieux (Financiére Hélios Capital)*, 2010 QCBDR 37 (Bureau de Décision et de Révision) the Bureau found that the Respondents in that case acted as advisors when they advised investors to unlock locked-in retirement accounts (LIRA) with resulting tax consequences for the purposes of participating in an investment scheme. In that case, the Bureau found there was sufficient grounds to grant the extraordinary remedy of a decision *ex parte*. The Bureau listed what they called "imperative reasons" at paragraph 44:

- these investors are ordinary people and most of them apparently have little knowledge about investments and show little interest in what happens to the balance of the transferred amounts;
- these investors are never asked to participate in the management of their investments;
- investors interested in the program set up by the Respondents receive little or no documentation to inform them about the transactions being proposed to them;
- investors who subscribe to the model set up by the Respondents are at risk of losing the benefit of their tax shelters;
- Altima does not have any concrete economic activities, no identifiable income, no employees and no business address which is really its own, but

it has supplemental pension plan for its employees;

- This plan is used by the Respondents as a ruse to cause investors to invest in it; [...]

- The sums belonging to investors which should be deposited into the pension plan are instead deposited into Altima's bank account and the Respondents regularly withdraw cash from it, for their benefit; [...]

- Certain Respondents act as a adviser and dealer, although none of them is currently registered as a dealer, advisor or representative of anyone registered with the Autorité des marches financiers and never has been;

311. Many of these imperative reasons could apply to the case at hand. The witnesses are ordinary people who did not participate in the management of their investments. The witnesses received little to no documentation about how the CanGlobe scheme worked and some of the witnesses may be at risk of losing some of the tax benefits of their RRSPs. Similarly, CanGlobe did not have any legitimate economic activities and the entire CanGlobe scheme was a ruse to cause the witnesses to invest. The evidence presented at the hearing confirmed that the money invested was deposited into CanGlobe accounts but then used purely for the benefit of Douglas Rudolph and Peter Mill and not for legitimate business purposes.

312. Upon careful review of the evidence, we are unable to conclude that Mr. Mill engaged in providing investment advice to the witnesses. Some of the witnesses, UV, YZ, WX, MN, OP, CD, GH & IJ never met Peter Mill in person although he signed some of the investment documents. Others, such as EF and KL met Peter Mill only when he signed the investment documents at closing. Although AB testified that he had met and discussed the bridge funding investment with Peter Mill, he also indicated that his retirement plan had been prepared by Douglas Rudolph. There is considerable correspondence in evidence signed by Peter Mill promoting or providing false updates to the witnesses regarding the CanGlobe bridge funding schemes. Although this correspondence documents Peter Mill's active participation in the fraudulent CanGlobe bridge funding scheme, it does not, however, constitute investment advice tailored to the specific needs and circumstances of the individual witnesses.

313. By comparison, the evidence against Mr. Rudolph on this charge is overwhelming. In many instances, it was the initial provision of tax and accounting advice by Douglas Rudolph that ultimately led to the investment advice to invest in the CanGlobe scheme. In other instances, the initial contact between the witness and the Respondents was for the purposes of receiving investment advice from Douglas Rudolph. We are satisfied that Mr. Rudolph, and the corporate Respondents acted as advisers and were not registered as such contrary to Section 31(2) of the *Securities Act*.

Illegal Distribution

314. In addition to the prohibition on unregistered dealing and advising, the *Securities Act* prohibits the distribution of securities in the absence of a prospectus or an exemption. Section 58(1), R.S.N.S. 1989 of the Act states:

> No person or company shall trade in a security on the person's or company's own account or on behalf of any other person or company, if such trade would be a distribution of such security, unless a preliminary prospectus and a prospectus have been filed and receipts therefore have been issued by the Director.

