[Unofficial English translation]

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| Bélisle c. Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM) | | | | 2022 QCTMF 68 |
| FINANCIAL MARKETS ADMINISTRATIVE TRIBUNAL | | | | |
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| PHILIPPE BÉLISLE | | | | |
| Applicant | | | | |
| v. | | | | |
| INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC) | | | | |
| Respondent | | | | |
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# OVERVIEW

1. On November 11, 2021, Philippe Bélisle filed with the Tribunal an application to review two decisions made by a Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”).
2. The first decision, on May 17, 2021, rejects a motion to stay proceedings[[1]](#footnote-1) on the grounds that Philippe Bélisle would not have demonstrated the existence of an abusive delay that would be the direct and actual source of significant prejudice.
3. The second decision, on October 12, 2021, which the Tribunal is being asked to review, follows a guilty plea by Philippe Bélisle and sanctions him for breaches noted through a decision on liability issued after the application to stay proceedings.
4. This second decision makes the following orders in respect of Philippe Bélisle:

* In the first instance, a temporary ban of 10 years less 14 months plus a strict two-year monitoring period following the resumption of business, if applicable, a financial penalty of $50,000 and a handing over of $12,600;
* With respect to the second and third counts, an overall financial penalty of $50,000;
* With respect to the fee, a sum of $10,000.

1. Philippe Bélisle maintains that in this second decision, the Hearing Panel did not take into account the extraordinary delay in processing his case that it had previously expressly recognized in its decision of May 17, 2021.
2. According to him, this omission would constitute a violation of procedural fairness. Indeed, a faster 14-month processing of his case would have enabled him to be released from the $50,000 financial penalty imposed on him. Indeed, this financial penalty would have been a claim provable in his personal bankruptcy, and therefore he would have been released from it when he was discharged on September 15, 2020.
3. Philippe Bélisle also maintains that the Hearing Panel did not take into account certain factors and facts in its assessment of the breaches he committed. Thus, the Hearing Panel would, in particular, have:

* Failed to take into account a retroactive general power of attorney signed before a notary by the investor injured by the actions of Philippe Bélisle in the exercise of the activity of securities representative on behalf of a registered dealer. According to Philippe Bélisle, this power of attorney is a circumstance that had to be considered by the Hearing Panel as a mitigating factor in its decision.
* Failed to take into account his exemplary cooperation during the investigation that gave rise to the contested decisions.
* Incorrectly applied the factors for determining appropriate sanctions applicable to him in its decision.
* Sanctioned on the basis of appropriation of funds whereas the alleged violation is falsification of signatures, which warrants a lower penalty.
* Failed to elaborate on measures other than those chosen to effectively sanction his conduct and by imposing an excessively disproportionate sanction for acknowledged breaches.
* Failed to correctly consider the amount of the commissions paid by the investor injured by the registered dealer and by Philippe Bélisle, and failed to order their repayment.

1. Thus, the issues in dispute that the Tribunal must decide are as follows:

**Question 1:** Did the Hearing Panel err in refusing to order the stay of proceedings in its decision of May 17, 2021, even though its decision finds the existence of an extraordinary 14-month delay in processing the case?

**Question 2:** Did the Hearing Panel err in law in its sanction decision by underestimating the consequences of the extraordinary delay in processing this case?

**Question 3:** Did the Hearing Panel fail to consider and process certain factors and facts in this case, including the existence of a power of attorney, his cooperation and the commissions paid?

**Question 4:** Did the Hearing Panel err in its determination of the penalty in connection with the breaches committed by Philippe Bélisle in carrying out his activity as a representative of a securities dealer?

1. Upon completing its analysis, the Tribunal answers no to the first three issues and yes to the fourth issue. Consequently, it partially allows Philippe Bélisle’s application for review on the grounds stated below, and makes the decision it considers to be the right one.

# BACKGROUND

1. Prior to analyzing the issues in dispute and in order to set this case in context, it is necessary to summarize the facts that gave rise to the contested decisions of the Hearing Panel that are not contested by Philippe Bélisle. The Tribunal will also elaborate on the standard applicable to the review of IIROC decisions and the framework within which it exercises its jurisdiction.

## The parties

### IIROC

1. IIROC is a self-regulatory organization recognized under Title III of the *Act respecting the regulation of the financial sector*[[2]](#footnote-2) (“ARFS”) owing to AMF recognition of decision bearing number 2008-PDG-126,[[3]](#footnote-3) as subsequently amended, particularly by decision 2018-PDG-0027.[[4]](#footnote-4)
2. As a self-regulatory organization, IIROC oversees and regulates the conduct of its members in their pursuit of activities in Quebec governed by one of the statutes listed in Schedule 1 of the ARFS, in this case, securities brokerage activities.
3. According to the IIROC rules, the relationship between IIROC and its members is based on a contractual relationship that becomes enforceable by virtue of recognition by the Authority.[[5]](#footnote-5)
4. Although IIROC is a private organization, it is given a special status with regard to the public interest due to its supervision by the Authority.[[6]](#footnote-6)
5. Pursuant to section 70 of the ARFS, IIROC’s constituting documents, by-laws and operating rules must allow the imposition of disciplinary sanctions on persons whose conduct it regulates for any breaches of its rules or contravention of the law.
6. Some of these rules[[7]](#footnote-7) govern IIROC’s disciplinary procedures and designate the group of persons authorized to make a decision involving disciplinary measures. This group of persons is called a “hearing panel”.
7. This group consists of a chair representing the public (a jurist) and two active or retired members of the securities industry.
8. In this case, it was the same three decision makers who heard and made all the decisions underlying this case concerning Philippe Bélisle.[[8]](#footnote-8)
9. To oversee its disciplinary process, in February 2015, IIROC established a set of sanction guidelines that “*are intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives*”.[[9]](#footnote-9)
10. These guidelines are intended, among other things, to assist hearing panels to fairly and efficiently determine the appropriate sanctions following a disciplinary hearing. Their main objective is to maintain high standards of conduct in the securities industry and protect market integrity.
11. These guidelines provide that IIROC sanctions are preventive in nature and must aim to protect investors, strengthen the integrity of the market and improve general professional standards and practices.[[10]](#footnote-10)

### Philippe Bélisle

1. Philippe Bélisle was registered as a full-service securities representative in February 2010.
2. Between May 16, 2014, and December 13, 2016, the date of his dismissal, Philippe Bélisle served as a registered representative of National Bank Financial (NBF).
3. Since his dismissal in 2016, he has no longer carried on any securities activities, even though the prohibition on securities transactions imposed on him by the Hearing Panel has been in force since the end of 2021.

## The Tribunal’s intervention framework and applicable standard

1. The application to review the decisions concerning Philippe Bélisle is made pursuant to section 322 of the *Securities Act.*[[11]](#footnote-11)
2. In every decision by the Tribunal regarding reviews of IIROC decisions, the Tribunal rules on the review standard applicable in the case.
3. Three major past Tribunal decisions examined the issue at length and have consistently been followed by the Tribunal since then. These decisions are *Séguin**,*[[12]](#footnote-12) *Métivier*[[13]](#footnote-13)and *Sultani*[[14]](#footnote-14).
4. In *Séguin*,[[15]](#footnote-15) the Tribunal specified in the following manner the review standard applicable when considering an application for review of an IIROC decision:

[TRANSLATION] “[74]      The Bureau has decided to specify the test developed in *Métivier* in order to align it even further with the position of the other provinces. In that regard, even though the Bureau can intervene broadly in the decisions of self-regulatory organizations, it will not generally intervene against a decision rendered by a self-regulatory organization (SRO), except in the following cases:

•         the individual affected by the decision was unable to fully assert their rights in accordance with the rules of natural justice;

•         the SRO erred in law;

•         the SRO enforced inappropriate guidelines or principles;

•         the SRO did not consider all of the evidence;

•         new material evidence has been adduced before the Bureau de décision et de révision;

•         the SRO incorrectly assessed the notion of public interest.

[75]      Save for the aforementioned exceptions, the Bureau will, in a paper review, defer to decisions rendered by self-regulatory organizations, particularly regarding the penalty. This thus brings us closer to the reasonableness criterion for paper hearings.

[76]      During a de novo hearing, the tribunal will conduct its own analysis and will make a decision it considers to be the right one. [...]”

1. In the case at hand, the Tribunal proceeded on file and, without hearing new evidence, but as a general rule, it can intervene and make the decision that should have been made in the presence of one of the aforementioned cases, particularly when procedural fairness is at issue or an error in law has been committed.
2. In this case, and for questions 1 and 2, the Tribunal examines the concepts of procedural fairness, in particular the treatment of the delay in the investigation noted by the Hearing Panel, which justifies the application of the standard of correctness.
3. However, with regard to questions 3 and 4 which call for the Hearing Panel’s assessment of certain factors and facts in determining the sanction, the Tribunal believes that it is appropriate to act with deference to the treatment of these questions by the Hearing Panel and to apply the standard of reasonableness.
4. The Supreme Court of Canada recently clarified the standard of reasonableness in *Vavilov**,*[[16]](#footnote-16) where it stated the following:

“[13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a ‘rubber-stamping’ process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

[14] On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be ‘justified to citizens in terms of rationality and fairness’: the Rt. Hon. B. McLachlin, ‘The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law’ (1998), 12 C.J.A.L.P*.* 171, at p. 174 (emphasis deleted); see also M. Cohen-Eliya and I. Porat, ‘Proportionality and Justification’ (2014), 64 *U.T.L.J.* 458, a pp. 467-470.”

1. As with certain Canadian securities commissions[[17]](#footnote-17) that perform jurisdictional functions, the Tribunal acknowledges that the Hearing Panel has expertise in the standards of conduct generally expected of the persons it supervises and in the application of its rules and procedures.
2. Even if the Tribunal acknowledges that the method for determining the applicable standard established by the decision of the Supreme Court of Canada in *Vavilov*[[18]](#footnote-18) does not apply to the review of a decision of a private body such as IIROC by another administrative body, the fact remains that certain lessons from this decision are useful for the assessment of this agreement, in particular those regarding the sufficiency or inadequacy of the reasons set out in a decision.[[19]](#footnote-19)
3. In this regard, the Tribunal’s interpretation is consistent with that of other Canadian securities regulators who perform jurisdictional functions by exercising revision powers similar to those of the Tribunal with respect to IIROC.[[20]](#footnote-20)

## The facts

### Admitted facts and decision on liability

1. According to the file submitted to the Tribunal and during the liability hearing held on June 28, 2021, Philippe Bélisle admitted his liability in the three counts brought against him and admitted the alleged facts against him in the statement of the allegations in I-1.
2. The counts for which he admitted liability are as follows:

* Count 1: During the period from February to April 2015, the Respondent appropriated a client's funds for personal use, thereby contravening Article 1 of Dealer Member Rule 29 and Consolidated Rule 1400 (after September 1, 2016);
* Count 2: During the period from February 2015 to November 2016, the Respondent executed unauthorized trades in a client's account, in contravention of Article 1 of Dealer Member Rule 29 and Consolidated Rule 1400 (after September 1, 2016);
* Count 3: During the period from February 2015 to November 2016, the Respondent executed trades in a client's account that were not within the bounds of good business practice, in contravention of paragraph 1(o) of Dealer Member Rule 1300.

