NOVA SCOTIA COURT OF APPEAL
Citation: ***Nova Scotia (Securities Commission) v. Schriver***,
2006 NSCA 1

Date: 20060104
Docket: CA 247291
Registry: Halifax

In the Matter of: **The Securities Act**, R.S.N.S. 1989, as amended, (the "**Act**")

- and -

In the Matter of:

Bruce Patrick Schriver (the "Appellant")

Judges:	Bateman, Cromwell and Saunders, JJ.A.
Appeal Heard:	November 22, 2005, in Halifax, Nova Scotia
Held:	Appeal dismissed per reasons for judgment of Cromwell, J.A.; Bateman and Saunders, JJ.A. concurring.
Counsel:	David A. Coles, Q.C. and Nichole Godbout, for the appellant Agnes MacNeil, for the respondent, Nova Scotia Securities Commission

Reasons for judgment:

I. INTRODUCTION:

[1] At the root of this appeal is one, straightforward question: Does the Mutual Fund Dealers Association ("MFDA") have exclusive original jurisdiction to determine whether Mr. Schriver contravened its rules? The Securities Commission answered this question in the negative and Tidman, J. upheld its decision on Mr. Schriver's appeal to the Supreme Court. Mr. Schriver now appeals again, making the same arguments which both the Commission and Tidman, J. rejected.

[2] For the reasons which follow, I would dismiss the appeal.

II. FACTS :

1. The Allegations:

[3] The Commission has issued a Notice of Hearing with respect to Mr. Schriver and another person. The Notice indicates that the Commission wishes to consider whether, by reason of various allegations set out in a Statement of Allegations of Staff of the Commission, it ought to make the following orders:

1. Suspend or cancel the registration of each of the Respondents for a period of three years pursuant to section 33(1) of the Act.
2. Make an order denying each of the Respondents any or all of the exemptions described or referred to in section 134(1)(c) of the Act.
3. Impose an administrative penalty in the amount of twenty five thousand dollars ($25,000.00) in respect to each of the Respondents pursuant to section 135(b) of the Act.
4. Order costs in respect of the investigation and hearing of this matter against each Respondent pursuant to section 135A of the Act.

[4] Among the allegations by Commission staff is that Mr. Schriver breached s. 30(3) of the **Securities Act**, R.S.N.S. 1989, c. 418. Section 30(3) provides that members of organizations such as the MFDA are to comply with the rules of those organizations:

(3) Any member of a self-regulatory organization who trades in securities within the Province shall comply with the by-laws, rules, regulations and policies of the self-regulatory organization except to the extent that such by-laws, rules or regulations are inconsistent with this Act, the regulations or the policies of the Commission.

[5] Staff allege that Mr. Schriver was registered as a salesperson with Select Money Strategies Incorporated ("Select"), that Select was a member of the MFDA and that Mr. Schriver was an approved person of that Association. Mr. Schriver, the allegations continue, entered into a referral arrangement with Portus Alternative Asset Management Inc. unbeknownst to Select and contrary to certain rules of the MFDA. Among the MFDA rules allegedly contravened is Rule 2.4.2 which provides:

2.4.2 **Referral Arrangements**

(a) **Definitions**. For the purpose of this Rule 2.4.2

(i) a "referral arrangement" is an arrangement whereby a Member is paid or pays a fee, including fees based on commissions or sharing a commission, for the referral of a client to or from another person; and

(ii) A referral arrangement does not include any payment to a third party service provider where the service provider has no direct contact with clients and where the services do not constitute securities related business.

(b) **Permitted Arrangements**. Referral arrangements may only be entered into on the following basis:

(i) the referral arrangement is only between a Member and another Member or between a Member and an entity that is (A) licensed or registered in another category pursuant to applicable securities legislation, (B) a Canadian financial institution for the purposes of National Instrument 14-101, (C) insurance agents or brokers, or (D) subject to such other regulatory system as may be prescribed by the Corporation;

(ii) there is a written agreement governing the referral arrangement prior to implementation;

(iii) all fees or other form of compensation paid as part of the referral arrangement, to or by the Member, must be recorded on the books and records of the Member; and

(iv) written disclosure of referral arrangements must be made to clients prior to any transaction taking place. The disclosure document must include an explanation or an example of how the referral fee is calculated, the name of the parties receiving and paying the fee, and a statement that it is illegal for the party receiving the fee to trade or advise in respect of securities if it is not duly licensed or registered under applicable securities legislation to so trade or advise.