315. Mr. Abel Lazarus, Director, Corporate Finance for the Nova Scotia Securities Commission, certified in an affidavit dated January 31, 2020 that:

> 1. The corporate respondents "are not reporting issuers in Nova Scotia".
>
> 2. No prospectus had ever been filed with the Commission on behalf of the corporate respondents.
>
> 3. The corporate respondents had not filed reports of trades relying on exemptions from regulation provided under Nova Scotia Securities laws.

316. We determined above that Mr. Rudolph, Mr. Mill, CanGlobe International and CFG*CN were trading in securities. For the purposes of s. 58(1) of the *Act,* we must also consider, however, whether the issuance of the promissory notes or the loan agreements by CanGlobe International and CFG*CN was a "distribution" by an issuer for the purposes of the *Securities Act* such that a prospectus or an exemption was required. A distribution is defined as follows:

> "Distribution", where used in relation to trading in securities, means:
>
> (i) a trade in securities of an issuer that have not previously been issued.

317. An Issuer is defined in section 2(1)(s) of the *Securities Act* as "a person or company who has outstanding, issues or proposed to issue, a security."

318. The evidence indicates that there were two broad categories of capital raising activities engaged in by Douglas Rudolph. The first category relates to early iterations of his deal making involving transactions where he sold his own receivables or promissory notes to his clients for low dollar amounts for a short term with a guaranteed return and targeted to individual investors. The second category of capital raising activities related to the CanGlobe scheme which more properly fall within the definition of a distribution and in which all of the Respondents participated.

319. The CanGlobe scheme raised capital from investors by trading in the securities of CanGlobe International and CFG*CN. We find the issuance of the promissory notes

from each of CanGlobe International and CFG*CN to the witnesses, AB, EF, GH, IJ, KL, MN, OP, UV and WX to be a distribution of security from an issuer not previously issued without an exemption or a prospectus and a violation of s. 58(1).

320. The question may be posed as to whether there would have been an exemption available for some of the investments where Douglas Rudolph had a long personal relationship with the victim. The Director of Enforcement submitted that not only was there no prospectus filed on the distribution, but there was also no exemption available because there was insufficient proximity between the Respondents and the victims to establish the close friends and family exemption. In our view, it is immaterial whether some or all of the victims may have potentially qualified for exemption. The law obliged the Respondents to avail themselves of the exemption before the distribution. We refer to the decision of the British Columbia Securities Commission in *Solara Technologies Inc., Re*, 2010 BCSECCOM 163 *(Solara)* where it is stated:

> 31 It is the responsibility of a person trading securities to ensure that the trade complies with the Act. This is so whether the person chooses to comply by filing a prospectus, or by using an available exemption.
>
> 32 When the person chooses to rely on an exemption, two considerations are relevant to the responsibility to ensure compliance with the Act. First, the person trading has the onus of proving that the exemption is available (see *Bilinski*, Re, 2002 BCSECCOM 102 (B.C. Securities Comm.) and *Limelight Entertainment Inc., Re* (2008), 31 O.S.C.B. 1727 (Ont. Securities Comm.)). Second, it is unlikely an issuer will be able to prove that an exemption was available at the time of the trade if it does not have documentation to prove it made a proper determination to that effect.

321. In the absence of evidence presented either at the time of the distribution or at the hearing, we find that there was no exemption available to the Respondents and that each and all of the Respondents breached section 58(1) of the *Securities Act*.

Undertakings as to Future Value

322. The *Securities Act* prohibits undertakings regarding the future value of a security. Section 44(2) states:

> no person or company, with the intention of effecting a trade in a security or derivative, shall give any undertaking, written or oral, relating to the future value or price of such security or derivative, shall give any undertaking, written or oral, relating to the future value or price of such security of derivative.