1. Thus, according to the facts admitted, only one client is targeted by his alleged actions, that being his stepmother, then aged 62, who had entrusted her assets to him in May 2014.
2. When the account was opened, three discretionary management accounts were opened in this client’s name with a “growth” investment objective.
3. At that time, his stepmother was his father’s spouse, had assets of approximately $850,000, was not employed, and had personal income of approximately $20,000, and the family income was approximately $200,000 annually.
4. Later, in November 2014, Philippe Bélisle opened margin accounts without his stepmother’s consent, but with the consent of his father, at that time her spouse.
5. The latter also guaranteed her accounts in January 2015 and guaranteed her margin accounts out of his own discretionary accounts.
6. According to the admissions, these margin accounts were to be used to leverage the borrowing power linked to the value of the assets of these accounts to finance renovation work at the personal residence of Philippe Bélisle.
7. He admitted that these actions were made without his client's knowledge and also admitted to subsequent actions designed to hide those actions.
8. Thus, Philippe Bélisle submitted documents for signature to his client even though the latter did not have a good understanding of their meaning and without informing her that these sums would be used for the renovation of his personal residence.
9. In total, more than $275,000 was transferred from his client’s account to his father’s account without her knowledge. His father subsequently transferred those sums to Philippe Bélisle's account.
10. Philippe Bélisle admitted that he instructed his assistant, who was his spouse, to falsify his client’s signature on certain documents for the first $150,000 transfer. Next, the other transfers were determined at lower amounts to avoid the signature process.
11. In addition, according to his admissions, Philippe Bélisle instructed his spouse to change the method of sending documents linked to the margin accounts from his client’s personal address to that of his father and changed the characteristics of sending notifications of the documents so no notification would be sent to the client.
12. From February 2015 to November 2016, Philippe Bélisle started buying and selling options in his client’s accounts and implemented a speculative trading strategy with these assets, which went against the client’s interests.
13. As a result, between February 2015 and October 2016, his client’s accounts had an average debit balance of nearly $360,000.
14. The numerous transactions in these accounts would have generated commissions of $33,800 for the dealer and a net amount of $12,600 paid to the Respondent, Philippe Bélisle.
15. Following the admissions of Philippe Bélisle on December 14, 2020, and in its decision on liability, the Hearing Panel found him guilty of the three counts brought against him.
16. Following a hearing held on September 13, 2021, on October 12, 2021, the Hearing Panel handed down the sanction decision concerning Philippe Bélisle.[[21]](#footnote-21)
17. In this decision, the Hearing Panel states that following the events, the client's husband made repayments to the client's accounts, i.e., in 2016, an amount of $210,000 and in 2018–2019 an amount of $280,000 plus interest. The Hearing Panel added that the client never filed a complaint against Philippe Bélisle.
18. The Hearing Panel specifies in the sanction decision that, according to the Respondent, the husband had a verbal power of attorney from the client authorizing him to give instructions concerning her accounts.
19. In the context of the proceedings brought by IIROC, Philippe Bélisle applied for a stay of proceedings, which was rejected by the Hearing Panel. The Hearing Panel then rendered a decision on liability based on the guilty plea of Philippe Bélise and its sanction decision.
20. These are the decisions on the motion for a stay of proceedings and the sanction decision Philippe Bélisle is applying to have reviewed. The facts surrounding the motion for a stay of proceedings will be dealt with in Question 1 and the sanction decision will be analyzed in the other questions in dispute below.

# ANALYSIS

## Question 1: Did the Hearing Panel err in refusing to order the stay of proceedings in its decision of May 17, 2021, even though its decision finds the existence of an extraordinary 14-month delay in processing the case?

1. In order to properly answer this question, it is first necessary to establish the chronology of the processing of this case as well as to elaborate on the circumstances of this case in order to, subsequently, analyze the question relating to the decision on the motion to stay proceedings.
2. This motion to stay proceedings was filed by Philippe Bélisle approximately four and a half months after the submission of IIROC’s statement of allegations served on December 14, 2020. The hearing took place on April 27, 2021, and the decision on this petition was issued shortly afterwards, i.e., on May 17, 2021.

### Chronology of events

1. According to the file sent to the Tribunal:

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| November 10, 2016 | Philippe meets his employer and informs him of his difficulties.[[22]](#footnote-22) |
| November 11, 2016 | Examination of Philippe Bélisle by his employer.[[23]](#footnote-23) |
| December 13, 2016 | Philippe Bélisle is dismissed from National Bank Financial.[[24]](#footnote-24) |
| December 15, 2016 | Initial examination by IIROC to determine whether there was a breach.[[25]](#footnote-25) |
| December 30, 2016 | Philippe Bélisle is advised by his former employer, NBF, that a bonus of $375,000 to which he would have been entitled if he had not been dismissed will not be paid to him.[[26]](#footnote-26) |
| April 6, 2017 | Philippe Bélisle is informed by IIROC that a formal investigation is open.[[27]](#footnote-27) |
| December 11, 2017 | Examination of Philippe Bélisle by IIROC.[[28]](#footnote-28) |
| December 14, 2017 | Examination of the spouse of Philippe Bélisle.[[29]](#footnote-29) |
| July 3, 2018 | Philippe Bélisle files a proposal with his creditors.[[30]](#footnote-30) |
| August 15, 2018 | Philippe Bélisle is informed that his case is transferred to the IIROC Prosecution Department for analysis.[[31]](#footnote-31) |
| December 14, 2018 | Philippe Bélisle assigns his assets (bankruptcy).[[32]](#footnote-32) |
| September 15, 2020 | Philippe Bélisle is discharged from his bankruptcy.[[33]](#footnote-33) |
| September 16, 2020 | IIROC sends a draft statement of the allegations to Philippe Bélisle for negotiation. |
| December 14, 2020 | The statement of the IIROC allegations comprising 3 counts is served.[[34]](#footnote-34) |
| January 18, 2021 | Publication of a notice of hearing on the merits.[[35]](#footnote-35) |
| February 23, 2021 | Preparatory conference and agreement on the timetable for the case.[[36]](#footnote-36) |
| April 27, 2021 | Hearing on the motion to stay proceedings.[[37]](#footnote-37) |
| May 17, 2021 | Decision of the Hearing Panel rejecting the motion to stay proceedings.[[38]](#footnote-38) |
| June 28, 2021 | Hearing on the merits of the case. |

1. After hearing the parties, the Hearing Panel rejected the motion to stay proceedings.
2. In support of his petition, Philippe Bélisle argues that the excessive delay by IIROC in filing his allegations constitutes a denial of justice since this delay would have deprived him of the right to present a serious defence and the right to redirect his career.
3. He also alleges that he suffered financial, psychological and family prejudice as a result of this delay.
4. Finally, he supports his request that the victim in this case did not file a complaint and that all principal and interest were repaid.

### The decision that is the subject of an application for review

1. In its decision on the motion to stay proceedings, the Hearing Panel establishes the legal framework used for its assessment of the unreasonable delay as that of the *Blencoe*[[39]](#footnote-39) decision of the Supreme Court of Canada, which would be the source of the applicable legal principles.
2. The Hearing Panel considers as a criterion that the prejudice suffered must be of such magnitude that it disregards the interests of justice.[[40]](#footnote-40)
3. The Hearing Panel also points out that Philippe Bélisle admits that the fairness of the process is not at issue. His claim is that an undue delay in the administrative process has caused him irreparable prejudice.
4. Therefore, the Hearing Panel team proceeded to determine whether Philippe Bélisle can prove these allegations and, moreover, whether he is entitled to the requested remedy: the stay of proceedings.
5. Thus, based on another case, *Castonguay (Re)*,[[41]](#footnote-41) the Hearing Panel proceeded with the determination of a pre-inculpatory and post-inculpatory timeframe, which is approximately 3 years for a non-complex case.
6. Based on its analysis, it assesses that this case is not complex.
7. However, in dealing with this, the Hearing Panel notes that there was a period of two years between the receipt of the file by the prosecution unit and the issuance of the statement of allegations to Philippe Bélisle.
8. Consequently, the Hearing Panel determines that the processing of this case at this stage gave rise to a delay of over 14 months, which does not correspond to the characteristics of the case.
9. Acknowledging the existence of this unreasonable delay, the Hearing Panel then proceeds to assess whether there is prejudice directly related to the delay.
10. On this issue, it concludes that there was no prejudice because:

* Most of the allegations, sources of psychological and professional prejudice, date back to before the official IIROC investigation and result from a disagreement between Philippe Bélisle and his former employer;
* The publication of complaints filed by IIROC takes place at the beginning of a post-inculpatory period that is not in dispute;
* The financial prejudice resulting from the fact that the delay prevented Philippe Bélisle from fully benefiting from the discharge of his bankruptcy is not accepted since it is hypothetical given the absence of any declaration of guilt or financial penalty.

1. Finally, the Hearing Panel rejects the allegations of Philippe Bélisle based on the fact that there was no complaint from his client and that the latter had been reimbursed.
2. However, the Hearing Panel insists that the unreasonable 14-month period it observed can be taken into consideration in any future sanction.
3. In conclusion, the Hearing Panel establishes that Philippe Bélisle did not demonstrate serious and real prejudice greater than that of any individual facing disciplinary proceedings and who endures negative effects.
4. Finally, and based on the precepts of the *Blencoe*[[42]](#footnote-42) judgment and concluding that the Respondent did not prove the existence of an abusive delay that was the direct and real source of prejudice.

### Application of the law with regard to the issue

1. The Tribunal carefully reviewed the decision made by the Hearing Panel on the motion to stay proceedings due to an unreasonable delay in determining whether the hearing panel had erred in law by rejecting the motion to stay proceedings.
2. After its analysis, the Tribunal agrees with the decision on the motion to stay proceedings and considers that this motion should be rejected.
3. According to *Blencoe*,[[43]](#footnote-43) when an excessive delay does not compromise the fairness of the upcoming hearing, there are few cases where this delay may constitute an abuse of process. According to this decision:

“115 [...] in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute.”

