IN THE MATTER OF THE SECURITIES ACT,
R.S.N.S. 1989, CHAPTER 418, AS AMENDED

-AND-

IN THE MATTER OF
Quintin Earl Sponagle and Trevor Wayne Hill
(collectively, the Respondents)

Reasons for Decision of
Nova Scotia Securities Commission

Hearing Dates:	May 30, 2011; May 31, 2011; June 1, 2011; June 2, 2011; June 7, 2011; and June 14, 2011
Decision Date:	August 4, 2011
Panel:	J. Walter Thompson, Q.C., Commissioner, Chair of the Panel Sarah P. Bradley, Commission Vice-Chair, and Paul E. Radford, Q.C., Commissioner
Present:	Heidi Schedler, Enforcement Counsel and Stephanie Atkinson, Enforcement Counsel, on behalf of staff of the Nova Scotia Securities Commission
	No one appeared for Quintin Earl Sponagle and Trevor Wayne Hill

Introduction

[1.] Jabez Financial Services Inc. (“Jabez”), a company incorporated in Panama, with a bank account in Curaçao, offered extraordinary returns to its investors, ranging from 2% per month to 12% per month. In the spring and summer of 2006, almost 200 Canadian investors wired more than $4,000,000.00 to the Jabez account at the First Curacao International Bank. In late summer 2006, the securities authorities of Newfoundland, New Brunswick and Nova Scotia commenced their investigation of Jabez. They intervened and Jabez ceased seeking new investors in the Atlantic Provinces. Just the same, much of this money disappeared to places unknown and beyond tracing. Some of it enriched the promoters or their family and friends, and about half became recoverable due to the unrelated intervention of Dutch authorities who took over the Curaçao bank as a result of the bank’s participation in a value-added tax fraud and money laundering. In due course, the matter was the subject of a hearing before this tribunal under the Nova Scotia *Securities Act,* R.S.N.S. 1989, c. 418, as amended. The purpose of the *Securities Act* is to provide investors with protection from practices and activities that tend to undermine investor confidence in the fairness and efficiency of

capital markets. This mandate certainly includes protecting the investing public from fraudulent schemes, and this proceeding provides an unfortunate example of why it is needed.

[2.] Enforcement Staff of the Nova Scotia Securities Commission ("Enforcement Staff") alleged the following facts, which we have found to be true on the basis of the evidence presented to us:

- The Respondents, Quintin Sponagle and Trevor Hill, were residents of Nova Scotia.

- Jabez Financial Services Inc. (Jabez) was a Panama corporation. Jabez was not registered to distribute or trade in securities with the national securities regulator of Panama.

- JFS Credit Union Ekonomisk Förening (JFS Credit Union) was registered with the Swedish Companies Registration Office, but was not authorized by the Swedish financial regulator Finansinspektionen to conduct any banking business, provide financial services or any other financial business.

- Quintin Sponagle and Trevor Hill held Jabez out as a registered financial management company licensed in Panama to manage its own funds and assets, and to trade for itself and third parties.

- Quintin Sponagle and Trevor Hill held JFS Credit Union out to be a legally registered credit union of Sweden and governed by the banking laws of Sweden.

- None of Quintin Sponagle, Trevor Hill, Jabez and JFS Credit Union were registered with the Nova Scotia Securities Commission nor in Panama nor in any other jurisdiction in Canada to trade or distribute securities in any other capacity.

- Beginning in April, 2006, Quintin Sponagle, Trevor Hill and Larry Beaton solicited and, either directly or indirectly, effected trades in securities resulting in Jabez receiving money in exchange for purported investments from 137 residents of Nova Scotia and 52 residents of other provinces with a total value of $4,130,000.00.

- Quintin Sponagle spent the money investors sent to Jabez on himself, and on indulging friends, relatives and business associates including specifically Trevor Hill and his family, and otherwise disbursing it for unknown purposes.

[3.] Enforcement Staff of the Commission also made the following allegations of breaches of the *Securities Act*:

- Quintin Sponagle and Trevor Hill violated s. 31 (1) of the *Securities Act* by soliciting investments without being registered to do so.

- Quintin Sponagle and Trevor Hill engaged in an unfair practice by failing to disclose the risks of investing in Jabez and thereby violated section 44A (2) of the *Securities Act.*

- Quintin Sponagle and Trevor Hill further engaged in an unfair practice by requiring investors to agree they would keep any information they received and any transactions they engaged in confidential thereby inhibiting the reporting of misfeasance and limiting regulatory access to information of the scheme they were investing in and thereby violated s. 44A (2)

- Quintin Sponagle and Trevor Hill violated s. 50(2) of the *Securities Act* by making untrue statements about the nature of Jabez' activities and rate of return on the investments in Jabez.

- Quintin Sponagle and Trevor Hill failed to file any prospectus with the Nova Scotia Securities Commission before distributing Jabez securities contrary to s. 58(1) of the Act.

[4.] A third respondent, Larry Beaton, was named in the original Notice of Hearing and Statement of Allegations. This respondent reached a settlement with Enforcement Staff shortly before the hearing of the allegations began. The hearing proceeded against Mr. Sponagle and Mr. Hill only.

Respondents' Participation in Investigation and Hearing

[5.] After January 1, 2007, neither Quintin Sponagle nor Trevor Hill appeared in response to any part of the investigation process and neither appeared at a prehearing conference to set dates, or at the hearing of the allegations. We are satisfied that the Respondents had actual and proper legal notice of the proceedings. We accept the affidavits of service sworn by the bailiffs, Les Barrett and Brenda Graham. The hearing was conducted in the Respondents' absence.

[6.] Thirty days prior to the commencement of the hearing, the Commission notified the Respondents that documentary evidence was available to them, subject to their agreement to a condition of confidentiality. Neither availed himself of the opportunity to receive and examine this evidence.

[7.] Below, we detail the particulars of the notices of proceedings that each of Mr. Sponagle and Mr. Hill have received. We do so because the allegations in this case are serious and the penalties sought against the Respondents are substantially higher than any previously awarded by this Commission. Additionally, we have taken a negative inference from the Respondents' failure to appear and give evidence in response to the Commission's lawfully issued summons.

Notice to Quintin Sponagle

[8.] Mr. Abel Lazarus, an investigator for the enforcement branch of the Commission who was appointed under the Act to conduct an investigation into the affairs of Jabez on October 24, 2006, interviewed Mr. Sponagle on September 27, 2006. He later summoned Mr. Sponagle to return for a further interview on December 8th, 2006. Mr. Sponagle did not appear, though his lawyer appeared on his behalf. The lawyer presented Enforcement Staff with a copy of a boarding pass in the name of Mr. Sponagle for a flight from Newark to Panama City on November 29th, 2006. The lawyer, on Mr. Sponagle's behalf, agreed to an adjournment to December 21st .

[9.] Mr. Lazarus, after agreeing to this date with Mr. Sponagle's counsel, had a summons served on Mr. Sponagle by attaching a copy to the door of 96 Smeltzer Road, Upper Vaughan, Hants County, which, according to the records at the Registry of Deeds for Hants County, is a residence jointly owned by Mr. Sponagle and Shelley Ann Sponagle. We conclude that Mr. Sponagle agreed through his counsel to a second interview on December 21st, and also received the summons to appear attached to the door of his home at 96 Smeltzer Road, Upper Vaughan, Hants County.

[10.] We note that duly appointed investigators under the *Securities Act* have the power to compel witnesses to appear and to give evidence under oath. Section 27 (3) provides:

> (3) Any person making an investigation pursuant to this Section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court of Nova Scotia in civil actions, and the failure or refusal of a person or company to attend, to answer questions or to produce such documents, records or things as are in the person's or company's custody, control or possession makes the person or company liable to be committed for contempt by a judge of the Supreme Court of Nova Scotia as if in breach of an order or judgment of that Court, provided that no provision of the Evidence Act exempts any bank or any officer or employee thereof from the operation of this Section.

[11.] Mr. Sponagle, however, once again failed to appear on December 21st. Mr. Sponagle's lawyer wrote to Mr. Lazarus on December 19th advising that Mr. Sponagle "will not be available for examination on December 21, 2006. Mr. Sponagle is out of the country and will not be returning by December 21, 2006."