[6] By contravening this and other MFDA rules, staff say that Mr. Schriver breached s. 30(3) of the **Act**.

2. Self-regulating organizations and the Commission:

[7] The **Act** authorizes the Commission to recognize self-regulatory organizations ("SROs"). The Commission may also delegate to such organizations any powers or duties of the Director or the Commission respecting, among other things, the responsibility for ensuring compliance with the **Act**: s. 30(1), (4):

> 30 (1) The Commission may, on the application of a person or company which represents registrants and regulates the standards of practice and business conduct of its members, recognize the person or company as a self-regulatory organization.
>
> . . .
>
> (4) The Commission may delegate, on such terms and conditions as the Commission may determine, to a self-regulatory organization any powers or duties of the Director or the Commission pursuant to this Act or the regulations respecting the registration of persons or companies that are members of the self-regulatory organization, the conduct of audits of those persons and companies and the responsibility for ensuring compliance with the requirements of this Act and the regulations.

[8] As noted, s. 30(3) of the **Act** provides that members of an SRO are to comply with the rules of that organization unless they are inconsistent with the **Act**, regulations or policies of the Commission.

[9] The MFDA is an SRO which had been recognized by the Commission under s. 30(1). There is no express delegation of authority as contemplated by s. 30(4). However, the terms and conditions of the Commission's recognition order include the following:

> **7. COMPLIANCE BY MEMBERS WITH MFDA RULES**
>
> (A) The MFDA shall enforce, as a matter of contract between itself and its members, compliance by its members and their Approved Persons with the rules of the MFDA and the MFDA shall cooperate with the Commission in ensuring compliance with applicable securities legislation relating to the operations, standards of practice and business conduct of members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.
>
> (Emphasis added)
>
> . . .
>
> **8. DISCIPLINE OF MEMBERS AND APPROVED PERSONS**
>
> (A) The MFDA shall, as a matter of contract, have the right to and shall appropriately discipline its members and their Approved Persons for violations of the rules of the MFDA and shall cooperate with the Commission in the enforcement of applicable securities legislation relating to the operations, standards of practice and business conduct of the members and Approved Persons, without prejudice to any action that may be taken by the Commission under securities legislation.
>
> (Emphasis added)

[10] The Commission has the authority to review certain decisions of SRO's as set out in s. 30(5):

> (5) Any person or company which is a registrant and directly affected by a decision, order or ruling of a self-regulatory organization is

> entitled to a hearing and review of the decision, order or ruling by the Commission to the same extent as if the decision, order or ruling had been a decision of the Director.

3. Mr. Schriver's preliminary objection and the decisions in relation to it:

[11] Mr. Schriver raised a preliminary objection to the Commission's jurisdiction. He contended that the Commission lacked jurisdiction to determine, in the first instance, whether he had contravened the MFDA's rules. He submitted that the ability to make that determination rested with the MFDA itself.

[12] The Commission rejected these submissions and found that it had jurisdiction in the circumstances to consider whether Mr. Schriver had or had not complied with the rules of the MFDA. The Commission reasoned:

> In our considered opinion we are entitled to consider whether the Respondent has or has not complied with the by-laws, rules, regulatory instruments or policies of MFDA. We find there is nothing in section 134(1) of the Act that specifically makes our granting of an order under any part of that section first conditional on a finding by the MFDA that their by-laws, rules, regulatory instruments or policies have been breached by the Respondent. If our authority under section 134(1) of the Act was conditional on a prior finding of breach by the MFDA this would allow the Respondent and, indeed, any member of a SRO to shelter from the jurisdiction of the Commission and this result would defeat the purpose of the Act as expressed in section 1A(1).
>
> Clearly there is nothing in the Recognition Order which displaces our conclusion. Indeed Schedule A to the Recognition Order in sections 7 and 8 make it clear that any action that may be taken by the MFDA is without prejudice to the Commission taking action under securities legislation.

[13] Mr. Schriver appealed the Commission's finding to the Supreme Court under s. 26 of the **Act**:

> 26 (1) Any person or company directly affected by a decision of the Commission ...may appeal to the Trial Division of the Supreme Court.