1. However, as soon as Philippe Bélisle, through his legal counsel, admitted that the procedural fairness of the trial was not at issue, the burden that Philippe Bélisle had of demonstrating that this delay constituted an abuse of process became very heavy and only a situation considered exceptional would have allowed this case to be brought to an end on the basis of such a request.
2. When filing the motion, Philippe Bélisle’s legal counsel mentioned the following to the Hearing Panel:

[TRANSLATION] “Okay. So, first of all, we don't have any allegation of a breach of hearing fairness. In other words, for the time being, there is no allegation of violation of what could be called ‘a full and complete defence’, or in fact, the problem of defending oneself, which is the first step, here, of the analysis found either in *Blencoe* or *Diaz*…”

1. However, at the time the motion to stay proceedings was filed on April 27, 2021, the hearing on the merits was already set for the following June 28, so, in the absence of any prejudice in connection with the upcoming hearing, the Tribunal believes it would have been preferable for the Hearing Panel to simply postpone the question of the delay and the prejudice related thereto on the merits of the case. This would have made it possible to make a comprehensive assessment, with full evidence including testimony on the prejudice and to have in hand the tools to determine the appropriate remedy since staying proceedings is not the only possible remedy for an infringement of procedural fairness.
2. This would have been all the more important to defer on the merits, considering that the facts underlying the motion to stay proceedings, i.e., the delay for processing the case and the prejudice suffered by Philippe Bélisle, were likely to have a significant impact on the determination or lack of determination of a possible sanction on the merits, if applicable.
3. In any event, by addressing this question on the merits and in the event that the Hearing Panel decides that there is an unreasonable delay constituting an abuse of process and a breach of procedural fairness, it could have assessed all at once the means raised and the range of possible remedies for this breach, including the ultimate remedy, which is the stay of proceedings.
4. It is recognized that staying proceedings is an exceptional measure. The Court of Appeal confirmed the application of this principle in disciplinary matters in *Ruffo*:[[44]](#footnote-44)

[TRANSLATION] “[64] Definitive stay of proceedings, whether in criminal or disciplinary matters, constitutes a remedy that must only be granted exceptionally, when no alternative exists. This extreme measure is only appropriate in the most obvious cases, when the applicant demonstrates the existence of irreparable prejudice that irreparably compromises his right to present a full and complete defence or the integrity of the judicial system.”[[45]](#footnote-45)

1. Taking into account the mission of IIROC, which acts in the public interest and whose disciplinary process aims to protect investors and strengthen market integrity, it is necessary to carefully assess a procedure that, if granted, would confer immunity on a registrant who may have contravened the rules of good conduct required of a registered person.
2. In *Huot* v. *Pigeon*[[46]](#footnote-46)and in relation to a motion to stay proceedings, the Court of Appeal refers to a quote by Dalphond J. at the time with the Superior Court in another case[[47]](#footnote-47), who issued the following opinion in relation to a motion to stay proceedings:

[TRANSLATION] “The public interest dictates that an ethical offence be punished, and the mere fact that the investigation takes some time cannot confer immunity on the perpetrator of the offence. If, in the event of the filing of complaints, the applicant considers that he is no longer able to assert a full and complete defence due to the time that has elapsed between the alleged offence and the hearing, it will then be up to the applicant to convince the members of the disciplinary committee to close the case. However, it is not up to the Court to intervene to prevent the filing of complaints and thus prevent such a debate from taking place before the appropriate *forum*.”[[48]](#footnote-48)

1. The public interest transcends the interest of a single individual and the burden of the person requesting the stay of proceedings is very high. The individual must demonstrate that the abuse they allege causes them prejudice to the point of making the potential hearing unfair.[[49]](#footnote-49)
2. In its decision, the Hearing Panel clearly identified the rules of law applicable in administrative law regarding an unreasonable delay on a motion to stay proceedings in light of the case law applicable at the time of that hearing.[[50]](#footnote-50)
3. Thus, proceedings should only be stayed if there was significant prejudice due to excessive delay and the situation is exceptional.
4. Given the admission that the procedural fairness of the upcoming hearing was not at issue, the burden on Philippe Bélisle to demonstrate prejudice became very heavy. Only an exceptional situation could justify a stay of proceedings on this motion.
5. In administrative matters, the Supreme Court of Canada decision in *Blencoe* is a seminal decision concerning delays in an administrative context.
6. According to this decision, the party claiming to have suffered prejudice must demonstrate that it was directly caused by the length of the delay, that it is real and on such a scale that members of the public would be struck by the continuation of proceedings.[[51]](#footnote-51)
7. In its judgment, the Hearing Panel carefully elaborated at length on the criteria to be applied to judge the unreasonableness of a delay that constitutes an abuse of process.
8. It therefore initially assessed whether there was an unreasonable delay and subsequently assessed the prejudice suffered by Philippe Bélisle due to this delay.
9. According to its assessment, it considered that the 14-month delay by IIROC between August 15, 2018, i.e., when Philippe Bélisle’s file was sent from the Investigation team to the Enforcement team, and December 14, 2020, i.e., the submission of the complaints to Philippe Bélisle, was too long in view of the complexity of the file.
10. After determining that there was an unreasonable delay, the Hearing Panel described the prejudice suffered by Philippe Bélisle due to this delay.
11. At the end of this exercise, the Hearing Panel considers, in terms of professional and psychological prejudice, that there is no link between this prejudice and the delay incurred, since they occurred before the IIROC investigation.
12. The Hearing Panel does not include the prejudice related to the stress generated by the publicity of the complaints filed by IIROC because this occurred after the 10-month period considered unreasonable and it considers this a normal and foreseeable prejudice.
13. As for Philippe Bélisle’s representations relating to the fact that he cannot benefit from the advantages linked to his discharge from bankruptcy in the event that he is sentenced to fines, the Hearing Panel considers this prejudice to be hypothetical.
14. The Tribunal finds that, in its assessment, the Hearing Panel underestimated the prejudice suffered by the Respondent because of how slowly it processed his case.
15. In its assessment, the Hearing Panel links the prejudice suffered to the exact period in which there was a delay in processing his file instead of treating everything as a whole.
16. Thus, the psychological prejudice experienced by Philippe Bélisle, connected to the fact that he was unable to practise his profession due to the ongoing investigation by IIROC and the fact that this case was dragging on, certainly started with his dismissal in November 2016. Furthermore, this prejudice remains constant for as long as he is not judged.
17. The fact that this case was not finalized before the date of his discharge from bankruptcy in September 2020 while IIROC carried out its initial examination of the facts based on the counts in December 2016 creates psychological and potentially financial prejudice that continued not only for the 10 months during which there was an extraordinary 14-month delay in processing prior to December 14, 2020, but rather for the entire duration of the case.
18. The Tribunal agrees with the conclusion of the Hearing Panel according to which at the time of the motion to stay proceedings the financial prejudice linked to the discharge from bankruptcy is purely hypothetical, since the decision of the Hearing Panel has not yet been rendered.
19. However, it is clear to the Tribunal that the Hearing Panel must assess this question when making its sanction decision, and this will be dealt with later in this decision when the sanction decision is reviewed.
20. Furthermore, despite this underestimation by the Hearing Panel of the extent of the prejudice suffered by Philippe Bélisle, the Tribunal considers that the prejudice caused by the latter is not exceptional or significant enough to justify the stay of proceedings on a motion for a stay of proceedings.
21. We recall that at the time this motion was presented in April 2021, the hearing on the merits was to take place shortly and therefore, there was reason to believe that this case would be resolved soon.
22. This is also supported by the fact that Philippe Bélisle admits that the procedural fairness of his hearing on the merits is not affected by the prejudice he mentions.
23. Just as the Hearing Panel acknowledges in its decision, remedies other than a stay of proceedings may be considered for an unreasonable delay in the processing of a case and this is why, when there are no exceptional circumstances, it is appropriate to choose to hold a hearing.
24. Also, the Tribunal stresses that the fact that there are no complainants in this case does not eliminate the need to proceed with the hearing in the public interest on the merits of the serious breaches alleged by IIROC in its proceedings.
25. As IIROC clearly mentions in *Castonguay (Re)*: [TRANSLATION] “*On the contrary, we are rather inclined to believe that a stay of proceedings would take away from the disciplinary process whose primary function is to protect the public and the reputation of the securities trade.*”
26. In view of the above, the Tribunal rejects the application for review of the decision rejecting Philippe Bélisle’s motion to stay proceedings and considers that the Hearing Panel was justified in rejecting that motion.

## Question 2: Did the Hearing Panel err in law in its sanction decision by underestimating the consequences of the extraordinary delay in processing his case?

1. In its sanction decision, the Hearing Panel acknowledges the excessive delay caused by a lack of diligence during the investigation conducted by IIROC, and to that end, it refers to the reasons for his motion to stay proceedings, which establishes this delay as being 14 months.
2. By referring to the reasons for the decision on the motion to stay proceedings, it justifies its decision on the exercise of its discretion regarding this unreasonable delay constituting an abuse of rights as follows:

[TRANSLATION] “67 In exercising our discretion and as we have already acknowledged that IIROC had caused an additional delay due to lack of diligence, we agree to credit in favour of the Respondent a 14-month period applicable to the calculation of the temporary prohibition.

. . .

72 As mentioned above, we had already decided that the Respondent had suffered excessive delay caused by a lack of diligence during the investigation conducted by IIROC. In addition, in our decision we concluded that an appropriate remedy would be the exercise of our discretion at the costs stage.

73 Consequently, we sanction the Respondent in the amount of $10,000 for payment of costs.”

(Reference omitted)

1. In its sanction decision, the Hearing Panel does not address the representations of Philippe Bélisle who claims that a financial penalty imposed as a disciplinary sanction, is a “provable bankruptcy claim” and that he should have been released from payment of the IIROC financial penalty amounts if his case had been dealt with within a reasonable period of time.
2. However, in its decision on the motion to stay proceedings, the Hearing Panel describes the financial prejudice to Philippe Bélisle as hypothetical, which the Tribunal agrees with because at that time no financial sanction has yet been imposed in the case.
3. However, at the time when the Hearing Panel decided to move forward and imposed such a sanction, which in fact came to $122,600,[[52]](#footnote-52) the Tribunal considered that it had to deal with this question based on the representations made to it by Philippe Bélisle on this subject and justify its decision.
4. By the sanction decision and when the Hearing Panel pronounces the financial sanctions, the financial prejudice alleged by Philippe Bélisle went from a hypothetical prejudice to a real and tangible financial prejudice that required a new assessment and an explanation by the Hearing Panel.
5. This justification and analysis are important since Philippe Bélisle represented that he should not be deprived of the benefits of the discharge of his bankruptcy because the Hearing Panel had been slow to file a complaint.
6. The arguments he raises in this regard are serious and well supported. The Tribunal considers it important to examine Philippe Bélisle’s claims on this aspect of the case and to justify them in connection with the change in situation created by the pronouncement of financial sanctions.
7. The analysis of this question relates to the obligation to justify a decision and the notion of an unreasonable delay causing an abuse of rights that jeopardizes procedural fairness.
8. Thus, in its assessment of this question, the Tribunal must apply the standard of correctness.
9. Thus, and according to the Supreme Court in *Dunsmuir*:[[53]](#footnote-53)

“When applying the correctness standard, a reviewing court will not show deference to the decision maker’s reasoning process; it will rather undertake its own analysis of the question. The analysis will bring the court to decide whether it agrees with the determination of the decision maker; if not, the court will substitute its own view and provide the correct answer. From the outset, the court must ask whether the tribunal’s decision was correct.”