[12.] Staff of the Commission proceeded concurrently through the Supreme Court of Nova Scotia and had PricewaterhouseCoopers Inc. appointed the Receiver of the assets and property of Jabez Financial Services Inc. by the Supreme Court on March 2, 2007. The Receiver in turn sued Mr. Sponagle in the Supreme Court, claiming payment of the monies sent to Jabez by individual investors. The Receiver retained a lawyer in

Panama to find and serve Mr. Sponagle with notice of the action and the claim. The best efforts of the Panamanian lawyer and a bailiff retained by her to locate Mr. Sponagle were unsuccessful. Her affidavit is a part of the record and we accept it as true.

[13.] The Receiver then made application to the Supreme Court for an order authorizing a substituted method of service. The Court granted an order authorizing service by:

- serving either one of Mr. Sponagle's parents, Garth or Norma Sponagle, personally;
- taping the notices to the door of 96 Smeltzer Road; and
- sending the notice by email to quintin@safe-mail.net.

[14.] At a pre-hearing conference held on February 7, 2011, this panel heard evidence of the difficulty of serving Mr. Sponagle personally and ordered that the notice of hearing and any subsequent notices served upon Mr. Sponagle in the manner set out in the Supreme Court order. Mr. Sponagle was so served. In particular, we accept the evidence set out in the affidavits of Mr. Les Barrett, a bailiff, dated March 30 and April 5 respectively stating:

1. that he went to 96 Smeltzer Road, Upper Vaughan, knocked and when there was no response, posted on the door the notice of the hearing beginning May 30 at the Continuing Professional Development offices of the Nova Scotia Barristers' Society.

2. that he served Mr. Garth Sponagle, Quintin`s father, with the same notice of hearing personally.

[15.] Mr. Garth Sponagle, father of the Respondent, responded to the service upon him by sending staff a sworn statement entitled Affidavit of Truth. Mr. Garth Sponagle says that the bailiff who served him perjured himself in some of the particulars of his affidavit of service, and says he has no evidence that Mr. Barrett was acting on behalf of the Nova Scotia Securities Commission. However, Mr. Garth Sponagle did not deny that he received the Notice and did not deny that Mr. Quintin Sponagle had actual notice through him of the hearing.

[16.] We conclude that the Respondent, Mr. Sponagle, was duly served with all notices relating to this hearing. We also conclude that he was deliberately evading process and the summons of the Commission. From his failure to appear in response to the summons of the Commission and subsequent failure to appear for this hearing, we draw the negative inference that he did so deliberately because he was unable to provide evidence to the Commission that would refute the allegations against him or explain the propriety of his actions.

Notice to Trevor Hill

[17.] Mr. Hill apparently remained in the Province throughout the period in question and he was served personally with successive notices. He also appeared twice before January 1, 2007 to be interviewed by the Commission on December 7th and 8th. Mr. Hill did not, however, appear at the hearing itself, though he was served with notice of the hearing personally on March 24, 2011.

[18.] Mr. Hill has also, through his own correspondence, acknowledged receipt of various earlier notices. In particular, he wrote a letter to the Commission dated January 31, 2011, stating that he had received the Notice of Pre-Hearing Conference and Notice of Hearing and correcting the address to which notices had been delivered. His final communication with the Commission was sent in response to the service upon him of notice of the hearing, when he wrote a letter dated May 18, 2011, stating, in its entirety:

> In response to the Notice of Hearing scheduled for May 30 - June 2, 2011, June 13-16, 2011 and June 27 - 30, 2011 "IN THE MATTER OF QUINTIN EARL SPONAGLE, TREVOR WAYNE HILL AND LARRY ENOS BEATON". Please Notice that **I do not accept this offer to contract**. Please further Notice that **I do not consent to these proceedings.**
>
> **Please forward this letter to the appropriate personnel.**
>
> Thank you,
> sgd. Trevor Hill
> Authorized Agent

[19.] From this correspondence and his subsequent failure to appear, we conclude that Mr. Hill deliberately chose not to participate in the proceedings of the Commission.

The Evidence

[20.] The tribunal heard testimony from Abel Lazarus and Lianne Bradshaw, both staff investigators for the Commission. Their evidence described the provenance of six volumes of documents, reports, affidavits and transcripts of testimony of witnesses summoned under s.27(3) of the *Securities Act,* and provided a summary of those documents, reports and that testimony.

[21.] 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 Practise 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.

[22.] The documents, reports, affidavits and transcripts presented by Mr. Lazarus and Ms. Bradshaw are relevant to the charges and we admit them as evidence. We acknowledge that some of this evidence is documentary and hearsay. We have not heard witnesses to the scheme in person to assess their credibility nor has the evidence been subject to cross examination. The evidence, however, including the transcript evidence of Mr. Hill and Mr. Sponagle, tells a coherent, consistent story of who induced investors to send money to Jabez and how they did so, where and how investors' money was sent to Jabez, and what subsequently happened to that money. We accept this evidence as set out below in our descriptions of the scheme, the Respondents' behaviour, and what happened to the money investors sent to Jabez in Curacao.

[23.] We note that the burden of proof upon Enforcement Staff in proceedings under the *Securities Act* is that of civil proceedings, which is to say that we must be satisfied on a balance of probabilities that the allegations have been proven.

The Scheme

[24.] Mr. Sponagle is a Nova Scotian with a home at Upper Vaughan, Hants County. Mr. Sponagle, established and controlled a number of corporations involved in this scheme, including Jabez Finanical Services Inc. Mr. Sponagle, through these companies, established a password-protected website that offered investments and an opportunity to benefit a supposed charity, the Community Compassion Foundation. Potential investors could only access the website through codes, which were provided by Mr. Sponagle, Mr. Hill and other agents they had recruited for this purpose. The website promoted the following investment options:

> **Our financial and trading account offers are as follows:**
>
> a) **Savings account** paying 2% per month paid on the lowest balance of the month
>
> b) **One year term note** paying 60% per year with a $10,000.00 US minimum deposit
>
> Note: Both of the above options have fully insured principal
>
> a) **Mini Market Fund** paying 8%/month (96%/year) with a minimum deposit of $1,000.00 US
>
> b) **Market Fund** paying 10% per month (120%/year) with a minimum deposit of $10,000.00 US.

[25.] Investment in Jabez required investors to subscribe to the conditions of "Membership Governance Documents." The Membership Governance Documents

stated that nothing in the website constituted a public solicitation or offer and nothing involved a sale of securities. The Membership Governance Documents also stated that Jabez was not a licensed security trader, that Jabez was to be indemnified and held harmless from any criminal or civil liability and that investors were prohibited from seeking out evidence which might serve as the basis of any charge. Members were bound to keep all information confidential. The Membership Governance Documents provided that if a member breached their terms, then such investor might be subject to "legal prosecution".

[26.] Interested people became investors by agreeing to the conditions in the Membership Governance Documents, filling in an application form and then sending money to the Jabez account at the First Curacao International Bank. Jabez would then provide investors with a debit card which enabled them to withdraw interest accumulating on their investment. Some investors withdrew some of this "interest", while others drew none, expecting their investment gains to compound. Agents, including Sponagle and Hill, reinforced these offers through conversations with investors and facilitated access to the Jabez website.

[27.] Jabez created a Swedish entity, JFS Credit Union, and held it out as an investment vehicle "governed by the banking laws of Sweden". In fact, Panamanian and Swedish documents show that Jabez and JFS were nothing more than ordinary incorporated entities and were never authorized, in Panama and Sweden respectively, to trade in securities or take deposits. The funds of Jabez were wired from the Curacao account to numerous destinations in the world, but there is no evidence of money ever going to Sweden or to the JFS Credit Union. There is no evidence indeed that JFS Credit Union ever operated at all. It remained a shell and a component of the scheme's complex debit card program.

[28.] Evidence provided by Mr. Sponagle himself, and through the investigations of the Receiver, PriceWaterhouseCoopers Inc., show that 137 residents of Nova Scotia and 52 residents of other provinces sent some $4,130,000.00 to Jabez in Curaçao.