323. There is a distinction to be drawn between a representation and an undertaking regarding the future value of a security. The Ontario Securities Commission in the *Portfolio Capital Inc.* 2015 CarswellOnt 2860 (OSC) case held at paragraph 42:

> Notwithstanding paragraphs [40] and [41] above, a breach of subsection 38(2) of the Act requires a finding that a respondent provided an undertaking with respect to the future price of a security. As stated by the Commission in previous cases, a simple representation with respect to the future price of security is not sufficient to constitute a breach of subsection 38(2) of the Act see, for example, *Al-Tar Energy Corp.; Re* (2010), 33 O.S.C.B. 5535 (Ont. Securities Comm.) ("*Al-Tar*") at paras. 160-169. The Commission has repeatedly stated that while an undertaking is more than a mere representation, it may amount to something less than a legally enforceable obligation, and can include representations amounting to promises, assurances, or guarantees of future value.

324. CanGlobe International Capital Incorporated was a self-proclaimed capital corporation. Mr. Rudolph did provide some disclosure of documents to the Director of Enforcement. These documents show that CanGlobe's primary activity was capital raising for projects by soliciting investments from investors where the investors were promised generous returns at little to no risk. AB, UV and KL all testified to attending meetings where investment opportunities were pitched to investors. UV and KL testified to attending a meeting of fellow police officers where structured tranches of investment with varying levels of return depending upon the amount invested were promoted. WX did not attend those meetings but described receiving the same pitch from Douglas Rudolph for CanGlobe investment schemes. WX also provided supporting materials outlining the structure of the investment tranches outlined as follows:

1. 25,000 repaid from first flow of fund
   $300 cash per month (14% per year- no tax) paid until return of capital
2. 37,500 repaid from first flow of funds
   $2,500 in advance
   $450 cash per month (14% per year – no tax) paid until return of capital to start end of month four included in the mortgage elimination process – two options
3. 50,000 repaid from first flow of funds
   $2,500 in advance
   $600 cash per month (14% per year – no tax) paid until return of capital to start end of month four included in the mortgage elimination process- two options
4. 75,000 repaid from first flow of funds
   $1,000 cash per month (16% per year- no tax) paid until return of capital included in the mortgage elimination process- two options
   If repaid within 2 months-$7,500 bonus from Trust

325. We find the supporting materials for the CanGlobe scheme outlining the sliding scale of returns on the promissory notes submitted into evidence was an undertaking as to future value.

326. Furthermore, as the witnesses testified and documented, Mr. Rudolph and Mr. Mill

repeatedly signed personal promissory notes, investment contracts guarantees and agreements undertaking to repay witnesses' original investment plus a premium often within a short period of time. For example:

- Peter Mill assured AB that by advancing funds to CanGlobe he would make more in a month than most people in a year;
- Douglas Rudolph guaranteed CD a return of $60,000 in 90 days for his investment in the CanGlobe scheme;
- Douglas Rudolph and Peter Mill guaranteed a return of $50,000 in one year to the GH and IJ for their investment in the CanGlobe scheme;
- Douglas Rudolph promised YZ a return of 15-25% within a month to a month and a half or less on an investment of $60,000;
- Douglas Rudolph guaranteed MN and OP a return of 25% on their investment in the CanGlobe scheme;
- Douglas Rudolph and Peter Mill guaranteed KL a return of 24% on his investment in the CanGlobe scheme;
- Douglas Rudolph guaranteed UV returns of 2-3% per month on his investment in the CanGlobe scheme;
- Douglas Rudolph promised EF returns of 2% per month on her investment in the CanGlobe scheme;
- Douglas Rudolph promised QR returns of 10% on her two investments in factoring agreements within four months.

327. We find these to be undertakings about the future value of the money invested with the Respondents and that, in providing them, they violated s. 44(2) of the *Act*. The witnesses, trusting Mr. Rudolph and Mr. Mill, relied on these undertakings.

Limitation Period

328. The investments commenced with Mr. Rudolph's taking of money from YZ and QR in the late 1990s and continued through WX's investment in September 2008. The ensuing excuses, diversions, and lies as Mr. Mill and Mr. Rudolph evaded the witnesses' increasingly panicked demands carried on through 2010. The statement of allegations is dated April 9, 2013.