1. With all due respect to the Hearing Panel, which made a worthy decision, the Tribunal considers that the reasons for the sanction decision do not explain what guided its reasoning regarding the remedy granted due to the unreasonable delay on the case, which constituted an abuse of rights.
2. In its sanction decision, it does not explain why it rejects the Respondent’s arguments regarding bankruptcy once the financial prejudice ceases to be hypothetical.
3. The Tribunal recalls that in the decision on the motion to stay proceedings, the Hearing Panel mentions this regarding the delay that it describes as hypothetical:

[TRANSLATION] “The Hearing Panel cannot accept this argument. Firstly, the Respondent is the sole instigator of the bankruptcy appeal without any interference from IIROC and secondly, the alleged prejudice can only be hypothetical given the absence of any conviction against the Respondent or the imposition of fines where applicable."

1. However, when it makes the following sanction decision, it does not deal with the question and refers to its decision on the motion to stay proceedings with regard to the delay and applies in the sanction decision the remedy that it considers appropriate.
2. It mentions in the sanction decision that it has decided that the appropriate remedy for the abusive 14-month delay it found was a reduction in costs. In this regard, it mentions:

[TRANSLATION] “In addition, in our decision we concluded that an appropriate remedy would be the exercise of our discretion when setting costs.”

1. However, what the Tribunal reads in the decision on the motion to stay proceedings is:

[TRANSLATION] “Nonetheless, the Hearing Panel acknowledges that a lack of diligence by an administrative body may be sanctioned. Other proposed remedies include an expedited hearing or an impact on costs.”

1. The Tribunal does not see this assertion as a final decision. Rather, the Tribunal sees in this assertion an announcement that the appropriate remedy will be dealt with in the sanction decision.
2. Thus, the Tribunal sees that the very short passage on the hypothetical nature of the mention of the absence of any declaration of guilt regarding the Respondent or the imposition of financial sanctions suggests that this aspect will be revisited when a financial sanction is imposed.
3. In fact, even by analyzing both decisions as if they were only one because one refers to the other, the Tribunal considers that the analysis of the appropriate remedy in connection with the unreasonable delay is incomplete and does not respond to the serious arguments raised by Philippe Bélisle on the financial prejudice inflicted by this delay.
4. The Tribunal considers that, in complete transparency for Philippe Bélisle, it was important for the Hearing Panel to address this question in the sanction decision and to justify the exercise of discretion with regard to the remedy for the observed abuse of rights.
5. The justification of decisions is at the heart of the function of administrative decision makers. In this regard *Vavilov* mentions, among other things, the following:

“79. […] Reasons explain how and why a decision was made. They help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power: *Congrégation des témoins de Jéhovah de St-Jérôme Lafontaine*, at paras. 12-13. As L’Heureux-Dubé J. noted in *Baker*, “[t]hose affected may be more likely to feel they were treated fairly and appropriately if reasons are given”: para. 39, citing S. A. de Smith, J. Jowell and Lord Woolf, *Judicial Review of Administrative Action* (5th ed. 1995), at pp. 459-460.”

1. Beyond this obligation to provide justification, the Tribunal considers that it was the duty of the Hearing Panel to assess the consequences of the unusual 14-month delay in connection with the bankruptcy of Philippe Bélisle and with the particularities of this case.
2. The delay and its consequences are analyzed according to the specific circumstances of each case.
3. Here, the unusual 14-month delay identified by the Hearing Panel is a delay that is described as unnecessary in that nothing justifies it.
4. An analysis of the file also reveals that it was Philippe Bélisle who denounced himself to his employer[[54]](#footnote-54) in November 2016, on, among other things, the situation related to the account of his mother-in-law, who was also its client.
5. Philippe Bélisle was also questioned by IIROC on these same facts during an examination held on December 11, 2017,[[55]](#footnote-55) where he again confessed all the circumstances surrounding the three counts then brought against him by IIROC.
6. In addition, the Tribunal notes that on the earliest possible date and at the liability hearing, he pleaded guilty to all three counts against him.
7. The examination of the file also reveals that no delay is due to him.
8. Due to the unreasonable 14-month delay constituting an abuse of rights observed by the Hearing Panel, there is reason to examine whether the financial sanctions imposed by the Hearing Panel constitute a real and tangible financial prejudice caused by this delay.
9. Philippe Bélisle claims that:

[TRANSLATION] “if he had been charged with the three (3) contraventions fourteen (14) months earlier, i.e., on October 14, 2019, instead of December 14, 2020, as acknowledged by this Hearing Panel in its decision of May 17, 2021, the applicant could have pleaded guilty, within the same timeframe as the one in which he entered his guilty pleas, i.e., at the end of April 2020, rather than on June 28, 2021.”

1. In his representations he adds that:

[TRANSLATION] “because IIROC failed to file a complaint at least fourteen (14) months earlier, as it should have done, the applicant could not plead guilty or be sanctioned before September 15, 2020, and if such a sanction had included a fine, such fine, which is a provable bankruptcy claim, would have been included in the bankruptcy from which he would have been discharged on September 14, 2020.”

1. To properly analyze these claims by Philippe Bélisle, the Tribunal provides a chronology of the elements relevant to this question in the following table:

|  |  |
| --- | --- |
| August 15, 2018 | IIROC sends Philippe Bélisle’s file to its IIROC Enforcement staff. |
| December 14, 2018 | Bankruptcy of Philippe Bélisle |
| April 14, 2019 | Start of the delay considered unreasonable by the Hearing Panel |
| September 2020 | Philippe Bélisle discharged from his bankruptcy |
| December 14, 2020 | Serving of the statement of allegations, therefore end of the 14-month delay considered unreasonable |

1. Putting these facts into perspective shows that at the time of the bankruptcy of Philippe Bélisle, this case is still in a phase where its processing time is reasonable and normal.
2. Thus, at the time of the bankruptcy of Philippe Bélisle, he could not reasonably expect that IIROC had finalized its statement of allegations, since the file had only left the Investigation team four months before.
3. It is therefore reasonable to expect that at the time he could not plead guilty to a statement of allegations that had not yet been made.
4. The Tribunal recalls that in its assessment of the reasonableness of the delays, the Hearing Panel considered the time for investigation of this case to be within the standard for a case of that complexity. The Tribunal does not challenge this assessment.
5. Several decisions deal with the impact of the discharge of a bankruptcy on disciplinary monetary sanctions.
6. In principle, in Quebec and according to the applicable case law, the disciplinary monetary sanction is a provable claim within the meaning of the *Bankruptcy and Insolvency Act*[[56]](#footnote-56) inasmuch as the amount of the penalty is determined in a judgment before the bankruptcy.
7. This principle also applies in other provinces in Canada, including, more recently, in *Hennig,* Alberta Court of Appeal.[[57]](#footnote-57)
8. In this decision,[[58]](#footnote-58) the Alberta Court of Appeal recalls the basic principles of bankruptcy, in particular that one of the objectives of the bankruptcy provisions is the financial rehabilitation of the debtor.
9. Thus, by being discharged from the claims of its creditors through the bankruptcy mechanism, the insolvent person can “start afresh,” which ensures their well-being and that of their family, and helps their rehabilitation and reintegration into economic life.[[59]](#footnote-59)
10. Consequently, an insolvent person who is a registrant would be released from a disciplinary financial penalty imposed on them by IIROC prior to their bankruptcy and would normally be entitled to this fresh start.
11. In view of the above, it is therefore clear to the Tribunal that if the IIROC financial sanction had been issued before the bankruptcy, Philippe Bélisle would have been released from it.
12. It is also generally recognized by Quebec case law that an insolvent person will not be released from administrative monetary sanctions and costs imposed by a disciplinary committee after the bankruptcy date for acts committed prior to the bankruptcy[[60]](#footnote-60) if at the time of the bankruptcy the procedure establishing administrative monetary penalties was not issued by the disciplinary body.
13. In *Wing* and concerning a penalty by the Ontario Securities Commission, the Ontario Superior Court mentions the following with regard to a case still under investigation at the time of bankruptcy:

“At the date of his bankruptcy, Mr. Wing had not admitted to a breach of the CTO. Whether such a breach could be proved and, if proved, whether it would be determined to be in the public interest to impose an administrative penalty in connection with that breach, were entirely matters for the OSC to decide. Further, the amount of any further administrative penalty was entirely discretionary to the Commission. These facts do not support the conclusion that a monetary sanction would probably be imposed.”

1. In *Fuoco*, the Court of Quebec considers that a disciplinary sanction imposed after the bankruptcy date does not constitute a provable claim in a bankruptcy subject to subsequent release and states the following:

[TRANSLATION] “[22]             Finally, the obligation to pay a sum of money cannot arise before the decision of the disciplinary committee to impose a monetary sanction. Indeed, before that date, the very existence of a monetary sanction is only hypothetical. It should be remembered that the person prosecuted by the disciplinary committee benefits from the presumption of innocence until he or she pleads guilty or is found guilty by the disciplinary committee.

[23]            Even then, the monetary sanction is not automatic since the disciplinary committee may impose various sanctions such as reprimand, temporary or permanent debarment, revocation or limitation or suspension of the right of exercise. The disciplinary committee may also impose a fine but is not required to do so.

[24]             Furthermore, the case law has considered that a fine imposed after the date of bankruptcy does not constitute a provable claim.”

(References omitted)

1. However, in *Thibault*,[[61]](#footnote-61) the Quebec Court of Appeal made an exception to this principle and ruled that the time was when the person pleaded guilty to the counts brought against them.
2. In this case, the investigation and the introductory proceedings happened before the bankruptcy and the insolvent person had filed an initial guilty plea before the bankruptcy date, which had been rejected by the Court.
3. In this case, the introductory proceedings, the start of the hearing and the guilty plea had taken place before the date of bankruptcy.
4. The Tribunal considers that this case differs from the one submitted to it since the case of Philippe Bélisle is being studied by the IIROC Enforcement staff to determine the measures to be taken at the time of bankruptcy.
5. In *Thibault*,[[62]](#footnote-62) the Court of Appeal also stated that a person should not be deprived of the discharge because a disciplinary committee was slow to file a complaint.
6. In this regard, the Court mentions the following:

“[27] One last point merits mention with regard to the lapse of time between the hearing and attempt to plead guilty (October 2011) and the decision (October 2013) and the imposition of the fines (July 2014). […]

[28] Drawing on this by analogy, I am of the view that Respondent should not be deprived of his discharge because the disciplinary committee delayed conviction and sentencing for a period exceeding two years in a matter which was not contested on the facts and where at the outset the Respondent indicated that he would plead guilty. The matter could and should have been disposed of in a more timely fashion which would have obviated the debate before us.

[29] The obligation was ‘incurred’ before bankruptcy and the fines were imposed prior to discharge. This, as indicated by the Supreme Court of Canada, is a factual inquiry. On the uncontested facts in this case, it cannot be said that there is reversible error. There is thus no justification for the appellant's intervention.”