The Conduct of Quintin Sponagle and Jabez Financial Services

[29.] We are satisfied that Quintin Sponagle was the principal operator and controlling mind of Jabez. Mr. Sponagle spoke grandiosely in the documents of Jabez's legal team and its administrative team, but the evidence throughout is consistent with him alone being the principal organizer and mastermind. He identified himself many times in Jabez correspondence as being Jabez's principal. We find that Mr. Sponagle, and no one else, created and controlled the accounts of Jabez and the Community Compassion Foundation. Mr. Sponagle held a full power of attorney for Jabez. In creating these accounts, Mr. Sponagle established himself alone to be the ultimate beneficiary of the accounts of Jabez and the Community Compassion Foundation. He drew large sums of money from Jabez accounts for his own benefit and purposes and paid large amounts

of money to people, including friends and relations, who had never been investors in Jabez Financial Services.

The Conduct of Trevor Hill

[30.] We are satisfied that, while Mr. Sponagle was the controlling mind behind Jabez, Mr. Hill was closely involved with the organization at a senior management level. He was involved in the creation of corporate entities and the opening of bank accounts for Jabez. In May 2006, he signed documents to open and operate accounts with a company known as MIG Investments, of Neuchatel, Switzerland. He was a director of JFS Credit Union. As director, he gave Swedish authorities a false address in England. Mr. Hill also opened, with Mr. Sponagle, an account in Hong Kong to which Mr. Sponagle wired $225,000.00 in February 2007.

[31.] Mr. Hill also acted as a senior operative for Jabez, recruiting agents as well as investors. He introduced Larry Beaton to Jabez and to Mr. Sponagle, provided Mr. Beaton with codes to access the Jabez website, and gave permission to Mr. Beaton to introduce others. Mr. Beaton then proceeded to introduce many others. Mr. Hill set up a Jabez office in Windsor, Nova Scotia with Mr. Sponagle, met with agents at the Windsor office, and processed incoming investor applications from there.

[32.] Mr. Hill acknowledged in his testimony to Enforcement Staff that he explained Jabez to people who approached him. He told potential investors that Jabez and the Community Foundation were invested in markets “out there” which produced the returns. He explained that a savings account produced a return of two percent per month; a one month note, a return of sixty percent per year; the mini-market, a return of eight percent per month; and the market account, a return of ten percent per month. The principal of the savings account and the one year note were “guaranteed by the people who hold the accounts”. The market accounts were not guaranteed, but he explained to investors that the risk was mitigated by spreading the money around in various investments. We conclude that Mr. Hill took an active and managerial role in the Jabez investment scheme.

Disposition of Invested Funds

[33.] Throughout the events which are the subject of this proceeding, Mr. Sponagle and Mr. Hill demonstrated a clear contempt for the work of financial authorities and securities regulators. These sentiments were communicated to the investors in the scheme and were evident in the responses of Mr. Hill and some of the investors to the inquiries of the Receiver and Enforcement Staff of the Commission. Some investors saw themselves and the Respondents as honest god-fearing people going about their proper and righteous business only to be frustrated by the Commission’s meddling. One of them, a pastor, went so far as to say that it was the staff of the Securities Commission who were acting immorally. Some, induced to invest in Jabez through a

hope of profit, with a lot of faith, and a measure of charity, reacted indignantly when the authorities had the temerity to intervene. They believed in Jabez's November, 2006 proposal to pay them back their principal within thirteen months if the Commission would only leave Jabez alone. Jabez provided investors with a form letter and encouraged them to send it to the Commission. Many investors did sign the letter, which complained of the Commission's interference in their "free right to financial offshore opportunities", inquired why "you have not accepted the five week old offer from Jabez to pay back Canadians and settle this issue", and requested enforcement staff to permit "Jabez the time to put the proper structure/by laws in place for a private offshore company to be allowed to have me as a client."

[34.] One has only to follow the money, as the saying goes, to discover how manipulative and dishonest Quintin Sponagle has been and to rebut any notions of Quintin Sponagle as a righteous man seeking to help the disadvantaged and to enable others to attain their financial goals. The Receiver followed the money and reported to the Supreme Court on May 31, 2010 and on January 27, 2010. The Receiver's reports the transcripts of his testimony given to Mr. Lazarus are the most damning of evidence. We accept their contents to be true. The Receiver advised the court as follows:

[35.] Approximately $4,295,688.03 was credited to the First Curaçao account. Almost all of this sum can be traced to the individual investors in Jabez. These investors were identified by Quintin Sponagle for the Commission's Investigator through his lawyer in the fall of 2006.

[36.] Jabez/Sponagle created a debit card program which the Receiver says allowed "JFSI investors access to their purported "earnings" as their accounts grew at up to a stated 20% per month." The Receiver learned from debit card records that "the debit card program was only ever funded by investors' contributions and not from the proceeds of any investment income."

[37.] The banking license of First Curaçao International Bank was revoked effective October 9, 2006, at which time the Receiver says the bank was:

> placed under the administrative control of the Central Bank of the Netherland Antilles for purposes of liquidation. These actions stemmed from investigations by European authorities into the operations of FCIB and some of its account holders given indications they were involved in VAT fraud and money laundering.

[38.] The Receiver sued the administrator of the First Curacao International Bank to recover the sum of $2,044,257.95. This sum was the balance then remaining in the Jabez account to which Canadian investors had wired their funds. In June 2008, the receiver recovered an initial sum of $1,532,740.96 from the administrator. Some more money may be made available to the Receiver once the claims of creditors of First Curaçao are settled. Jabez did not respond or appear in this litigation to determine the fate of its $2,044,257.95.

[39.] The Receiver, in its report, also detailed the results of its investigation into Jabez, a number of details relating to the disposition of the funds that had been deposited into the Curacao account by Jabez investors. This report revealed:

- Jabez/Sponagle made significant payments to the agents who induced people to invest. The Receiver identified $43,900.00 in payment to one of these agents.

- In June, 2006, Jabez/Sponagle sent $46,000.00 to a law firm in Berwick, Nova Scotia. Quintin Sponagle's parents, Garth and Norma Sponagle, used this money to purchase a property in Garland, King's County. Garth and Norma Sponagle are not listed as investors in Jabez. The Receiver sought and obtained a Supreme Court judgment to recover the money Jabez/Sponagle sent Garth and Norma Sponagle.

- Between June 5, 2006 and August 17, 2006 Jabez/Sponagle transferred $94,311.56 to purchase motor vehicles, a boat and accessories. More particularly, Mr. Sponagle used the money to purchase:

  - a 2004 Chevrolet Silverado for himself;

  - a Truck Cap for himself;

  - a 2005 Nissan Altima for his wife, Shelley;

  - a $13,000.00 18 foot Bombardier pleasure craft and trailer for himself;

  - a 2005 Dodge Caravan for Trevor Hill; and

  - a motorcycle for Mr. Robert Stevens who was not an investor in Jabez.

- In July and September, 2006 Mr. Sponagle caused the sum of $330,000.00 to be wired to Swiss or Liechtenstein accounts.

[40.] Following the commencement of the Commission's investigation of Jabez, on December 21, 2006, Mr. Leslie O'Brien, the Chairman of the Commission, wrote to Mr. Sponagle by fax, copying his lawyer, directing:

> Jabez Financial Services, Inc., JFS Credit Union, Quintin Earl Sponagle, Trevor Hill and Larry Beaton to hold all funds and refrain any party from withdrawing any funds or securities from the account maintained by any or all of the Respondents at the First Curaçao International Bank, account number 0-201-302902-01, and any other accounts containing funds or securities maintained or in the control of any or all of the Respondents held at any other financial institution, securities dealer/broker, investment or trade account in Curaçao or any other jurisdiction.

[41.] Sponagle disregarded and violated this direction. In February, 2007, he caused $225,000.00 to be wired to a Jabez account in Hong Kong. In the words of the Receiver:

> [...] the (Swiss) records indicated that the bulk of this tranche of funds, $225,000.00 was wired onward to Hong Kong to an account in the name of Jabez Financial Services Ltd., a company established in Hong Kong but purporting to have a head office in Canada. The Hong Kong account was opened by Quintin Sponagle and Trevor Hill in December 2006 after the issuance of a temporary cease trade order by the NS Securities Commission [...]