[14] Tidman, J. dismissed the appeal, holding that the standard of appellate review was correctness and that the Commission was correct to reach the conclusion it did.

III. ISSUES:

[15] Mr. Shriver appeals from Tidman, J.'s conclusion on the merits. The Commission, by notice of contention, submits that the judge ought to have reviewed the Commission's decision on the reasonableness standard rather than for correctness. The issues to be determined, therefore, are:

1. What is the applicable standard of review on appeal from the Commission in this case under s. 26?
2. Did Tidman, J. err in finding that the Commission had not committed any reviewable error?

IV. ANALYSIS:

1. Standard of Review:

[16] The correct standard of review is ascertained by performing a pragmatic and functional analysis. This analysis examines and then weighs the effect of four contextual factors: the presence, absence or wording of a privative clause or statutory appeal; the expertise of the tribunal and the court in relation to the issues on review; the purpose of the legislation and the particular provisions at issue; and the nature of the question. These factors overlap and I have found it convenient to consider them in the following order.

a. the purpose of the legislation and the particular provisions at issue:

[17] The purpose of the **Act** is to protect investors and foster the process of capital formation: s. 1A. As has been said many times, securities regulation with these objectives is a highly specialized activity. Lead responsibility for discharging this specialized function has been entrusted to the Commission: see, for example, **Pezim v. British Columbia**, [1994] 2 S.C.R. 557 at para. 60 and s. 5(1) of the **Act**. The Commission is given a broad mandate to determine and act in accordance with the public interest: see for example s. 134. It has not only an adjudicative role, but also a part in policy development, particularly through its

extensive rule-making power: see s. 150. In short, the **Act** gives the Commission the central role in securities regulation under a complex and detailed statutory scheme.

[18] The provisions of the **Act** most directly relevant to this appeal are ss. 30 and 134. Section 30, among other things, gives the Commission a discretion to grant and revoke recognition of SROs, authorizes the Commission to review decisions of those organizations as if they were decisions of the Director and makes failure to comply with those rules a contravention of the **Act**. Section 134 gives the Commission a broad mandate to determine and act on what it considers to be in the public interest.

b. The nature of the question:

[19] While the question in issue may (and has been) phrased in various ways, in essence it is this: Does s. 30 of the **Act**, read in conjunction with the Commission's order recognizing the MFDA, confer on it exclusive original jurisdiction to determine whether there has been a breach of the MFDA rules?

[20] At one level, this issue calls simply for the interpretation of s. 30 of the **Act** and the Commission's order recognizing the MFDA. But this interpretative issue must be placed in the context of the **Act** as a whole and the role of the Commission in its administration. On closer examination, the issue is one at the centre of the Commission's role in carrying out the purposes of its constituting statute. While SROs such as the MFDA play an important part in policing their members and others, the Commission has the primary role in the enforcement of securities law. Moreover, the Commission, under s. 30, has the authority to define its relationship with SRO's through its power to recognize them, revoke that recognition, delegate certain powers to them and review their decisions. In other words, while at one level the question in issue is a relatively narrow one, at a deeper level, it relates to a matter at the heart of the Commission's regulatory responsibilities.

c. Expertise:

[21] As set out in **Dr. Q. v. College of Physicians & Surgeons of British Columbia**, [2003] 1 S.C.R. 226, the analysis of expertise has three dimensions: the

court must characterize the expertise of the tribunal, consider its own expertise relative to that of the tribunal and identify the nature of the specific issue before the tribunal relative to this expertise: at para. 28.

[22] The Supreme Court of Canada has consistently recognized the considerable expertise of securities commissions: see, for example, **Pezim, supra** paras. 60 and 70; **Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission) ("CETAMS")**, [2001] 2 S.C.R. 132 at para. 49; **Cartaway Resources Corp. (Re)**, [2004] 1 S.C.R. 672 at paras. 46 - 47. Given the broad policy context within which securities commissions operate, courts have been held to have less expertise relative to the commissions in determining what is in the public interest in the regulation of financial markets and in interpreting their constituent statutes: **Cartaway** at para. 46.