(References omitted)

1. Philippe Bélisle considers that he is in the same kind of situation, where the unreasonable delay in dealing with his case would have deprived him of the benefits of his discharge from bankruptcy.
2. The Tribunal carefully examined this aspect in its assessment of Philippe Bélisle’s situation and checked whether the abusive 14-month delay identified by the Hearing Panel had denied him his right to his discharge.
3. However, this abusive 14-month delay occurred after the bankruptcy of Philippe Bélisle. Consequently, the Court considers that this period did not deprive him of any right, since at the time of the bankruptcy, the file was being examined by IIROC Enforcement staff according to a schedule considered normal, and no determination had yet been made by IIROC as to the outcome of this case.
4. In its assessment, the Tribunal also took into consideration the fact that since the very beginning of this case, Philippe Bélisle has confessed the breaches alleged against him, which is described as extrajudicial confessions in the examinations by his employer and by IIROC which have been filed in the case.
5. The Tribunal pondered whether such confessions could be considered the same as the guilty plea in *Thibault*, and therefore crystallize the financial sanction that could result from it at a time prior to the bankruptcy.
6. However, the Tribunal does not believe that this approach is viable. It is of the opinion that the issuance of the statement of allegations by IIROC is the starting point to consider and that the confessions made before the statement of allegations cannot be considered as the guilty plea in *Thibault*.
7. Consequently, and despite the lack of sufficient justification by the Hearing Panel to examine the question of the delay in relation to the bankruptcy in its sanction decision, the Tribunal considers that it did not err in its assessment of the situation raised by Philippe Bélisle.
8. The Tribunal considers that the lack of justification for the decision on this aspect is not fatal in the application of the standard of correctness, and this decision addresses that concern.

## Question 3: Did the Hearing Panel fail to consider and process certain factors and facts in his case, including the existence of a power of attorney, his cooperation and the commissions paid?

1. In his application for review, Philippe Bélisle alleges that in the sanction decision of October 12, 2021, the Hearing Panel erred in law by omitting or failing to sufficiently take into account the following factors:
2. The existence of a general power of attorney granted by Philippe Bélisle’s stepmother[[63]](#footnote-63) in favour of his father, signed before Mtre. Yves Roch, notary, on February 15, 2017;
3. The exemplary cooperation of Philippe Bélisle during the IIROC investigation; and
4. The Hearing Panel made a decisive error with regard to the amounts of the commissions to be reimbursed to the client.
5. Before analyzing the three factors identified by Philippe Bélisle, the Tribunal wishes to contextualize the obligation of an administrative decision maker to deal with all the arguments and details submitted by a party.
6. In this regard, the comments made in *Brassard*[[64]](#footnote-64) clearly illustrate the duty of a decision maker:

[TRANSLATION] “[27] Thus, the fact that the reasons for the decision do not refer to all the arguments, legislative provisions, precedents or other details that the judge sitting in review would have wished to read there does not constitute a basis on its own to set aside the decision. Instead, particular attention should be paid to the decision maker’s motives and interpreted in a global and contextual manner.

[28] Moreover, not all editorial shortcomings amount to a breach of the obligation to justify a decision, as stated by Bich J.:

[41] […] As McLachlin J., now Chief Justice, once wrote, “It is as utopian to seek perfection in judicial institutions as it is to seek perfection in any other social body.” These comments can be transposed to the reasons for the judgments. The construct of a judgment may therefore not be perfect, it may even be mediocre without the reasoning or conclusions being erroneous, certain flaws having no effect on the outcome of the dispute.

[42] In addition, the justification of judgments, whether judicial or administrative, does not mean that courts must use the menu of each item of evidence and argument, and then analyze them one by one. The court will normally only consider what it considers essential. It is not required to address every one of the parties’ arguments, some of which do not deserve to be dealt with at length or even to be dealt with at all. That which is implicit necessarily has its place in the judgment.

[29] These comments were repeated by the Court of Appeal. Thus, the obligation to justify requires providing intelligible reasons to support the conclusion reached, but this can be done succinctly. An administrative decision does not have to be drafted as a judicial decision. The core of the analysis must be read in its context.”

[30] In short, the lack of justification by an administrative decision maker justifies judicial review, but this is the case when it is a serious shortcoming.”

(References omitted)

1. Thus, the Tribunal must review whether the breach invoked by Philippe Bélisle constitutes a serious shortcoming.

### 1. The existence of a general power of attorney granted by Philippe Bélisle’s stepmother[[65]](#footnote-65) in favour of his father, signed before Mtre. Yves Roch, notary, on February 15, 2017

1. According to the evidence submitted to support the admissions, Philippe Bélisle’s stepmother and therefore his client, granted a general power of attorney to the father of Philippe Bélisle in February 2017 that mentioned that it was a retroactive confirmation until 2014 of his father’s mandate regarding the affairs of Philippe Bélisle’s stepmother.
2. In a way, this power of attorney granted Philippe Bélisle’s father all the powers to administer her assets. As for investments, it allowed him to make any investment he considered appropriate on his own.
3. According to Philippe Bélisle, the Hearing Panel’s failure to take into account this general power of attorney is decisive since this general power of attorney is a very important mitigating factor that the Hearing Panel should have mentioned under the heading “mitigating factor”;
4. Yet, in the sanction decision, the Hearing Panel mentions in paragraph 15:

[TRANSLATION] “it was agreed with the client’s spouse (the spouse) that the margin accounts will be managed on a discretionary basis, without obtaining the client’s prior agreement before executing transactions on the accounts. According to the Respondent, the spouse had a verbal power of attorney from the client authorizing him to give instructions relating to her accounts.”

1. The Tribunal is of the opinion that the written power of attorney signed before a notary that is subsequent to the facts that gave rise to the IIROC allegations is not relevant in this case.
2. What the Hearing Panel took into account in its decision was the existence of a verbal power of attorney and the existence of this power of attorney was a fact admitted by Philippe Bélisle.
3. According to the evidence on file, Philippe Bélisle had his father’s authorization to execute the transactions in the account of his client, who is his stepmother, but at the time the facts occurred, no written document confirmed this situation.
4. The Tribunal also understands that Philippe Bélisle believes that this power of attorney is important since he is reproached of discretionary management in the file without the approval of his client and on the basis of a verbal power of attorney whereas the rules of conduct require that the client’s file be documented and include a written document when there is a power of attorney.
5. Indeed, the file reveals that his employer justified Philippe Bélisle’s actions with the client based on this verbal power of attorney and wrote to the client: [TRANSLATION] “Due to our decision not to file a complaint against your representative, we consider that you are retroactively ratifying the actions of your spouse, the advisor and the investment assistant.”
6. However, this position of the employer vis-à-vis the client has no relevance to the obligations and rules of conduct of a representative and a dealer.
7. The Tribunal does not consider that the existence of this retroactive written document had any relevance whatsoever in the case of Philippe Bélisle, and the Tribunal considers that there is no decisive error on the part of the Hearing Panel in its failing to address the existence of this written power of attorney in its sanction decision.

### 2. The exemplary cooperation of Philippe Bélisle during the IIROC investigation

1. Philippe Bélisle considers that the Hearing Panel did not sufficiently take into account his exemplary cooperation with IIROC in the handling of his case or did not adequately take into account the latter in determining the sanction.
2. In reading the IIROC sanction decision, the Tribunal notes that at paragraph 43, the Hearing Panel considers that the Respondent fully cooperated with the investigation.
3. It points out that he himself reported the controversial facts and took into account his guilty plea submitted at the first opportunity.
4. The Hearing Panel describes the Respondent’s cooperation as very adequate in paragraph 64 of the decision.
5. The Tribunal does not consider that this difference in the description of the Respondent’s collaboration is a serious breach in the sanction decision.
6. The Tribunal points out that the IIROC sanction guidelines specify the following:

“In determining the appropriate sanction, a respondent’s proactive and exceptional assistance to IIROC in the investigation will be considered. IIROC Rules require a respondent to cooperate fully with investigations and respond to requests for information in a timely and straightforward manner. In light of the general requirement to cooperate with IIROC investigations, only assistance by a respondent that is proactive and exceptional should be considered as a mitigating factor in imposing sanctions.”

1. Regarding these guidelines, the Hearing Panel specifically mentioned the Respondent’s collaboration with IIROC.
2. Consequently, the Tribunal concludes that this aspect was correctly assessed by the Hearing Panel.

### 3. It made a decisive error with regard to the amounts of the commissions to be reimbursed to the client

1. Philippe Bélisle alleges that the Hearing Panel made a decisive error in ordering only the reimbursement of the amount of commission of $12,600 in its sanction decision, and that it did not rule on reclaiming the excess amount of commission that National Bank Financial received.
2. The Tribunal does not believe this to be an error. This case does not cover National Bank Financial, so the Hearing Panel did not have to address this aspect of the case.

## Question 4: Did the Hearing Panel err in its determination of the penalty in connection with the breaches committed by Philippe Bélisle in carrying out his activity as a representative of a securities dealer?

1. As stated at the beginning of this decision,[[66]](#footnote-66) the Tribunal’s review of the sanction in connection with the breaches committed involves the Hearing Panel’s assessment of certain factors and facts.
2. IIROC is a specialized body, and even if the Tribunal, as an administrative decision maker, works in the same sector of specialization as IIROC, the Tribunal recognizes in the IIROC Hearing Panel a more acute specificity of specialization than that of the Tribunal with regard to its members.
3. Accordingly, it is appropriate to act with deference to the Hearing Panel in the handling of this question and apply the standard of reasonableness despite the very broad power of review available to the Tribunal.
4. In assessing the reasonableness of the decision, the Tribunal recalls certain statements made by the Supreme Court of Canada that guide its assessment:

* “That being said, a reasonable decision is one that is justified in light of the facts: *Dunsmuir*, at para. 47. The decision maker must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them: see *Southam*, at para. 56. The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it.”[[67]](#footnote-67)
* “A reasonable decision is based on an internally coherent reasoning.”[[68]](#footnote-68)
* “A reasonable decision is justified in light of the legal and factual constraints that bear on the decision.”[[69]](#footnote-69)

1. The Tribunal wishes to highlight the following aspects of the standard of reasonableness mentioned by the Supreme Court in *Vavilov,* in particular “omissions are not stand-alone grounds for judicial intervention: the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker.”[[70]](#footnote-70)
2. That being said, Philippe Bélisle is applying to have the sanction decision concerning him reviewed, claiming that it did not correctly assess, and at times even omitted to assess, the mitigating factors concerning him.
3. Philippe Bélisle also alleges the Hearing Panel failed to correctly identify its analytical factors and did not correctly apply those factors to his situation. In his opinion, the Hearing Panel made a decisive error in that regard.
4. Philippe Bélisle also alleges the Hearing Panel failed to develop or assess remedial measures other than the financial sanction, and claims that this obligation stems from Section 24 of the *Canadian Charter of Rights and Freedoms*.
5. He added that the fundamental principle underlying sentencing remains proportionality based on the seriousness of the offence and the offender’s degree of liability.
6. The Tribunal will not accept the argument based on the *Charter of Rights and Freedoms,* specifying that IIROC is not a body created by law and, therefore, the *Charter* does not apply to it. This has been recognized in several decisions.[[71]](#footnote-71)
7. Furthermore, its status as a private body that establishes its rules contractually allows it to administer its own disciplinary rules. In fact, it has adopted its own rules, which were subject to the approval process provided for in the ARFS.[[72]](#footnote-72)
8. In addition, the Tribunal emphasizes that IIROC must apply the rules of procedural fairness in the treatment of its cases.
9. Thus, as stated in the *Knight*[[73]](#footnote-73) decision of the Supreme Court of Canada, the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case.“All circumstances must be taken into account when deciding the nature of the procedural fairness obligation.”
10. Thus, when imposing sanctions, the Hearing Panel must apply the guidelines[[74]](#footnote-74) to which IIROC is subject and which establish principles for determining sanctions in cases submitted to this body.
11. These guidelines set out major principles:
12. Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.
13. Disciplinary sanctions should be more severe for respondents with prior disciplinary records.
14. For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct.
15. Sanctions should ensure that a respondent does not financially benefit as a result of the misconduct.
16. A suspension should be considered where:

* there has been one or more serious contraventions;
* there has been a pattern of misconduct;
* the respondent has a prior disciplinary history;
* the contraventions involved fraudulent, willful and/or reckless misconduct; or
* the misconduct in question has caused some measure of prejudice to investors, the integrity of a marketplace or the securities industry as a whole.