[42.] Some months later on March 14, 2007, Mr. Sponagle provided the Receiver, through his lawyer, with the combinations needed to open a safe in the Windsor office. Thus, his lawyer was still in touch with Mr. Sponagle three months after the lawyer had been advised of the Commission's direction to hold all funds. We conclude that Mr. Sponagle knew of the Securities Commission direction and wired the money to Hong Kong in defiance of it.

[43.] The Receiver reported that between March and November 2007, approximately $124,000.00 was wired from the Hong Kong account to an Australian "money services bureau" at an account at the Bank of New Zealand. An additional $100,000.00 was sent to a California construction company, which now cannot be found.

[44.] The Receiver concluded that:

> Accordingly, $250,000.00 (sic) originating from JFSI Investors primarily in Atlantic Canada had passed through a network of accounts in Curaçao, Switzerland and Hong Kong created by or linked to Quintin Sponagle and Trevor Hill and ultimately controlled by Quintin Sponagle.
>
> The Receiver continues to investigate the dissipation of these funds and based on the Receivers tracing efforts to date, it has concluded that the funds have been used by or for the personal benefit of Quintin Sponagle.

[45.] Jabez/Sponagle also wired $340,000.00 from the Jabez Curaçao account to a Texas entity called Winsome Investment Trust. A certain Robert Andres, said to be a director of Winsome, wrote the Receiver saying that in January 2007, again subsequent to the Securities Commission's preservation orders, the funds had been transferred

> [...] to a New Zealand company called Crystal Seas Financial Ltd. The Receiver's investigation has revealed that Quintin Sponagle was a Director of Crystal Seas Financial Ltd. at one time.

[46.] None of this Winsome money has been traced further, and none has been recovered. We conclude that Mr. Sponagle directed these further transfers in order to hide the money, prevent its recovery, and avail of it himself.

[47.] Jabez/Sponagle wired $100,000.00 to an Ohio entity called Holly's Day in Heaven, operated by a certain Joan Holly. She told the Receiver that:

> [...] she had met Quintin Sponagle at an investment meeting or seminar and merely acted as a pass through entity, forwarding the funds on to two individuals.

[48.] Ms. Holly has not, however, revealed who those two individuals are. None of this Holly's money has been traced further, and none has been recovered. We conclude that Mr. Sponagle directed these further transfers in order to hide the money, prevent its recovery, and avail of it himself.

[49.] On June 22, 2006, Jabez transferred $33,092.45 to the Royal Bank account of Ann and Theodore Wile, the in-laws of Trevor Hill. There is no evidence of any proper reason why the Wiles should have been entitled to this money. There is no evidence they were investors in Jabez. We conclude Mr. Sponagle simply took investors' money and gave it to the Wiles.

[50.] Large sums of money which people had invested in Jabez were wired to others who, according to the voluminous records recovered by the Receiver and Enforcement Staff, had never invested in Jabez.

[51.] Mr. Sponagle used investors' funds for his own benefit through card charges to the Jabez account. Evidence from the First Curaçao Bank indicated that Mr. Sponagle was the only holder of a debit card on this account. Enforcement Staff have provided in evidence a list of those debit card transactions, which total $103,635.93. They include payments to:

- Air Canada;
- Armstrong Auto Sales;
- Bijouterie Kurz of Geneva, Switzerland;
- Blessings Christian Market;
- Cardigan Lobster Suppers of Cardigan, P.E.I.;
- Churchill's Prime Rib of North Bay, Ontario;
- Duck's Unlimited;
- Hyatt Hotels, Houston;
- Leon's Furniture;
- Mikes and Nadia's Fashions, Windsor, Nova Scotia;
- Quarterdeck Restaurant and Cottages, Summerville, Queens County;
- Sears Catalogue;
- Ultramar, Windsor;
- West Jet;

- Great Hobbies, Charlottetown; and
- Canadian Tire

[52.] Additionally, there are debits to the credit of Dell Computer Corp., Burnside Liquidators, Staples and others which may relate to equipping the Windsor office, but many others could only have been used for Mr. Sponagle's personal purposes or for such other people as he chose to benefit. We are satisfied none of the money spent through the bank card ever benefited those people who in good faith had sent their money to Jabez in Curaçao.

[53.] The evidence also shows that between April 16, 2006 and September 26, 2006 Mr. Sponagle also withdrew $139,811.29 of investor's money from the Jabez Curaçao account through ATM's. He made most of the withdrawals through an ATM at the Bank of Nova Scotia in Windsor, and some through bank ATM's in Bedford and Lower Sackville. Oftentimes, he made multiple cash withdrawals on the same day. On May 5, 2006, for example, he took $3,000.00 in three separate transactions. On September 24th and 25th 2006, when he knew that he was under investigation by the Securities Commission, he withdrew $10,800.00 in 12 separate transactions at banks in Berwick, Wolfville and Halifax.

Findings Respecting Alleged Violations of the *Securities Act*

Soliciting contrary to section 31 (1)

[54.] Mr. Sponagle and Mr. Hill are charged with trading in securities without being registered under the Nova Scotia *Securities Act.* Section 31 (1) provides:

> 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 a 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 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.

[55.] We are satisfied that Quintin Sponagle and Trevor Hill did not register to distribute or trade in securities with the securities regulators in Panama, Nova Scotia or anywhere else in Canada. We accept the affidavit evidence of Mr. Brian Murphy, Deputy Director, Capital Markets for the Commission, in which Mr. Murphy states:

> Quintin Sponagle, Larry Beaton, Trevor Hill are not currently registered in any capacity with the Nova Scotia Securities Commission ("Commission") or any other jurisdiction in Canada, nor have they been registered with the Commission or any other jurisdiction in Canada since November 2005.

[56.] The *Securities Act* provides exemptions from the registration requirement in certain circumstances and subject to certain conditions. Most exemptions require the filing of a report of the trade with the Commission. There is no evidence that Mr. Sponagle or Mr. Hill would qualify for any of these exemptions. Furthermore, we accept the evidence of Kevin Redden, Director, Corporate Finance for the Commission, that Jabez filed no reports of trades relying on exemptions at any time and never filed any preliminary prospectus or prospectus with the Commission.

[57.] We also accept the evidence, provided in the form of an email to Commission Investigator, Mr. Abel Lazarus, dated November 8, 2006 from Sandra de Zubieta, the Oficial de Inspección y Análisis, Dirección de Mercados, Commision Nacional de Valores of the Republic of Panama, stating that:

> The National Securities Commission has not granted license to conduct any type of business related to the securities market (broker, dealer, clearing house) in or from the Republic of Panama to JABEZ FINANCIAL SERVICES, INC. or JFS CREDIT UNION.

and further that:

> Neither has this authority granted license to act as broker, analist (sic) or investment advisor to: Quintin Earl Sponagle, Trevor Hill and Larry Beaton

[58.] The Republic of Panama further advised through a warning posted on the website of the National Securities Commission of the Republic of Panama that:

> **JABEZ FINANCIAL SERVICES INC.** has not been issued any kind of license by the Commission, nor has it been authorised to carry out businesses as a financial intermediary of securities or investments in or from Panama.

[59.] We find that neither Mr. Sponagle, Mr. Hill, Jabez or JFS were registered as required, nor did any of them qualify for or obtain exemptions under the *Securities Act* that would have enabled them to trade.

[60.] We are further satisfied that the investments in Jabez are “securities” under the *Act.*
The *Act* sets out an inclusive definition of “security” in section 2(1), the relevant provisions of which for our purposes are:

> (aq) "security" includes [...]
>
> (xiv) any investment contract

[61.] We are satisfied that investors invested money through a contract with Jabez and JFS, the terms of which contract are included in the Jabez website described earlier in this decision. The Jabez website offered investment contracts and instructed the reader how to accept the offers by signing various standard forms and then stated:

> Funding of your JFS account is done by wire in US dollars from your bank. Please click on the Transfers button inside your “account”. Click on “incoming Wire” and once done, it will give you very clear forms to print for yourself to take to your bank.