[23] To a degree, the issue in this case engages both of these areas of the Commission's specialized functions and expertise. To put it broadly, the Commission ultimately will have to decide what order, if any, it should make in the public interest in this matter. More immediately, its determination under s. 30 on the preliminary application giving rise to this appeal involves the interpretation of its constituent statute in relation to a matter which is central to its role in regulating the financial markets.

d. Absence of privative clause and right of appeal:

[24] As noted, there is a right of appeal from the Commission's decision to the Supreme Court: s. 26. We have not been referred to any privative clause that protects the Commission's decision in this case from review. This tends, of course, to less deference on review.

e. Conclusion on standard of review:

[25] While the existence of a statutory right of appeal and the absence of privative protection suggest less deference, the specialized functions of the Commission and its extensive expertise strongly suggest that deference is due to the Commission's determination of the issue on appeal. In my view, these words of LeBel, J. in **Cartaway** are equally applicable here:

> 45. ... Decisions of the Commission are ... not protected by a privative clause. This militates against deference. Nevertheless, this

> Court has held that deference is due to matters falling squarely within the expertise of the Commission even where there is a right of appeal: *Pezim*, *supra*, at p. 591. This Court recognized in *Pezim*, at pp. 593-94, that the Commission has special expertise regarding securities matters. The core of this expertise lies in interpreting and applying the provisions of the Act, and in determining what orders are in the public interest with respect to capital markets. ...

[26] In my view, the conclusion reached by Iacobucci, J. in **CETAMS** concerning standard of review also applies to this case:

> 49 In this case, as in *Pezim*, it cannot be contested that the [Commission] is a specialized tribunal with a wide discretion to intervene in the public interest and that the protection of the public interest is a matter falling within the core of the [Commission's] expertise. Therefore, although there is no privative clause shielding the decisions of the [Commission] from review by the courts, that body's relative expertise in the regulation of the capital markets, the purpose of the Act as a whole and [the provision in issue] in particular, and the nature of the problem before the [Commission], all militate in favour of a high degree of curial deference. However, as there is a statutory right of appeal from the decision of the [Commission] to the courts, when this factor is considered with all the other factors, an intermediate standard of review is indicated. Accordingly, the standard of review in this case is one of reasonableness.

[27] I conclude that the appropriate standard of review is reasonableness and that the judge erred in concluding otherwise. In fairness to both the judge and to counsel for the Commission, the judge apparently was under the erroneous impression that Commission counsel agreed that correctness was the applicable standard.

[28] Iacobucci, J. described the reasonableness standard of review in **Law Society of New Brunswick v. Ryan**, [2003] 1 S.C.R. 247 at para. 55:

> 55 A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of

> the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see *Southam*, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see *Southam*, at para. 79).

2. The commission's authority to deal with the allegation:

[29] The appellant's central contention is that the MFDA has exclusive original jurisdiction to consider whether Mr. Schriver breached its rules. It is submitted that the exclusive jurisdiction model as developed in **Weber v. Ontario Hydro**, [1995] 2 S.C.R. 929 applies to the MFDA's disciplinary authority over its members. The appellant says that the essential character of the subject matter of the case is the "discipline" of Mr. Schriver and that the provisions of s. 30 of the **Act** and the Commission's recognition order show that the authority of the MFDA is exclusive in this domain.

[30] With respect, I cannot accede to these contentions. Neither the statute nor the recognition order provides any support, in my view, for the appellant's submissions. Moreover, the practical implications of the appellant's arguments are alarming.

[31] It is true, as the appellant submits, that the principles of **Weber** apply, not only to the relationship between courts and tribunals, but also to the interaction of different administrative tribunals: **Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners**, [2000] 1 S.C.R. 360 at para. 26. However, the appellant's submissions which build on this proposition ignore its underlying rationale. As indicated by Bastarache, J. in **Regina Police Assn.** at para 26, the key to sorting out these jurisdictional issues is the intention of the Legislature. So, in **Weber**, the exclusive jurisdiction model was adopted "... to ensure that the legislative scheme in issue was not frustrated by the conferral of jurisdiction upon an adjudicative body that was not intended by the legislature" (at para. 26).