1. A permanent bar should be considered where:

* the contraventions involve significant harm to the investing public, the integrity of the market or the securities industry;
* the misconduct had an element of criminal or quasi-criminal activity; or
* there is reason to believe that the respondent cannot be trusted to act in an honest and fair manner in their dealings with the public, their clients, and the securities industry as a whole.

1. Inability to pay is a factor when considering an appropriate monetary sanction or costs only when raised by the respondent.
2. In determining the appropriate sanction, a respondent’s proactive and exceptional assistance to IIROC in the investigation will be considered.
3. Remedial sanctions tailored to the specific misconduct can be a useful tool in effectively addressing regulatory misconduct.
4. Also, in determining IIROC sanctions, the sanctions guideline provides for certain key factors that will be addressed later in this decision.
5. It is therefore necessary to examine the sanctions determined by the Hearing Panel and to assess, based on the sanction decision, whether it properly applied the guidelines that its body has adopted for this determination.
6. The Tribunal’s analysis of the sanctions is subject to the standard of reasonableness. Consequently, the Tribunal may only intervene if it considers the sanction [TRANSLATION] “*so severe or so lenient that it is unfair or inadequate in view of the seriousness of the violation and all the mitigating and aggravating circumstances of the case.*”[[75]](#footnote-75)
7. In the absence of such indication, the Tribunal does not have to intervene.
8. The Tribunal’s analysis of the Hearing Panel’s sanction decision shows that it endeavoured to properly apply the sanctions guidelines adopted by its organization.
9. The sanction decision issued by IIROC is intelligible, well articulated and clear, it elaborates the facts related to the case and it describes the seriousness of the violations admitted by Philippe Bélisle.
10. It specifies mitigating factors and aggravating factors contributing to the decision, refers to precedents in this area and clearly explains the reasoning behind the decision rendered.
11. The first part of the decision deals with factors used in the analysis in which it mentions the mission of IIROC and the guiding principles on which its assessment is based, and acknowledges that these factors must be adapted to the conduct examined.
12. The Hearing Panel then elaborates on the facts it considers relevant for the purpose of determining the sanction. These facts are clearly presented and give a fairly accurate picture of the situation submitted to the Hearing Panel.
13. The next title of the decision elaborates on the claims of the parties.
14. It is noted that IIROC is requesting a permanent prohibition, a financial penalty of $100,000 for the first count and $50,000 for each of counts 2 and 3. It is seeking $222,600 as repayment of financial benefits obtained and $30,000 as a portion of the costs incurred.
15. As for the Respondent, it proposes the following conclusions: a maximum suspension of 5 years from November 2016, no fine and no costs charged to Philippe Bélisle.
16. In the next section of the decision, the Hearing Panel elaborates on the factors used in its analysis and specifies the aggravating and mitigating factors according to its assessment.
17. The Tribunal considers the list of aggravating factors to be quite complete.
18. For the mitigating factors, and in connection with the guidelines it applies, the Tribunal considers that certain additional factors could normally have been mentioned or is not convinced that even if they were listed, they were considered at their fair value in the entirety of the sanction. It will address this further on.
19. The decision also mentions the guidelines IIROC used to assess the situation of Philippe Bélisle, and correctly establishes the principles applicable to sanctions, as follows:

[TRANSLATION] “47 Disciplinary sanctions are preventative in nature and should specifically be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.

48 The primary goal is prevention, not punishment. We want to prevent the Respondent from pursuing such a gesture, but also to send a clear message to those who would be tempted to imitate him that such conduct will not be tolerated.[[76]](#footnote-76)

49 Sanctions must strike a fair balance between the specific misconduct of the regulated person and the expectations of the profession. The sanction must be significant enough to act as a general deterrent, but also proportionate to engage the support of stakeholders because the sanction is fair.

50 In the case of multiple violations, the overall sanctions imposed must not be excessive or disproportionate to the seriousness of the overall misconduct to be sanctioned. However, multiple violations can constitute an aggravating factor.

51 Finally, in its exercise of applying all these principles, the Hearing Panel must ensure the protection of the public, but must also treat fairly “the person whose livelihood is placed in its hands.”[[77]](#footnote-77)

1. Once these bases have been established, the Hearing Panel proceeds with the legal analysis of the situation.
2. It uses relevant precedents, several of which deal precisely with appropriation of funds by registered persons with regard to persons close to them, for example family members as in this case, and makes the appropriate distinctions. These precedents are *Re Scerbo,*[[78]](#footnote-78) *Re Silvaggio,*[[79]](#footnote-79) *Re Giroux-Garneau,*[[80]](#footnote-80) and *Re Chher.*[[81]](#footnote-81)
3. At the end of its analysis, it mentions the seriousness of the Respondent’s actions while weighing its seriousness given the particularity of the family context in which Philippe Bélisle found himself, and rightly stating that this context did not exempt Philippe Bélisle from his duty as responsible manager. It highlights the Respondent’s collaboration, and determines that a severe sanction is nonetheless required.
4. Based on these facts, it determines the sanction, which consists of a 10-year debarment less 14 months due to the unreasonable delay and monetary sanctions totalling $100,000 including the repayment of commission and expenses, as set forth above.
5. The Tribunal acknowledges that it must defer to the assessment of the Hearing Panel, and that it is generally not the responsibility of the reviewing decision maker to review the assessment of the facts by the decision makers whose decision it is reviewing.
6. However, this case is somewhat unique for two reasons. First, the Tribunal analyzed part of this case according to the standard of correctness. This forced it to review the entire case.
7. Secondly, the Hearing Panel never had to assess live testimony in this case since it was decided based on the file and further to the admissions of Philippe Bélisle. Consequently, the Tribunal had to assess exactly the same evidence as the Hearing Panel where everything is written and nothing is heard.
8. With all due respect to the Hearing Panel, the Tribunal considers that the latter did not give the personal situation of Philippe Bélisle the importance it warranted in connection with the allegations of which he is found guilty.
9. The Tribunal considers these facts to be of such importance that they should have carried more weight in the mitigating factors associated with the determination of the sanction.
10. For the purposes hereof, the Tribunal breaks down these facts into three themes: the circumstances surrounding the dismissal of Philippe Bélisle from National Bank Financial, the financial situation of Philippe Bélisle in connection with the sanctions imposed, and the analysis of the specific and general deterrent factor surrounding administrative sanctions.

### The circumstances of the dismissal

1. According to the IIROC guidelines that list the key factors for determining appropriate sanctions, factor 12 is as follows:

“12. an individual respondent was subject to internal discipline by the Dealer Member (see Staff Policy Statement on “Internal Discipline by a Dealer Member”)”

1. It should be considered that Philippe Bélisle was dismissed from his employment with National Bank Financial, and this dismissal was in connection with the facts of this case.
2. However, in its sanction decision, the Hearing Panel attaches very little importance to this fact, and in the decision on the stay of proceedings, it deals with the dismissal of Philippe Bélisle as follows, which helps to understand its assessment. It states:

[TRANSLATION] “53. It should be recalled that initially in December 2016, the Respondent was dismissed. However, in the follow-up to this dismissal, the Respondent had several disagreements with NBF, including one relating to an unpaid bonus and another relating to a loss of clients due to NBF's interventions.

54. Most of the allegations, which are sources of professional and psychological prejudice, are directed mainly at NBF and occurred before the official IIROC investigation. There is no direct and real link between the alleged prejudice and the delay.”

1. Thus, the Hearing Panel does not clearly link this dismissal with the facts underlying this case, even though this dismissal stems from Philippe Bélisle’s interview with his employer in which he informs him of the allegations against him in this case.
2. Philippe Bélisle had a thriving career as a representative of a securities dealer and had been beyond reproach since his registration in 2010. The evidence also shows that this interview, which he requested to seek his employer’s assistance in a difficult and untenable situation, triggered a spiral that led to a complete breakdown of his personal and professional life.
3. The Tribunal does not trivialize appropriation and false signatures aimed at deceiving or inappropriate management of his client's portfolio, but it considers that the consequences of these actions in his personal and professional life should have been more rightfully considered by the Hearing Panel.
4. These consequences should not only be treated by the Hearing Panel as a disagreement between him and his employer, as the Hearing Panel mentions in the decision on the stay of proceedings.
5. At the time of this meeting in November 2016, Philippe Bélisle had for some time been awaiting a $375,000 bonus for his performance since 1995, which was due by the end of the year.
6. He mentioned and confirmed in writing to his employer that he wanted to reimburse his client’s portfolio losses for this amount, since he had lost his assets due to errors in the management of his portfolio and that of his clients.
7. In fact, he claims that two stocks that performed poorly were overweighted in the portfolios, which had an exponential negative impact due to his management strategy.
8. Following this meeting, Philippe Bélisle was suspended and then dismissed, which led to what the Hearing Panel considers to be a disagreement between his employer and himself, which the Tribunal summarizes as being in a client dispute, which is not unusual in this type of situation.
9. This bonus was due by December 31, 2016.
10. However, after dismissing Philippe Bélisle in early December 2016, National Bank Financial refused to pay him. In this regard, on December 30, 2016, it indicated the following to him in an email:

[TRANSLATION] “Your $375,000 production bonus

Your Employment Contract provides that you were eligible for various bonuses in connection with your employment at NBF subject to the terms and conditions contained therein.