[62.] We are satisfied that investors accepted the Jabez and JFS offers contained in the website by following the instructions the site referred them to and wiring their money. The offer and the acceptance, in our opinion, constitute “an investment contract” and thus a “security” within the meaning of the *Act.*

[63.] An investment contract is defined as an investment of money in a common enterprise with expected profits derived significantly from the efforts of others: *Pacific Coast Coin Exchange of Canada Limited v. Ontario (Securities Commission),* [1978] 2 S.C.R. 112. The investors sending of money to the Jabez account with expected profits to be derived from the efforts of Mr. Sponagle and his cohorts fulfill this definition.

[64.] Additionally, we are satisfied that Mr. Sponagle and Mr. Hill made “trades” or were “trading” in securities within the meaning section 2(1)(as) of the Act. That section provides:

> (as) "trade" or "trading" includes
>
> > (i) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, installment 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,
> >
> > (ii) any participation as a floor trader in any transaction in a security upon the floor of any stock exchange,

> (iii) any receipt by a registrant of an order to buy or sell a security,
>
> (iv) any transfer, pledge or encumbrancing of securities of an issuer from the holdings of any person or company or combination of persons or companies described in subclause (iii) of clause (l) 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;

[65.] We are satisfied that the activities of Mr. Hill and Mr. Sponagle in Nova Scotia constitute trading within the definition of the Act, particularly under clauses (i) and (v) of section 2(1)(as). They leased, improved and equipped an office in Windsor to do the business of Jabez in Nova Scotia. They worked in the office everyday. They met with investors at the office. They prepared a website which offered the Jabez investments and took investors through the process of making the investments. They themselves personally engaged with investors, and arranged for the transfer of their money to the Jabez account in Curaçao. They distributed the passwords to enable investors to access the website. They engaged agents to speak to potential investors, explain the Jabez scheme, and assist in the transfer of the investors' money to the Curaçao account. They met with agents at the office. They responded either directly or indirectly to inquiries from investors. Mr. Sponagle received the funds sent to Jabez by investors. He paid Mr. Hill and his family with some of those funds.

[66.] In sum, Quintin Sponagle and Trevor Hill engaged in sales of securities in Nova Scotia without being registered or pre-qualifying for exemptions contrary to section 31(1) of the *Securities Act.*

<u>Making improper statements to investors contrary to section 50(2) of the Act</u>

[67.] Counsel for Enforcement Staff have alleged that Mr. Sponagle and Mr. Hill have also violated section 50(2) of the *Securities Act.* Section 50 provides:

> 50 (1) A person or company shall not represent that the person or company is registered under this Act unless:
>
> (a) the representation is true; and
>
> (b) in making the representation, the person or company specifies the person or company's category of registration under this Act and the regulations.
>
> (2) A person or company shall not make a statement about something that a reasonable investor would consider important in deciding whether to enter into or maintain a trading or advising relationship with the person or company if the statement is untrue or omits information necessary to

> prevent the statement from being false or misleading in the circumstances in which it is made. *2006, c. 46, s. 22.*

[68.] We note however, that section 50, as set out above, was enacted in March 2007, subsequent to the events at issue in this proceeding.

[69.] It is our view that, had section 50(2) been in force in 2006, Mr. Sponagle and Mr. Hill's activities would clearly have constituted a breach of that section. The evidence shows that they repeatedly made blatantly untrue statements about the most fundamental and essential terms of the securities in which they were trading. The whole scheme was a sham and a fraud. Mr. Sponagle and Mr. Hill said the money would be invested. It was not. They said the money would earn fantastic rates of return. The money was never invested. In any event, there could be no returns of the stupendous magnitude Mr. Sponagle and Mr. Hill offered. There was no basis in fact for the offers. They said investments through the JFS Credit Union had "fully insured principal". There was no insurance.

[70.] In our opinion, however, section 50(2) cannot be applied to the present proceedings because it was not the law when the contraventions occurred and the law should not be read so as to have a retroactive or retrospective effect. Our legal system has traditionally found the application of new laws to old facts to be fundamentally unfair. This view is manifested in the presumption against retroactivity and the principle of statutory interpretation that presumes a legislature did not intend for people to be punished under a law which did not exist at the time of the impugned acts. In this case, the breaches in question took place between April and September 2006. The application of the presumption against retroactivity to securities matters is discussed fully below in the context of the administrative penalty we impose in this matter, but simply stated, in our view we are bound by the law as it stood when the contraventions took place. In this regard, we refer to and agree with the opinion of the British Columbia Court of Appeal in *Thow v. British Columbia (Securities Commission)* [2009] BCCA 46.

[71.] Counsel for Enforcement Staff rely on *Brosseau v. Alberta (Securities Commission)* [1989] S.C.J. No. 15 in support of their argument that we may apply section 50(2) to events which occurred before its enactment. Mr. Brosseau had sought to prevent the Alberta Securities Commission from hearing an application for a cease trading order and an order that certain exemptions did not apply. He argued that the more recent power granted the Alberta Securities Commission to grant such orders could not be exercised retroactively. The Supreme Court of Canada disagreed stating:

> 55 The provisions in question are designed to disqualify from trading in securities those persons whom the Commission finds to have committed acts which call into question their business integrity. This is a measure designed to protect the public, and it is in keeping with the general regulatory role the Commission. Since the amendment at issue here is designed to protect the public, the presumption against the retrospective effect of statutes is effectively rebutted.

[72.] In our opinion, however, *Brousseau* can be distinguished from the present case. The argument in this case is whether a section creating a specific offence may be applied to earlier events. In our view, it cannot.

[73.] In the alternative, counsel for Enforcement Staff submitted that we should apply the former section 51, which provided:

> 51 No person or company who is not registered shall, either directly or indirectly, hold himself out as being registered.

[74.] The definition of “register” is set out in section 2(1) of the Act, which provides:

> (ak) "register" means register under this Act.

[75.] In our view, the allegation that Mr. Sponagle and Mr. Hill violated the former section 51 has not been proven by the evidence presented. Neither Mr. Sponagle nor Mr. Hill, in all their statements, documents, websites or other communications ever made any pretence that they were registered in Nova Scotia. Indeed, they would have been the very first to deny any intention of registering or any obligation to be registered in this Province.

Unfair Practice

[76.] Counsel for Enforcement Staff also submit that Mr. Sponagle and Mr. Hill violated section 44(A) of the Act. We agree with this submission and are of the opinion that it covers the transgressions described above in relation to section 50(2) rather better than does the former section 51. Section 44(A) provides:

> 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.*

[77.] We are satisfied that Mr. Sponagle and Mr. Hill engaged in “unfair practice”. The definition is inclusive and therefore an unfair practice may arise from actions other than those enumerated in sub-sections (a), (b) and (c). We find that the whole Jabez scheme

was fundamentally dishonest and an unfair practice within any understanding of the words.

[78.] Mr. Sponagle and Mr. Hill were parties to and fully complicit with the following lies, made through web materials or through agents, in order to mislead and coerce investors:

1. Stating that the money sent to Jabez' Curaçao account would be invested at all;
2. Stating that money sent to Jabez' Curaçao account would earn two per cent per month, five per cent per month, eight per cent per month or twelve per cent per month;
3. Stating that money sent to Jabez' Curaçao account would be placed in a credit union;
4. Stating that the money sent to Jabez' Curaçao account to be placed with JFS Credit Union was fully insured and/or bonded;
5. Stating that JFS Credit Union was "governed by the banking laws of Sweden";
6. Stating that "These funds have been operating since November 2004 with good success and continue to perform at expectation"; and
7. Stating that Jabez was licensed to "manage our own funds, assets and trading as well as third party assets" and a "licensed financial management entity" in Panama.

[79.] In addition, we agree with counsel for Enforcement Staff that Mr. Sponagle and Mr. Hill, through the Membership and Governance Documents on the website, intimidated the investors through confidentiality provisions, disclaimers and threats to deprive them of benefits or even subject them "legal prosecution" if any had the temerity to breach their terms. They imposed terms on investors which were manifestly inequitable and took advantage of their ignorance of financial transactions, regulatory requirements, and their rights under the law.