[32] This point is overlooked in the appellant's argument. The appellant says that "[t]he Supreme Court has determined that, in the administrative realm, an exclusive jurisdiction model is preferable to an overlapping or a concurrent model." With respect, the Supreme Court has determined no such thing. As McLachlin, C.J. said in **Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Quebec (Attorney General)** (the "**Morin**" case), [2004] 2 S.C.R. 185 at paras. 11 and 14, "*Weber* does not stand for the proposition that labour arbitrators always have exclusive jurisdiction ... . [T]here is no legal presumption of exclusivity *in abstracto*." There is, therefore, no general "preference" for, or presumption favouring exclusive jurisdiction of arbitrators rather than courts let alone, as the appellant would have it, some general preference throughout administrative law for an exclusive jurisdiction model. Rather, the intent of the legislature must be discerned and given effect in each case by considering the legislative scheme in light of the essential character of the particular dispute: *Ibid* at para. 11.

[33] The appellant says that the MFDA's original jurisdiction is exclusive because the essential character of the dispute is "the discipline" of Mr. Schriver and that there has been an "express delegation" of disciplinary powers to the MFDA. I do not accept either of these propositions.

[34] I turn first to the appellant's characterization of the essential character of the dispute. In my view, characterizing this dispute as being, in essence, concerned with the discipline of Mr. Schriver is misleading and oversimplified. The Commission is not seeking to enforce the disciplinary regime of another regulatory body. Rather, it is seeking to enforce its own legislation which, in s. 30(3), makes compliance with the rules of that other body mandatory. A breach of the **Act** is a matter the Commission may consider in exercising its public interest jurisdiction. The essential character of the dispute, in my view, is concerned with whether Mr. Schriver breached s. 30(3) of the **Act** and whether the Commission, in the public interest, ought to make any of the orders set out in the Notice of Hearing. Simply put, the essential character of the dispute is whether Mr. Schriver's conduct should engage the Commission's authority and responsibility to act in the public interest. Viewed in this way, the essential character of the dispute lies at the core of the Commission's statutory mandate.

[35] The appellant submits that the statute and the Recognition Order both support its position. They show, it is argued, that the Legislature intended the

MFDA to have exclusive original jurisdiction to determine whether Mr. Schriver breached its rules.

[36] This position is supported, says the appellant, by the direction in s. 30(3) of the **Act** to members of SROs to comply with their rules unless inconsistent with the **Act**. The appellant says that this implies that the Commission will defer to those rules except to the extent that they are inconsistent with the **Act**. Section 30(3), says the appellant, "only has meaning if it is interpreted as an express conferral of certain powers." This, coupled with the Commission's power to delegate under s. 30(4) combine to show the Legislature's intent to exclusively delegate to the MFDA the authority at first instance to determine whether there have been breaches of its own rules.

[37] The appellant also finds support for this interpretation in the Commission's recognition order. The Recognition Order states in the preamble that "the MFDA will continue to regulate, in accordance with its Rules, the operations and the standards of practice and business conduct of its members and their Approved Persons as defined under its Rules." In addition, Schedule A to the Recognition Order includes s. 8, "Discipline of Members and Approved Persons." Section 8A states that:

> The MFDA shall, as a matter of contract, have the right to and shall appropriately discipline its members and their Approved Persons for violations of the rules of the MFDA and shall cooperate with the Commission in the enforcement of applicable securities legislation relating to the operations, standards of practice and business conduct of the members and Approved Persons, *without prejudice to any action that may be taken by the Commission under securities legislation*. (Emphasis added)

[38] The appellant says that the **Act** and the Recognition Order, when read in concert, delegate discipline for contravention of the rules of the MFDA to the MFDA. It follows that the italicized portion of the section can only mean that the Commission retains a residual power solely. An SRO is <u>not</u> self-regulating, claims the appellant, if another body has the authority to decide matters within its areas of self-regulation.

[39] The appellant further submits that s. 10 of the MFDA Recognition Order, "Purpose of Rules" also supports his view:

> The MFDA shall, subject to the terms and conditions of its recognition and the jurisdiction and oversight of the Commission in accordance with securities legislation, establish such rules as are necessary or appropriate to govern and regulate all aspects of its business and affairs and shall in so doing:
>
> (i) seek to ensure compliance by members and their Approved Persons with applicable securities legislation relating to the operations, standards of practice and business conduct of the members;
>
> (ii) seek to prevent fraudulent and manipulative acts and practices and to promote the protection of investors, just and equitable principles of trade and high standards of operations, business conduct and ethics;
>
> (iii) seek to promote public confidence in and public understanding of the goals and activities of the MFDA and to improve the competence of members and their Approved Persons;
>
> (iv) seek to standardize industry practices where appropriate for investor protection;
>
> (v) *seek to provide for appropriate discipline*; and shall not
>
> (vi) permit unfair discrimination among investors, mutual funds, members or others; or
>
> (vii) impose any barrier to competition that is not appropriate.
>
> (B) Unless otherwise approved by the Commission, the rules of the MFDA governing the conduct of member business regulated by the MFDA shall afford investors protection at least equivalent to that afforded by securities legislation, provided that higher standards in the public interest shall be permitted and are encouraged.
>
> (Emphasis added)