More specifically, the granting and payment of these bonuses are subject in particular to:

* adopting and maintaining a professional and respectful attitude in line with NBF's corporate image; and
* compliance with securities legislation and the Conduct and Practices Handbook for securities market professionals, as well as any other rules, policies, guidelines or procedures adopted by FBN; and
* being in our employ.

In light of your dismissal for cause on December 13, 2016, no payment will be made to you for the month of December 2016 or for the future, as an annual payment of the recruitment bonuses, net inflows of assets and gross revenues in 2015.”[[82]](#footnote-82)

1. Thus, following an investigation by the employer, which the Tribunal would describe as “very efficient and diligent”, Philippe Bélisle was dismissed before the end of December 2015 without his bonus.
2. And consequently, by not receiving the $375,000 bonus that he expected, he finds himself in a situation where he cannot reimburse his client for her losses, despite having informed his employer that he wanted to use the money to reimburse this client, who is also a client of National Bank Financial.
3. In the end, his father was the one who reimbursed his stepmother pursuant to his guarantees of her accounts.
4. These circumstances are important, and the Tribunal considers that the Hearing Panel did not assess at its fair value the link between the dismissal of Philippe Bélisle and the facts of the present case as well as the financial consequences of this dismissal in connection with the facts alleged against him.

### The financial situation of Philippe Bélisle

1. The IIROC sanctions guidelines mention:

“7. Inability to pay is a factor when considering an appropriate monetary sanction or costs only when raised by the respondent. Inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a respondent. It should not be considered a predominant or determining factor, but it is a relevant factor depending on the circumstances of the misconduct

The burden is on the respondent to raise the issue and provide evidence of financial hardship. Evidence of financial hardship should be in the form of sworn affidavits or declarations, along with standards or commonly accepted documents, such as tax returns, audited financial statements or other externally verified financial statements.

Evidence of inability to pay could result in the reduction/waive of a fine and/or in the imposition of an installment payment plan. In cases in which a hearing panel reduces or waives a fine based on a *bona fide* inability to pay, the written decision should so indicate.”

1. Whether Philippe Bélisle’s inability to pay or his financial situation, the Tribunal considers that the Hearing Panel did not take into account Philippe Bélisle’s recently discharged bankruptcy status.
2. This bankruptcy appears on the file and the file reveals that it was only discharged in September 2020. The Hearing Panel’s decision is handed down in October 2021.
3. However, the financial sanctions issued by IIROC are significant. These sanctions add up to more than $122,600. In the examinations filed in support of Philippe Bélisle's admissions, he also claims to have lost his assets in his bad investments.
4. There is no mention in the decision that the Hearing Panel would have reduced or refused the amount of a financial sanction it determined based on Philippe Bélisle’s financial situation at the time of the decision.
5. The Tribunal held that the Hearing Panel should have given more weight to the assessment of Philippe Bélisle’s newly discharged bankruptcy in connection with the determination of the financial sanction. Nor did the Hearing Panel consider that the loss of his $375,000 bonus could have a significant impact on his financial position.
6. These facts appeared in the evidence in the file and should have been considered.

### Analysis of the specific and general deterrent factor surrounding administrative sanctions

1. The first principle set out in the IIROC sanctions guidelines, which must be taken into account when determining a disciplinary sanction is as follows:

“1- Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.

The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).

When considering specific and general deterrence in the imposition of sanctions, consideration should be given to the size of the Dealer Member, including the firm’s financial resources, nature of the firm’s business, and the number of individuals associated with the firm, with a view toward ensuring that the sanctions imposed are sufficient to achieve deterrence. Similarly, with respect to an individual respondent, consideration should be given to a *bona fide* inability to pay when imposing a fine (see General Principle No. 7).

General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person’s specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating or aggravating factors.”

(References omitted)

1. As the Supreme Court of Canada points out in *Cartaway*[[83]](#footnote-83) on this topic:

“64.  The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission.  Protecting the public interest will require a different remedial emphasis according to the circumstances.  Courts should review the order globally to determine whether it is reasonable.  No one factor should be considered in isolation because to do so would skew the textured and nuanced evaluation conducted by the Commission in crafting an order in the public interest. Nevertheless, unreasonable weight given to a particular factor, including general deterrence, will render the order itself unreasonable. […]”

1. The Hearing Panel elaborated on these principles of law in the decision. In determining the sanctions, it gave great weight to the precedents in this area, which supports the principle of general deterrence, but what about the specific deterrence of Philippe Bélisle?
2. In view of the specific circumstances of this case, the Tribunal questions the Hearing Panel’s assessment of the mitigating factors identified and specific to this case.
3. The purpose of the regulation by IIROC and its disciplinary process is to protect the public, not to penalize.[[84]](#footnote-84)
4. Therefore, appropriate sanctions should not be used to punish for misconduct. Rather, they must be, and are perceived to be, an adequate deterrent against similar conduct in the future by Philippe Bélisle and others in the sector under similar circumstances.
5. However, by assessing the consequences of the actions that Philippe Bélisle committed and that were alleged against him, his dismissal, the loss of his $375,000 bonus in connection with the events, the end of a promising career in the world of securities, and the impact on his personal and family life, the Tribunal considers that the specific deterrent objectives sought by a disciplinary sanction are largely achieved only by the debarment of 10 years less 14 months imposed by the Hearing Panel.
6. In the Tribunal's view, the addition of a monetary sanction of $50,000 for the first count and a penalty of $50,000 for the other two counts confers a punitive nature on the sanction determined by the Hearing Panel, which is not the purpose of such sanctions.
7. Consequently, the Tribunal considers that the Hearing Panel erred in determining the imposed sanction by underestimating the mitigating factors that were taken into account in the assessment of the specific deterrent.
8. The Tribunal recognizes that the burden of reviewing an administrative sanction in a review that must be made on the basis of reasonableness is heavy, since a severe sanction is not necessarily unreasonable.
9. However, and taking into account the Court of Appeal’s comments in *Pigeon* c. *Daigneault,*[[85]](#footnote-85) the Tribunal considers that the Hearing Panel’s sanction has become unreasonable since it is [TRANSLATION] “so severe or so lenient that it is unfair or inadequate in view of the seriousness of the violation and all the mitigating and aggravating circumstances of the case”.
10. In its analysis, the Tribunal reviewed the Hearing Panel’s rationale with respectful attention, and sought to understand the reasoning it followed to reach its conclusion. The whole is consistent, but the lack of appreciation of the factors raised by the Tribunal resulted in serious omissions in the assessment.
11. The Tribunal considers that Philippe Bélisle, through his legal counsel, highlighted in his application for review those aspects that the Hearing Panel had underestimated in connection with his situation.
12. The Tribunal considers that the fact that the Hearing Panel did not sufficiently take into account the personal elements of Philippe Bélisle raised by the Tribunal is sufficient to describe the decision as unreasonable with regard to Philippe Bélisle and orders a revision of the latter regarding the sanction.
13. To correct the situation, it cancelled the $50,000 financial penalty attached to count 1 of the decision, as well as the $50,000 overall financial penalty attached to counts 2 and 3 of the sanction decision by the Hearing Panel.
14. The Tribunal considers that the circumstances surrounding this case have ensured that Philippe Bélisle has paid enough for his actions. The Tribunal associates the loss of his $375,000 bonus and the loss of his employment with the events at the origin of this case.
15. With regard to the temporary ban of 10 years minus 14 months and the strict monitoring period of two years in the event that Philippe Bélisle reactivates his registration, if applicable, the Tribunal considers that this ban is acceptable in connection with the breaches observed, and that this measure strictly related to protecting the public is appropriate. It shall make its decision so that the start of the calculation of this period falls on the date of the sanction decision. It also states that, since December 2016, Philippe Bélisle has no longer carried out any securities activities.
16. The review of the comparables referred to in the decision by the Hearing Panel convinced the Tribunal that this prohibition is appropriate given the seriousness of the breaches observed in the circumstances, and that this measure corresponds to the information provided in the sanctions guideline on this subject.
17. The Tribunal agrees with the Hearing Panel’s statements regarding appropriation,[[86]](#footnote-86) falsification of signatures and unauthorized operations. These are very serious breaches that require a sanction that is dissuasive and in this sense the 10-year debarment is appropriate.
18. The Tribunal also considers the reduction of this debarment by a period of 14 months to reflect the delay considered abusive in this case to be fair and appropriate.
19. Furthermore, with regard to the disgorgement of the $12,600 commission overpayment by Philippe Bélisle’s client, the Tribunal considers it appropriate to maintain it and notes the agreement to repay the client the amount of $12,600 mentioned in his application for review.
20. With respect to the order to pay the IIROC investigation costs, reduced from $30,000 to $10,000 by the Hearing Panel due to the unreasonable delay, the Tribunal considers that this order should be maintained, which is justified and appropriate. His wrongful actions are the direct cause of this investigation, which was well founded and despite the delay in processing, he is responsible for these costs incurred by IIROC.
21. Consequently, and in response to Question 4, the Tribunal considers that the Hearing Panel erred in determining the sanction in connection with the breaches committed by Philippe Bélisle in the performance of his activity as a representative of a securities dealer.
22. Finally, Philippe Bélisle asked the Tribunal to review the decision in order to reduce to one year the penalty for falsification of signatures based on the aforementioned *Pigeon* v. *Daignault* decision. In that ruling, the court reportedly suspended for one year for the misconduct and set costs at $2,000. The Tribunal rejects this proposal and considers that the assessment of the Hearing Panel on the seriousness of this gesture for a registrant is appropriate.

**CONCLUSION**

1. The Tribunal partially allows Philippe Bélisle’s application for review and revises the decision. It also considers that, for reasons of efficiency and savings of legal resources and in order to finalize a case that has been going on since 2016 for Philippe Bélisle, the decision that should have been made should be rendered and reviews that decision in accordance with its decision.
2. The Tribunal also wishes to thank the prosecutors on file for their professionalism, for their mutual respect despite differing opinions, for the rigour of their work, and for the quality of their representations.