Failure to File a Prospectus

[80.] Section 58 of the *Securities Act* provides:

> 58 (1) Subject to any exemption in Nova Scotia securities laws, 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.
>
> (2) A preliminary prospectus and a prospectus may be filed in accordance with this Act to enable the issuer to become a reporting issuer,

notwithstanding the fact that no distribution is contemplated. *R.S, c. 418, s. 58; 1990, c. 15, s. 80; 2006, c. 46, s. 23.*

[81.] Distribution is defined in section 2(1)(l) of the Act, as follows:

(l) "distribution", where used in relation to trading in securities, means

(i) a trade in securities of an issuer that have not been previously issued,

(ii) a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by or donated to that issuer,

(iii) a trade in previously issued securities of an issuer from the holdings of a control person,

(iv) a trade by or on behalf of an underwriter in securities which were acquired by that underwriter, acting as underwriter, prior to the coming into force of this Act if those securities continue on the day this Act comes into force to be owned by or for that underwriter, so acting,

(v) a first trade made in securities by a vendor who acquired them pursuant to a trade that was in contravention of Section 58 or 67,

(vi) a trade specified to be a distribution by the regulations,

(vii) a trade specified in a decision of the Commission to be a distribution,

and includes a distribution referred to in Nova Scotia securities laws, and also includes any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution.

[82.] The *Securities Act* defines “issuer” in section 2(1)(s) as: “a person or company who has outstanding, issues or proposes to issue, a security.”

[83.] We are satisfied on the basis of the evidence adduced that Mr. Sponagle and Mr. Hill traded in securities and that such trades resulted in a distribution of securities to 137 Nova Scotians. No prospectus had been filed, no exemptions were open to them and, in any event, they did not file for any. They therefore breached the provisions of section 58 of the *Securities Act*

Administrative Orders and Penalties

[84.] At the conclusion of the presentation of evidence in this matter, we decided to hear submissions relating to penalty immediately, rather than to convene a separate penalty hearing. We had no reason to expect that Mr. Hill or Mr. Sponagle would respond to a notice or appear, and convening a separate hearing would therefore be a waste of limited Commission resources.

[85.] Enforcement Staff submitted that the tribunal should make the following orders and impose the following penalties:

a) Pursuant to section 134(1)(c) of the Act that any or all of the exemptions contained in Nova Scotia securities law do not apply to Sponagle and Hill permanently;

b) Pursuant to section 134(1)(d)(ii) of the Act, that Sponagle and Hill be permanently prohibited from becoming or acting as a director or officer of an issuer;

c) Pursuant to section 134(1)(g) of the Act that Sponagle and Hill be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;

d) Pursuant to section 134(1)(h) of the Act that Sponagle and Hill be reprimanded;

e) Pursuant to section 135 of the Act that Sponagle be ordered to pay an administrative penalty of $3,840,000.00;

f) Pursuant to section 135 of the Act that Hill be ordered to pay an administrative penalty of $2,560,000.00;

g) Pursuant to section 135A of the Act that Sponagle be ordered to pay costs in connection with the investigation and conduct of this proceeding before the Commission in the amount of $27,000.00; and

h) Pursuant to section 135 of the Act that Hill be ordered to pay costs in connection with the investigation and conduct of this proceeding before the Commission in the amount of $18,000.00.

[86.] Given the findings of fact that we have made, we have no trouble in granting the orders sought in subparagraphs (a) to (d). Mr. Sponagle and Mr. Hill implemented their scheme with an utter disregard of all the norms of responsible and honest investment dealing. It is very much in the public interest that they be formally prohibited from engaging in the investment business or associating with it and further, that they be reprimanded. We so order.

[87.] We also have no difficulty in ordering Mr. Sponagle and Mr. Hill to pay costs in connection with the investigation in the amount of $27,000.00 and $18,000.00 respectively, and we so order. These costs are assessed in accordance with a table established under the regulations made under the *Securities Act.* We are satisfied with the particulars of those costs as presented. The proceeding against them has been long, involved, and no doubt expensive. These costs are undoubtedly lower than they would otherwise be due to the efforts expended by the Receiver in collecting evidence and providing it to enforcement staff.

[88.] Enforcement Staff also seek administrative penalties of $3,840,000.00 against Mr. Sponagle and $2,560,000.00 against Mr. Hill. The evidence of Mr. Sponagle and Mr. Hill's violations of the *Securities Act* is quite overwhelming, and their breaches of the Act are exceptionally serious. While we felt it necessary in the public interest to describe the evidentiary basis for our findings in some detail, in reality, the most difficult issue before us is the amount of the administrative penalty to be imposed. In determining this issue, we must address complex legal issues relating to the retroactive application of penalty provisions.

[89.] Counsel for Enforcement Staff of the Commission made their submissions with respect to administrative penalty on the basis of the administrative penalty provisions of section 135 in its current form, which provides:

> 135 Where the Commission, after a hearing,
>
> (a) determines that
>
> (i) a person or company has contravened or failed to comply with any provision of Nova Scotia securities laws, or
>
> (ii) a director or officer of a person or company or a person other than an individual authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Nova Scotia securities laws by the person or company;
>
> and
>
> (b) considers it to be in the public interest to make the order,
>
> the Commission may order the person or company to pay an administrative penalty of not more than one million dollars for each contravention or failure to comply. *2006, c. 46, s. 48.*

[90.] However, Enforcement Staff failed to advert to the fact that this most recent version of section 135 only became law on February 6, 2007. Prior to this date, and throughout the period during which Mr. Sponagle and Mr. Hill's aforementioned breaches of the *Securities Act* took place, section 135 provided for a maximum administrative penalty of $500,000.00 per respondent. Though Enforcement Staff did not address this issue in their original submissions, when they were subsequently extended the opportunity to do so, they responded with comprehensive submissions on the issue.

[91.] The issue to be decided in this matter is therefore whether the current administrative penalty provisions should apply to Mr. Sponagle's and Mr. Hill's conduct. In other words, the question is whether we have the power under the law to "order the person or company to pay an administrative penalty of not more than one million dollars for each contravention or failure to comply" notwithstanding the fact that the law provided for a maximum penalty of five hundred thousand dollars when the conduct occurred.

[92.] To address this issue, we must canvass the legislative history of the administrative penalty provision and consider the conflicting opinions that have been expressed by the British Columbia and Alberta Courts of Appeal on this subject.

[93.] In 1990, the Nova Scotia government amended the *Securities Act* by chapter 15 of the Statutes of 1990, that included a new section 135, which then provided:

> 135 Where the Commission, after a hearing,
>
> (a) determines that a person or company has contravened
>
> (i) a provision of this Act or of the regulations, or
>
> (ii) a decision, whether or not the decision has been made a rule or order of the Supreme Court of Nova Scotia; and
>
> (b) considers it to be in the public interest to make the order, the Commission may order the person to pay the Commission an administrative penalty of not more than one hundred thousand dollars.

[94.] In 2005, the government amended this section 135 by increasing the administrative penalty from one hundred to five hundred thousand dollars. *Stats. N.S. 2005, c. 27, s. 13*

[95.] Mr. Sponagle and Mr. Hill engaged in their scheme through the spring and summer of 2006. The securities regulators of Nova Scotia, New Brunswick and Newfoundland intervened and effectively shut it down in early September, 2006. Thus, the violations of the *Securities Act* by Mr. Sponagle and Mr. Hill which we have detailed above occurred before the end of September, 2006.

[96.] The maximum administrative penalties available to the Commission were repeatedly increased in Nova Scotia, and in other jurisdictions, in recognition of the fact that those violating securities laws, such as Mr. Sponagle and Mr. Hill, may reap many multiples of that maximum through their misfeasance. A $100,000.00 administrative penalty, though the maximum, in that context may be just a token and the payment of it viewed as merely a cost of doing business. The legislature recognized that unless securities commissions have the power to deter through penalties commensurate with the potential gains to be had through breaking securities law, the securities regulatory

apparatus could become ineffective in realizing its purpose of investor protection. The increases from $100,000.00 to $500,000.00 and then to $1,000,000.00 per contravention were therefore in the public interest to ensure that the sanctions were capable of providing a real deterrent effect.

[97.] As in Nova Scotia, the maximum administrative penalties allowable under the Securities Acts of many provinces of Canada have increased significantly in recent years. This has led to the issue of their retrospective application arising before the British Columbia, Ontario and Alberta Securities Commissions and, in the case of the decisions in British Columbia and Alberta, these cases have proceeded to their respective Courts of Appeal. The Courts of Appeal in these provinces have reached different conclusions respecting the retroactive application of administrative penalties by securities commissions, principally on the basis of their different interpretations of the nature of these penalties.