[40] In the absence of a conferral of exclusive jurisdiction, these purposes (and particularly those emphasized) would, the appellant contends, “be utterly hollow, and needlessly duplicative”.

[41] I cannot accept these submissions. I begin with s. 30(4). The Commission is given the discretion to delegate to SRO’s, on terms and conditions which the Commission determines, the responsibility for ensuring compliance with the **Act**

and regulations. However, there is nothing in the record to show that any such delegation under this section has been made to the MFDA. I, therefore, do not understand how s. 30(4) could support the appellant's arguments.

[42] Turning to s. 30(3), I do not see anything in it which could reasonably be interpreted as a statutory delegation to the MFDA of an exclusive original power to determine whether a member had complied with its rules. That suggestion is not only inconsistent with the text of the subsection, it does not sit with other provisions of the **Act**. For example, under s. 134, the Commission, after a hearing, may order a person to comply with the rules of an SRO: s. 134(1)(a)(iii). It is hard to understand how the Legislature could have delegated exclusive authority to an SRO to determine whether a member had breached its rules and at the same time give the Commission the authority to order that the person comply with those rules.

[43] Moreover, I do not find that the Commission's power under s. 30(5) to review SRO decisions is in any way supportive of the appellant's position. While there is the potential for overlapping hearings between the Commission and the MFDA, there is nothing before us to suggest that is an issue in this case. Moreover, the jurisprudence recognizes that statutory schemes sometimes contemplate overlapping jurisdiction: see, for example, **Morin, supra** at paras. 24 - 25. How to sort out the problem of parallel proceedings is not before us. The only proceeding in issue here is that before the Commission. There is nothing in the statute which deprives the Commission of the authority to inquire into whether a provision of the **Act** has been breached.

[44] Contrary to the appellant's contentions, there is nothing in the Commission's Recognition Order that may reasonably be interpreted as any sort of delegation of its authority to determine whether s. 30 (3) of the **Act** has been breached. Section 8 of Schedule A to the Recognition Order specifies that the MFDA authority with respect to discipline of its members and approved persons is a matter of contract and that such authority is without prejudice to any action that may be taken by the Commission under securities legislation. Section 10 of the Schedule expressly makes the MFDA's authority to make rules subject to the terms of the recognition order and the jurisdiction of the Commission. Contrary to the appellant's submissions, there is nothing here to support the view that there has been a grant of exclusive original jurisdiction whenever it is alleged that s. 30(3) of the **Act** has been breached by virtue of contraventions of MFDA rules.

[45] In short, there is nothing in the **Act** or the Recognition Order to support the conclusion that the MFDA has exclusive original jurisdiction to determine whether its rules have been breached where such breaches are alleged to have resulted in a violation of s. 30(3) of the **Act**.

[46] Practical considerations support this conclusion. The Commission quite properly took these into account. I reproduce some of its comments in this regard which in my view are apt:

> If we accepted the submission of counsel for the Respondent the Commission would never become involved if the SRO sanctioned a member and the member accepted the sanction imposed. This would be the case even if the sanction imposed by the SRO was such as to undermine investor confidence in the fairness of the capital markets. Furthermore if the Respondent's position was adopted a lengthy delay by or complete failure by the SRO to take action would leave the Commission unable to take specific action against the member. ...

[47] I conclude that Tidman, J. did not err in dismissing the appeal from the Commission's ruling. The Commission's reasons provide a "tenable explanation" for its conclusion in the sense that those reasons stand up to a "somewhat probing examination": **Ryan, supra** at para. 55.

V. DISPOSITION:

[48] I would dismiss the appeal with costs fixed at $3000 plus disbursements.

Cromwell, J.A.

Concurred in:

Bateman, J.A.

Saunders, J.A.