**FOR THESE REASONS**, the Financial Markets Administrative Tribunal, pursuant to section 93 of the *Act respecting the regulation of the financial sector*[[87]](#footnote-87) and section 322 of the *Securities Act*:[[88]](#footnote-88)

**ALLOWS** in part Philippe Bélisle’s application for review;

**UPHOLDS** the decision made by IIROC on May 17, 2021;

**OVERTURNS** the penalty decision rendered by IIROC on August 12, 2021;

**AND** **RENDERS** the decision that should have been made in view of the 3 counts brought against Philippe Bélisle by IIROC:

**PROHIBITS** Philippe Bélisle from engaging in any securities registration activity for a period of 10 years minus 14 months starting on October 12, 2021, and imposes a strict monitoring period of two years in the event of the reactivation of his registration;

Rectification

**ORDERS** Philippe Bélisle to remit the sum of $12,600 to IIROC, which will then remit this sum to Philippe Bélisle’s client;

**ORDERS** Philippe Bélisle to pay costs of $10,000 to IIROC.

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| Mtre. Gérald Soulière | |
| (Gaggino Avocats) | |
| For Philippe Bélisle | |
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| Mtre. Fanie Dubuc | |
| (IIROC) | |
| INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC) | |
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| Hearing date: | June 2, 2022, reserved on June 20, 2022 |

1. Exhibit I-3. [↑](#footnote-ref-1)
2. CQLR, c E-6.1. [↑](#footnote-ref-2)
3. Decision no. 2008-PDG-0126, 2008-05-02, Bulletin of 2008-05-30, Vol. 5, no. 21. [↑](#footnote-ref-3)
4. Decision no. 2008-PDG-0126, 2018-04-10, Bulletin of 2018-04-12, Vol. 15, no. 14. [↑](#footnote-ref-4)
5. *Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM)* c. *Beaudoin*, 2011 QCCA 2247, para. 35. [↑](#footnote-ref-5)
6. *Sultani* c. *Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM),* 2018 QCTMF 114, paras. 78 and 79. [↑](#footnote-ref-6)
7. Rules 8200 and 8400. [↑](#footnote-ref-7)
8. Hearing Panel Chair Robert Monette, François Demers and François Breton. [↑](#footnote-ref-8)
9. Excerpt from page 2 of the Sanction Guidelines. [↑](#footnote-ref-9)
10. This is consistent with the principles stated in paragraph 43 of *Committee for the Equal Treatment of Asbestos Minority Shareholders* v. *Ontario (Securities Commission)*, [2001] 2 S.C.R. 132. [↑](#footnote-ref-10)
11. CQLR, c. V-1.1. [↑](#footnote-ref-11)
12. *Séguin* c. *Association canadienne des courtiers en valeurs mobilières (Organisme canadien de réglementation du commerce des valeurs mobilières)*, 2010 QCBDR 104. [↑](#footnote-ref-12)
13. *Métivier* c. *Association canadienne des courtiers en valeurs mobilières (ACCOVAM)*, 2005 QCBDRVM 6. [↑](#footnote-ref-13)
14. *Sultani* c. Organisme Canadien de réglementation du commerce des valeurs mobilières (OCRCVM), supra., note 6. [↑](#footnote-ref-14)
15. Supra., note 12. [↑](#footnote-ref-15)
16. *Canada (Minister of Citizenship and Immigration)* v. *Vavilov*, 2019 SCC 65. [↑](#footnote-ref-16)
17. See *Re* *O’ Brien,* 2020 ABASC 160 (CanLII). [↑](#footnote-ref-17)
18. *Canada (Minister of Citizenship and Immigration)* v. *Vavilov*, supra, note 16. [↑](#footnote-ref-18)
19. *Canada (Minister of Citizenship and Immigration)* v. *Vavilov*, supra, note 16, paras. 91 to 95. [↑](#footnote-ref-19)
20. See *Re Johnston*, 2021 BCSECCOM 79 (CanLII) para. 38, *Re O’Brien*, supra, note 17, *Debus (Re)*, 2021 ONSEC 22 (CanLII), para. 88. [↑](#footnote-ref-20)
21. Exhibit I-5, decision on the application to stay proceedings. [↑](#footnote-ref-21)
22. Exhibit I-21, page 1200. [↑](#footnote-ref-22)
23. Exhibit I-21, page 837. [↑](#footnote-ref-23)
24. Exhibit I-5, decision on the motion to stay proceedings and Exhibit I-21, page 86. [↑](#footnote-ref-24)
25. Exhibit I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-25)
26. Exhibit I-13 from the list of exhibits filed in support of the motion to stay proceedings is listed under I-8 in this file. [↑](#footnote-ref-26)
27. Exhibit I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-27)
28. Exhibit I-1, motion to stay proceedings. [↑](#footnote-ref-28)
29. Exhibit I-11 motion to stay proceedings. [↑](#footnote-ref-29)
30. Exhibit I-11, para 85 motion to stay proceedings. [↑](#footnote-ref-30)
31. Exhibit I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-31)
32. Exhibit I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-32)
33. Exhibit I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-33)
34. Exhibit I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-34)
35. Exhibits I-1 and I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-35)
36. Exhibits I-7 and I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-36)
37. Exhibits I-12 and I-5, decision on the motion to stay proceedings. [↑](#footnote-ref-37)
38. Exhibit I-4. [↑](#footnote-ref-38)
39. *Blencoe v. B.C. (Human Rights Commission)*, 2000 SCC 307. [↑](#footnote-ref-39)
40. Exhibit I-5, decision on the motion to stay proceedings, para. 30. [↑](#footnote-ref-40)
41. *Castonguay (Re),* 2012 OCRCVM 42, para. 10. [↑](#footnote-ref-41)
42. *Blencoe* v. *C-B (Human Rights Commission)*, supra, note 39. [↑](#footnote-ref-42)
43. *Ibid*, para. 115. [↑](#footnote-ref-43)
44. *Ruffo case (Re)*, 2005 QCCA 647. [↑](#footnote-ref-44)
45. *Ibid.* [↑](#footnote-ref-45)
46. *Huot* c. *Pigeon*, 2006 QCCA 164. [↑](#footnote-ref-46)
47. *Parizeau* v. Barreau du Québec, 1997 CanLII 9307 (QC CS), [1997] R.J.Q. 1701, p. 1711. [↑](#footnote-ref-47)
48. *Huot* c. *Pigeon*, 2006 QCCA 164 quoting *Parizeau* c. *Barreau du Québec*, 1997 CanLII 9307 (QC CS), [1997] R.J.Q. 1701, p.1711. [↑](#footnote-ref-48)
49. A beautiful illustration of this principle in *Dentistes (Ordre professionnel des)* c. *Gourgi*, 2007 CanLII 81523 (QC ODQ), para. 79 et seq. [↑](#footnote-ref-49)
50. It should be noted that at the time of this hearing, the decision of the Supreme Court of Canada in *Abrametz* (*Law Society of Saskatchewan* v. *Abrametz*, 2022 SCC 29) had not been rendered. [↑](#footnote-ref-50)
51. *Blencoe* v. *C-B (Human Rights Commission)*, supra, note 39, para. 133. [↑](#footnote-ref-51)
52. Count 1: $50,000 + $12,600 in commission repayments, counts 2 and 3: $50,000, fees: $10,000. [↑](#footnote-ref-52)
53. *Dunsmuir* v. *New Brunswick*, 2008 SCC 9, para. 50. [↑](#footnote-ref-53)
54. Exhibit I-21, pp. 837 to 971. [↑](#footnote-ref-54)
55. Exhibit I -21 in support, pp. 972 to 1276. [↑](#footnote-ref-55)
56. *Chambre des notaires du Québec* c. *Dugas*, 2002 CanLII 41280 (QC CA). [↑](#footnote-ref-56)
57. *Alberta Securities Commission* v. *Hennig*, (2021) ABCA 411 (CanLII). [↑](#footnote-ref-57)
58. *Ibid.*  [↑](#footnote-ref-58)
59. *Alberta (Attorney General) v*. *Moloney*, 2015 SCC 51, para. 36. [↑](#footnote-ref-59)
60. *Association des courtiers & agents immobiliers du Québec* c. *Fuoco*, 2007 QCCQ 292 (CanLII), *Chambre de la sécurité financière* c. *Harton*, 2008 QCCA 269, *Thow (Re)*, BCSC 1176 (CanLII), *Wing (Re),* 2019 ONSC 4063 (CanLII). [↑](#footnote-ref-60)
61. *Chambre de la sécurité financière* c. *Thibault*, 2016 QCCA 1691. [↑](#footnote-ref-61)
62. *Ibid*. [↑](#footnote-ref-62)
63. Exhibit I-8. [↑](#footnote-ref-63)
64. *Curateur public du Québec* c. *Brassard*, 2021 QCCS 3646. [↑](#footnote-ref-64)
65. Exhibit I-8. [↑](#footnote-ref-65)
66. See paragraph [31]. [↑](#footnote-ref-66)
67. *Canada (Minister of Citizenship and Immigration)* v. *Vavilov*, supra, note 16, para.126. [↑](#footnote-ref-67)
68. *Ibid*, paras. 102 to 104. [↑](#footnote-ref-68)
69. *Ibid*, paras. 105 to 107. [↑](#footnote-ref-69)
70. *Ibid*, para. 122. [↑](#footnote-ref-70)
71. *Castonguay (Re*), 2012 OCRCVM 42 (CanLII), para. 14, *Re Jones*, 2020 OCRCVM 29 (CanLII), Robert Sharpe and Kent Roach, *Charter of Rights and Freedoms*, 6th edition, 2017, pages 103 and 108. See also *Derivative Services Inc. and Malcolm Robert Bruce Kyle* v. *Investment Dealers Association of Canada*, 2005 CanLII 18303 (ON SCDC), at paras. 58 to 61 and 88. [↑](#footnote-ref-71)
72. Sections 59 to 91 of the *Act respecting the regulation of the financial sector*. [↑](#footnote-ref-72)
73. *Knight v. Indian Head School Division No. 19*, 1990 CanLII 138 (SCC),[1990] 1 S.C.R. 653 [↑](#footnote-ref-73)
74. [IIROCSanctionGuidelines\_en.pdf (iiroc.ca)](about:blank). [↑](#footnote-ref-74)
75. *Pigeon* v. *Daigneault*, 2003 CanLII 32934 (QC CA), also included in *Beaudoin* v. *Autorité des marchés financiers*, 2019 QCCQ 2216. [↑](#footnote-ref-75)
76. *Re St-James*, 2021 OCRCVM 02, para. 61 et seq. [↑](#footnote-ref-76)
77. *Ordre des ingénieurs du Québec* v. *Gilbert*, 2016 QCCA 1323. [↑](#footnote-ref-77)
78. *Re Scerbo*, 2017 OCRCVM 57. [↑](#footnote-ref-78)
79. Re *Silvaggio*, 2011 OCRCVM 63. [↑](#footnote-ref-79)
80. *Re Giroux-Garneau*, 2016 OCRCVM 46. [↑](#footnote-ref-80)
81. *Re Chher*, 2011 OCRCVM 79. [↑](#footnote-ref-81)
82. Exhibit I-18, pp. 35 and 36. [↑](#footnote-ref-82)
83. Cartaway Resources Corp. (Re), [2004] 1 R.C.S. 672, 2004 CSC 26 [↑](#footnote-ref-83)
84. *Ibid.* [↑](#footnote-ref-84)
85. *Pigeon* v. *Daigneault*, 2003 CanLII 32934 (QC CA), also included in *Beaudoin* v. *Autorité des marchés financiers*, 2019 QCCQ 2216. [↑](#footnote-ref-85)
86. Paragraphs 59 and 60 of the sanction decision. [↑](#footnote-ref-86)
87. CQLR, c E-6.1. [↑](#footnote-ref-87)
88. CQLR, c. V-1.1. [↑](#footnote-ref-88)