[98.] The British Columbia Court of Appeal in *Thow*, *supra*, canvassed the long history of the common law prohibition against retroactivity and retrospectivity, observing that our legal system has traditionally found the application of new laws to old facts to be fundamentally unfair. At paragraph 10 the Court stated:

> Laws generally operate only from the date of their enactment. Indeed, the idea that laws operate prospectively is a fundamental aspect of the Rule of Law [cites references] ... As noted by Elizabeth Edinger in “Retrospectivity in Law (1995), 29 U.B.C.L.R. at 12, “The common theme of judges and scholars throughout the centuries has been that retrospective laws are unfair or unjust.”
>
> The principle that laws should generally operate only prospectively is of particular importance in respect of penal laws. The principle requires that persons not be punished for acts which were lawful at the time they were committed, and also that punishment for unlawful acts not exceed that provided for at the time they were committed [...]

[99.] The jurisprudence is clear that the presumption against retrospectivity applies to sanctions that are penal in nature, but does not apply to sanctions that are intended to protect the public. The Supreme Court of Canada discussed the limits of the application of the presumption against retrospectivity of securities commission penalties in *Brosseau v. Alberta (Securities Commission)* [1989] 1 S.C.R. 301. The Court cited the following passage from Elmer Driedger in *Statutes: Retroactive, Retrospective Reflections* (1978), 56 Can. Bar Rev. 264, at p. 275 with approval (at para 51):

> In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.

[100.] In *Brosseau*, the Supreme Court considered whether administrative sanctions, such as commission orders prohibiting a respondent from acting as a director of a public company, were penalties that could be applied retroactively. The respondents in that matter argued that the presumption against retrospectivity should apply, but the Court held that it should not, because such penalties were (at para 55):

> [...] designed to disqualify from trading in securities those persons whom the Commission finds to have committed acts which call into question their business integrity. This is a measure designed to protect the public, and it is in keeping with the general regulatory role of the Commission. Since the amendment at issue here is designed to protect the public, the presumption against the retrospective effect of statutes is effectively rebutted.

[101.] It is clear that the purpose of the Commission's public interest jurisdiction is protective and preventative not punitive: *Re Cartaway Resources Corp.* 2004 SCC 26. The Supreme Court in *Cartaway* held that securities commissions could properly impose significant monetary penalties for the purposes of general deterrence as a part of that protective and preventative jurisdiction. The Court stated (at para 60):

> [...] it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive.

[102.] The Alberta Court of Appeal, following *Brosseau*, applied similar reasoning to the retroactive application of monetary administrative penalties in the case of *Workum v. Alberta (Securities Commission),* [2010] A.J. No. 1468. In that case, the Court expressed the view that the presumption against retroactivity does not apply to monetary administrative penalties ordered by securities commissions because such penalties are preventative and in the public interest and therefore, the presumption does not apply.

[103.] The Alberta Court of Appeal in *Workum* interpreted this to mean that the higher penalty may be applied retroactively by securities commissions because the purpose of the legislation is to protect the public. The Court observed (at para 112):

> This court previously ruled in *Alberta Securities Commission v. Brost*, 2008 ABCA 326, 440 AR 7 at paras 56-57, that the presumption against retroactive application of the 2005 amendment to the maximum administrative penalty in section 199 of the *Securities Act* does not apply because such penalties are not punitive but are instead designed to protect the public.

[104.] In *Brost*, the Alberta Court of Appeal had previously made the following observations (at paras 56-57):

> 56 The Commission held that the administrative penalty amendment that took effect on June 8, 2005 could be applied in this case. Prior to June 8, 2005, the maximum administrative penalty that could be imposed under the Act was $100,000; after June 8, 2005, it was $1 million. The Commission held that, because administrative penalties are not punitive, the presumption against retrospective application did not bar it from imposing administrative penalties greater than the maximum administrative penalty that was available prior to June 8, 2005: Sanctions Decision at para. 32.
>
> 57 The Commission was correct to conclude that the presumption against retrospective application did not apply in this case because administrative penalties under the Act are not punitive but are instead designed to protect the public: Brosseau v. Alberta Securities Commission, [1989] 1 S.C.R. 301, 57 D.L.R. (4th) 458 at 471-3, cited in Re Morrison Williams Investment Management Ltd. (2000), 7 ASCS 2888. Moreover, contrary to what Brost and Alternatives suggest, it is well settled that "[e]xcept for criminal law, the retrospectivity and retroactivity of which is limited by s. 11(g) of the Charter, there is no requirement of legislative prospectivity embodied in ... any provision of our Constitution": British Columbia v. Imperial Tobacco Canada Ltd., 2005 SCC 49, [2005] 2 S.C.R. 473 at para. 69.

[105.] This reasoning was also applied by the British Columbia Securities Commission in *Re Thow* 2007 BCSECCOM 758, in which the Commission imposed a higher monetary penalty instituted by more recent legislation retroactively. On appeal however, this decision was reversed. The British Columbia Court of Appeal made this decision on the basis of the distinction between monetary administrative penalties and the various other administrative orders that securities commissions are empowered to impose. The Court reasoned (at para 48):

> [...] the Securities Commission erred in this case by assuming that the test used in *Cartaway* to determine whether or not general deterrence was a proper factor for the Commission to consider in imposing a penalty was identical to the test to determine whether legislation comes within the exception to the presumption against retrospectively. The two issues involve different considerations.
>
> Here, the Commissions imposition of the fine was arguably not “punitive” in the narrow sense of the word; that is, it may not have been imposed as a punishment for Mr. Thow’s moral failings, and it may not have been motivated by a desire for retribution or to denounce his conduct. Nonetheless, it was “punitive” in the broad sense of the word: it was designed to penalize Mr. Thow and to deter others from similar conduct. It was not merely a prophylactic measure designed to limit or eliminate the risk that Mr. Thow might pose in the future.

> Accordingly, I am of the view that the Securities Commission erred in finding that the presumption against retrospectivity was inapplicable to the increase in the maximum administrative penalty authorized by the 2006 legislation.

[106.] The ruling of the BC Court of Appeal in *Thow* has since been followed in a number of subsequent cases in British Columbia, as well as by the Ontario Securities Commission in *Re Rowan* (2010), 33 OSCB 91. In that case, the OSC canvassed the jurisprudence, and held (at para 94):

> We agree with and prefer to follow the reasoning and rationale of the British Columbia Court of Appeal in *Thow*, although we would emphasize that the imposition of a fine is a penalty and would downplay the use of the word punitive even though it is used in a limited sense in that decision. The law as developed by the Supreme Court of Canada cases, and followed in *Thow*, is that ongoing constraints or prohibitions may be applied retrospectively but penalty provisions, particularly monetary penalties, should not to be applied retrospectively.

[107.] We also agree with the BC Court of Appeal in *Thow*. In our view, the nature of the administrative orders and prohibitions that the Commission is empowered to impose pursuant to section 134 of the *Securities Act* differ from the monetary administrative penalties that may be imposed pursuant to section 135. Administrative orders under section 134 are inherently preventative in nature. Though they may be based on past conduct, their application is clearly protective of the public interest in the future. While such administrative orders can be exceptionally serious and disabling to those upon whom they are imposed, their object is to protect the public by ensuring compliance with the *Securities Act* and by removing from the capital markets those who, in the view of the Commission, pose threats to its integrity.

[108.] Monetary administrative penalties are imposed for different reasons. They are intended to deter future misconduct by the person against whom they are ordered, as well as by others who would consider similar activity, by penalizing those who have breached the Act. This deterrent effect is achieved by removing any financial incentive to breach the Act, and also by imposing additional penalties sufficient to cause an apprehension in any person considering a breach of the Act in the future that they too will suffer a similar penalty if they proceed with such activity. Thus, we agree with the BC Court of Appeal in *Thow*, that while such measures are not punitive in the narrow sense because they are preventative in nature and imposed in the public interest, they are nevertheless punitive in a broader sense, and therefore subject to the common law prohibition against retroactivity.