> Limitation period
>
> 136 (1) No proceedings shall be commenced in a court more than six years from

> the date of the occurrence of the last event upon which the proceeding is based.
>
> (2) No proceedings under this Act shall be commenced before the Commission more than six years from the date of the occurrence of the last event upon which the proceeding is based. 2003, c. 7, s. 6.

329. In our view, the date of the Statement of Allegations falls within the six-year limitation period. The actual taking of money and the deceptions that followed establish a pattern of deceit spanning the limitation period.

330. We refer to the British Columbia Securities Commission decision in the case of *Saafnet Canada Inc.*, Re 2013 CarswellBC 4302, 2013 BCSECCOM 442. The BC Securities Commission reviewed a trilogy of cases and in words that could have been equally as well applied to Mr. Mill and Mr. Rudolph stated:

> In *Dennis*, *Barker*, and *Maudsley* the panels found that the misconduct consisted of a pattern of deceit that spanned the limitation date. In all three cases, the events were found to be a continuing course of conduct: the continuity of the misconduct was obvious" (at paragraph 40)

331. In *Saafnet*, the BC Securities Commission also quoted *British Columbia (Securities Commission) v. Bapty*, 2006 BCSC 638 (B.C.S.C. [In Chambers]) as follows (paragraph 36):

> A "continuing contravention" a "continuing violation", a "continuing offence", or a "continuing course of conduct" results in the commission of such an offence not being complete until the conduct has run its course. These terms are most often used to describe a succession of separate illegal acts of the same character which, in their entirety, make up a single continuing transaction...Where there is a finding that there is a continuing contravention, the limitation period does not begin until the entire "transaction" is complete and discrete activities that occur outside of the limitation period are not statute-barred if they form part of the same transaction as events falling within the limitation period: Re Dennis 2005 BCSECCOM 65...
>
> The concept of a "continuing contravention" must be contrasted with the concept of "continuing "ill-effects" of a past illegal act. The latter cannot extend a limitation period indefinitely as the limitation period is triggered by the completion of the offence even though the ongoing effect arising from the original breach may continue...

332. The correspondence and documents provided by the witnesses demonstrate a continuous engagement in the capital raising activities by the Respondents from 1997 until September 2008 well within the limitation period. However, the fraudulent activities persisted until as late as January 3, 2011 when Douglas Rudolph emailed WX stating "waiting for an update with the trust group- a trading schedule is to be provided this

week based on the positioning of cash last week of December." In this instance, there certainly was no break in the misconduct. Even while the Respondents were being pursued by one witness for the failed scheme, they were soliciting other witnesses for new 'investments' with the same deceptions.

333. It cannot be said that where the Respondents continued to victimize their investors with dishonest delay tactics that they have succeeded in running the clock out on the limitation period. In some instances, the evidence told the story of mounting desperation for each of the victims as each struggled to face the consequences of the Respondents' actions and the impact of the untrue statements. At no point were the investors told that the investment would not be returned. Rather, the point of each email was to delay the victim from taking action to recover their investment until some future date and thereby force them to hold the security. We find that where the Respondents used delay tactics to prevent the victims of the investment scheme from realizing they had been defrauded that the date of the occurrence of the last event for the purposes of the limitation period under the *Securities Act* was delayed each time the Respondents wrote to delay. Therefore, the delay tactics of the Respondents and their continued deceitful conduct was part of a series of events comprising a continuous course of conduct which could bring it within the limitation period.

334. It is difficult to capture the magnitude and extent of the manifestly misleading and untrue statements made by the Respondents in soliciting investments and presented in evidence by the witnesses and in documents tendered on behalf of the Director. We find that none of the projects connected to the "bridge funding" ever had any substance to them and Mr. Mill and Mr. Rudolph knew the statements were misleading and untrue and were made to induce the witnesses to give them their money. We also find the misconduct of the Respondents was obvious, the events were part of a continuous course of conduct and there was a pattern of deceit that spanned the limitation date.