[109.] We are strengthened in this view by the legislative treatment of these two distinct kinds of penalty. We note that the Act empowers the Commission to issue administrative orders pursuant to section 134 if the Commission “considers it to be in the public interest, after a hearing”. Pursuant to section 135, before ordering a

monetary administrative penalty, the Commission must, in addition to considering it in the public interest after a hearing to do so, make a positive finding that a breach of Nova Scotia securities laws has occurred. Thus, by requiring proof of past misconduct before monetary administrative penalties can be ordered, the legislature has acknowledged the distinct, and more punitive, nature of such penalties.

[110.] We also observe that to determine the question of the application of the presumption of retrospectivity on the basis of an analysis of whether the provision is "designed to protect the public", risks so broadening the exemption to the principle that its meaning, recognized in the common law, is significantly diluted. The BC Court of Appeal in *Thow*, when discussing the holding of the Supreme Court in *Brosseau*, and its application to the retrospective application of monetary administrative penalties, observed (at paras 40 – 42):

> In discussing retrospectivity in *Brosseau,* the Supreme Court of Canada was not so much concerned with the role of the Securities Commission *per se*, but rather with an assessment of the fair operation of the Rule of Law. While the concept of "punishment" has been used by the courts to analyse both the limits of regulatory sanctions and the appropriateness of retrospective operation of penal statues, it is not clear to me that the word is used identically in those discussions.
>
> While some of the language used in *Brosseau* may be interpreted as supporting a very broad protection of the public exception to the presumption against retrospectivity, I do not think that that was the Court's intention. The Court's reasons in *Brosseau* draw heavily on Driedger and other cases he cites. The reasons do not suggest any intention to broaden the exception, and there was no need to do so in order to resolve the issues in the Brosseau case.
>
> Soon after the decision in *Brosseau,* the Federal Court of Appeal rejected the idea that the "protection of the public" exception to the presumption against retrospectivity had been broadened. In *Re Royal Canadian Mounted Police Act* [1991] 1 F.C. 529, at paragraph 34, MacGuigan J.A., for a unanimous court, noted that a broad "protection of the public" exception to the presumption would effectively eliminate the presumption entirely [...]

[111.] Therefore, in our view, the presumption against retrospectivity applies to the application of section 135, and we are bound in this case to apply the provision as it existed in 2006 when the breaches of the *Securities Act* committed by Mr. Sponagle and Mr. Hill took place, which is to say that the maximum administrative penalty that may be imposed on each of Mr. Sponagle and Mr. Hill is $500,000.00.

[112.] The considerations guiding the imposition of sanctions on violators of securities laws were canvassed by the British Columbia Securities Commission in *Re Manna*

Trading Corp Ltd., 2009 BCSECOM 595. The Commission (at para 16), cites with approval *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly summary 22, in which the Commission (at page 24) discussed the factors relevant to sanction as follows:

> [...] the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders...but the following are usually relevant:
>
> - the seriousness of respondent's conduct,
> - the harm suffered by investors as a result of the respondent's conduct,
> - the damage done to the integrity of the capital markets in British Columbia by the respondent's conduct,
> - the extent to which the respond was enriched,
> - factors that mitigate the respondent's conduct,
> - the respondent's past conduct,
> - the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of British Columbia,
> - the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
> - the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
> - the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and factors that mitigate the respondent's conduct,
> - orders made by the Commission in similar circumstances in the past.

[113.] The scheme perpetrated by Mr. Sponagle and Mr. Hill was a deceptive and dishonest ruse, designed to extract money from trusting and unsuspecting Canadian investors. It was in the nature of a "ponzi scheme". Mr. Sponagle was the mastermind of this scam, and his breaches of the *Securities Act* in this case are extremely egregious and among the most serious possible breaches of the Act. Many investors lost large sums of money as a result of his actions. He profited personally from these breaches, drawing on the invested funds unwitting Nova Scotians. He used his association with the church and spiritual affinity to assure naive investors of his integrity and charitable purposes to inveigle money out of them. Such scams are damaging to the investors who have been targeted and also inspire distrust of investment advisors in the general public, thus damaging the integrity of capital markets. There are no mitigating factors in this case. Mr. Sponagle ought not to be permitted to so enrich himself without facing a penalty commensurate with his anticipated gain. Nor can the public, or anyone inclined to promote such scams, be allowed to believe the law will condone their cheating of investors by imposing a financial slap on the wrist.

[114.] Mr. Hill played a secondary but nevertheless crucial role in this scheme, actively filching millions of dollars from those who trusted him and his associates. He was Mr. Sponagle's principal associate. He was instrumental in organizing the Jabez office in Windsor. He was in contact with investors and the agents who talked them into investing. He handled the paperwork through the Windsor office. He was a principal of the JFS Credit Union. He actively assisted Mr. Sponagle in the complicated money transfers. He was a signatory to accounts including the account in Hong Kong. He was uncooperative with Staff of the Commission. He repeatedly and in contempt avoided legitimate relevant questions which the law required him to answer, claiming that he was bound to silence by some non-disclosure agreement with Jabez. Mr. Hill professes to be a pastor and a man dedicated to helping those in need. His abuse of his vocation exacerbates his culpability in this scheme. He too profited not only through the spring and summer of 2006 when the fundraising was going on, but also through the time of his interviews with Enforcement Staff months after Jabez had become inactive. He was still, in December, 2006, receiving money ill-gotten from the Jabez investors. In the circumstances, these payments appear to have been made at least in part as hush money to keep him quiet.

[115.] If we were not constrained to the maximum penalty of $500,000.00, and were able to assess penalties against Mr. Sponagle and Mr. Hill pursuant to the current administrative penalty provisions of section 135, then on the basis of their egregious breaches of the *Securities Act*, we would have ordered Quintin Sponagle to pay an administrative penalty of $3,120,000.00 and Trevor Hill to pay an administrative penalty of $2,080,000.00. We would have made such order in recognition of the fact that Mr. Sponagle and Mr. Hill misappropriated some $4.2 million dollars from Canadian investors through their deceit and appalling dishonesty and with a flagrant disregard for the regulatory systems that exist for the protection of investors in Canadian capital markets. In our view, it would have been in the public interest to require the Respondents to pay fines in this amount, plus a further administrative penalty of one million dollars in recognition of the egregious nature of their breaches and for the purpose of enhancing the specific and general deterrence of the penalty. We would have apportioned this total administrative penalty of $5.2 million, 60% to Mr. Sponagle and 40% to Mr. Hill on the basis of our assessment of their relative involvement in this scheme.

[116.] Administrative penalties of similar magnitude have been ordered in similar cases elsewhere in Canada. We note that in the case of *Re Manna Trading Corp Ltd.,* 2009 BCSECOM 595 the British Columbia Securities Commission considered penalties against the perpetrators of a scheme resembling Mr. Sponagle's and Mr. Hill's, which the Commission described (at para 13) as "a deliberate and well-organized fraud that resulted in the loss of at least US$10.4 million, and probably closer to US $13 million, by more than 800 investors in British Columbia and elsewhere." The British Columbia Securities Commission, in addition to ordering the perpetrators to disgorge the US $16 million which they obtained as a result of their contraventions of the Act, ordered one perpetrator to pay administrative penalties of US $8 million and three others to pay US $ 6 million.

[117.] However, as noted above, the maximum penalty that we are empowered to order against each of these respondents is $500,000.00 in this case. Given that constraint, we find, for the reasons outlined above, that Mr. Sponagle's conduct warrants the maximum penalty of $500,000.00.

[118.] Though we have determined that Mr. Hill's role in this scheme was secondary to Mr. Sponagle's, the maximum penalty provided by law is nevertheless exceptionally low relative to the seriousness of Mr. Hill's behaviour and violations. We therefore assess an administrative penalty on Mr. Hill in the maximum amount of $500,000.00 as well.

[119.] We ask enforcement counsel to prepare a comprehensive order covering these monetary and other penalties for our approval and signature.

Dated at Halifax, Nova Scotia this 20th day of October, 2011.

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

"Sarah P. Bradley"
Sarah P. Bradley, Commission Vice-chair

"Paul E. Radford"
Paul E. Radford, Q.C., Commissioner