Conclusion

335. The CanGlobe scheme was an elaborate deception designed to defraud unwitting investors. Each witness' evidence told a familiar story of abused trust, deception and loss. Some expressed disbelief that they had fallen for the scam, but the truth is that the Respondents were masters of deception and obfuscation. Their clearly established relationships with AA at TD Bank and A. Mark David lent an air of legitimacy to the entire CanGlobe scheme with devastating consequences. Each witness testified to the lasting negative impact and far-reaching consequences of having fallen for this scam. These witnesses, in many instances, lost not only their life savings but were left encumbered with the maximum amount of debt possible. Although years have passed since the failed investment, many of these witnesses are still working to pay for the debts incurred from being defrauded by the Respondents. Others have indicated that they believe they will never recover financially or emotionally from the loss. The sheer volume and consistency of the evidence presented at the hearing has convinced us that the Director has successfully made the case for the Allegations against the Respondents.

336. We find that Douglas Rudolph, Peter Mill, CanGlobe International and CFG*CN:

- Perpetrated frauds upon the witnesses by engaging in a course of conduct relating to the securities of CanGlobe International Capital Inc. and/or CFG*CN Ltd. and/or other securities in violation of section 132A(1)oof the Act, R.S.N.S. and part 3.1(1)(b) of the National Instrument 23-101) Trading Rules, Commission Rule 23-101, (16 April 2003, effective 1 July 2003);

- Engaged in unfair practice in violation of s. 44A(2), Stats. N.S. 2002, c.39, s. 3;

- Traded in securities with the witnesses without being registered as dealers in violation of s. 31(1)(a), R.S.N.S. 1989, c. 418;

- Traded in securities on behalf of the witnesses where such trades were distributions of such securities without having filed a prospectus or preliminary prospectus with the Commission in violation of s. 31(1)(a) and section 58 (1) of the Act, R.S.N.S. 1989, c. 418;

- Provided undertakings with respect to the future value of securities, with the intention of effecting a trade in such securities, in violation of section 44(2), R.S.N.S. 1989, c.418 of the *Act*;

- Engaged in an unfair practice with the witnesses in violation of section 44A(2) of the Act, S.N.S. 2002, c. 39, s. 3 (assented to 28 November 2002) by failing to disclose in sufficient detail the risks associated with investing in the securities of CanGlobe International Capital Inc. and/or CFG*/CN Ltd. and/or other securities;

- Engaged in an unfair practice by requiring witness WX to agree not to disclose any information pertaining to her investment in CanGlobe International Capital Inc. and or CFG*CN Ltd. and/or other securities, in violation of section 44A(2) of the Act, R.S.N.S.;

- Engaged in unfair practice with the witnesses by making untrue statements in the promotion of a high yield investment program, untrue statements that a reasonable investor would consider material in deciding whether to enter into or maintain a trading relationship with any of the Respondents, in violation of section 44A(2) of the Act;

- Made untrue statements an investor would have found material to WX with the intention of effecting a trade in securities in violation of sections 50(2) and 132B(1) of the Act, R.S.N.S.;

337. And we find that Douglas Rudolph:

- Acted as an adviser to the witnesses without being registered as an adviser in violation of s.31(1)(c) of the Act, R.S.N.S. 1989, c. 418.

Submissions on Penalty

338. We shall receive written submissions on penalty and dispense with oral argument. We request that Enforcement's submissions be delivered to the Panel by June 11, submissions on behalf of Mr. Mill and Mr. Rudolph be delivered by June 25 and any rebuttal by July 5.

Dated at Halifax, Nova Scotia this 28th day of May, 2021.

J. Walter Thompson, Q.C.
Commissioner
Chair of Panel

Heidi Walsh-Sampson
Commissioner

Ken Wheelans
Commissioner