**ALBERTA SECURITIES COMMISSION**

**DECISION**

**Citation: Re GRS Hydrogen Solutions Inc., 2025 ABASC 157** **Date: 20251201**

**GRS Hydrogen Solutions Inc. and Albert Eugene Cerenzie**

| | |
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| **Panel:** | Tom Cotter<br>Kari Horn, K.C.<br>Bryce Tingle, K.C. |
| **Representation:** | Peter Verschoote<br>Amanda Goodwin<br>for Commission Staff<br><br>Brendan Miller<br>for Albert Cerenzie |
| **Submissions Completed:** | January 24, 2025 |
| **Decision:** | December 1, 2025 |

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## I. INTRODUCTION

[1] In a Notice of Hearing (the **Notice**) dated August 25, 2023, staff (**Staff**) of the Alberta Securities Commission (the **ASC**) alleged that, from approximately December 2021 to May 2023 (the **Relevant Period**), GRS Hydrogen Solutions Inc. (**GRS**):

- contravened s. 110(1) of the *Securities Act* (Alberta) (the **Act**) by distributing securities of GRS (**GRS Shares**) without filing a prospectus and without an available exemption from the prospectus requirement for at least some of the distributions;

- contravened ss. 92(3)(b) and 92(4.1) by making representations that the GRS Shares would be listed on the Toronto Stock Exchange (the **TSX**), that an application had been made to list the GRS Shares on the TSX, and that an application would be made to list the GRS Shares on the TSX; and

- contravened s. 92(4.1) by making representations that GRS had entered into a contract with the ATCO Group or a related entity (collectively, **ATCO**) in relation to the production or supply of hydrogen, electricity or methanol.

[2] According to the Notice, the alleged representations about the TSX and ATCO were made to investors and the general public on a GRS website (the **GRS Website**), in purported news articles that GRS created or helped create (the **GRS Articles**), and in communications with investors.

[3] The Notice also alleged that Albert Eugene Cerenzie (**Cerenzie** and, together with GRS, the **Respondents**) authorized, permitted, or acquiesced in GRS's contraventions.

[4] The merits hearing, during which we heard testimony and received documentary evidence, began on May 27, 2024. At the outset of the hearing, Cerenzie represented both Respondents. He was unable to attend the hearing on June 3, 2024, and the balance of the hearing was rescheduled. Before the hearing resumed, Cerenzie retained legal counsel to represent both Respondents and the hearing was further adjourned for three months. In September 2024, the Respondents' counsel sought, and was granted, unconditional leave to withdraw as counsel for GRS. Since that time, Cerenzie was represented by legal counsel while GRS was unrepresented.

[5] We received written and oral submissions from counsel for Staff and for Cerenzie, and we reserved our decision. We find that GRS contravened ss. 110(1), 92(3)(b), and 92(4.1) of the Act, and that Cerenzie authorized, permitted, or acquiesced in GRS's contraventions. Our reasons are set out below.

## II. INTERIM ORDER

[6] To protect the public interest, and with the Respondents' consent, the ASC issued an interim order (the **Interim Order**, cited as *Re GRS Hydrogen Solutions Inc.*, 2022 ABASC 167) on December 16, 2022. The Interim Order prohibited all trading in or purchasing of GRS Shares, though GRS remained able to repurchase or redeem GRS Shares. The Interim Order also prohibited the Respondents from using any prospectus exemptions contained in Alberta securities

laws and from engaging in investor relations activities, and required that the GRS Website remain disabled.

[7] The Interim Order was issued with an expiry date of December 16, 2023, and was extended on November 17, 2023 (*Re GRS Hydrogen Solutions Inc.*, 2023 ABASC 151) to remain in effect until the allegations in the Notice could be finally determined or otherwise concluded. The Interim Order therefore remains in effect pending a final determination of any sanction and cost-recovery orders.

## III. OVERVIEW

[8] In May 2021, Cerenzie incorporated GRS in Alberta with the assistance of a local law firm, McLeod Law LLP (**McLeod**), apparently planning to develop his patents into marketable clean-energy products and services. The evidence indicated that the Respondents planned that GRS would eventually conduct an initial public offering (**IPO**).

[9] Cerenzie was GRS's founder, sole director, president, and chief executive officer. He owned 80% of the outstanding GRS Shares, while Mark Miller (**Miller**), a resident of Prague in the Czech Republic, owned the remaining 20% of GRS shares. The evidence established, and we find, that Cerenzie was GRS's guiding mind.

[10] Cerenzie retained Kelly Kiser (**Kiser**) to conduct an online promotional campaign on behalf of GRS. As part of the services, Kiser and his team (the **Kiser Group**) created a new website for GRS – the GRS Website – and compiled information about GRS. That information found its way into the GRS Articles, some of which were available on the GRS Website and some of which were on other internet sites. The GRS Website included a section in which prospective investors could provide their contact information in an online form to request information about investing in GRS. Prospective investors who took this step communicated with various members of the Kiser Group, who guided them through the investment process and provided documentation.

[11] During the Relevant Period, GRS raised $282,500 by selling newly issued GRS Shares to approximately 17 investors, including at least three Alberta residents. GRS was not a reporting issuer and did not file a preliminary prospectus or a prospectus with the ASC (or elsewhere). Instead, the documentary evidence showed that the company purported to rely on the private issuer exemption pursuant to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**). At issue was the availability of that exemption for distributions of GRS Shares to approximately 12 investors, pursuant to which GRS raised $143,500.

[12] Various statements were made in GRS Articles available on the GRS Website, in GRS Articles available elsewhere, on other parts of the GRS Website, and in communications between Kiser Group personnel and investors. Some of those statements referred to listing on the TSX and to a contract with ATCO, and those statements were at issue.

## IV. PRELIMINARY MATTERS

### A. Onus and Standard of Proof

[13] In ASC enforcement proceedings, Staff bear the onus of proving the allegations on a balance of probabilities (*R. v. Ward*, 2022 ABASC 139 at para. 27). That standard requires an

assessment, based on "clear, convincing and cogent" evidence, of whether it is more likely than not that GRS breached Alberta securities laws as alleged, and whether Cerenzie authorized, permitted, or acquiesced in any such breaches (*F.H. v. McDougall*, 2008 SCC 53 at paras. 40-49).

**B. Investigative Interview Transcripts**

[14] Staff tendered transcripts from interviews conducted during their investigation. Consistent with the general practice in ASC proceedings, Staff provided the entire transcripts from those interviews, although Staff sought to rely only on certain "read-ins" from those transcripts.

[15] We agree with the statements about the admissibility and weight of transcript evidence in *Re Capital Alternatives Inc.*, 2007 ABASC 79 at paras. 338-342 (appeal dismissed *sub nom. Alberta Securities Commission v. Brost*, 2008 ABCA 326 at paras. 33-36):

> The Commission is not bound by the laws of evidence applicable in judicial proceedings (section 29(f) of the Act). The primary consideration in a proceeding such as this is whether evidence is relevant: section 29(e) of the Act calls on us to "receive that evidence that is relevant to the matter being heard". Having received that evidence, a hearing panel assesses such factors as its probative value and utility, and determines what, if any, weight to assign to it.
>
> Transcripts of investigative interviews are not the same as live testimony in the hearing room, and we treat them with some caution. There are several reasons for this.
>
> First, where a witness testifies before the hearing panel, the panel has the benefit of context: it is aware of the full sequence of questions and answers. This is not the case where only a portion of an interview is presented to the panel by way of transcript. Second, live testimony gives a hearing panel an opportunity not only to hear the questions and answers (which also appear in a transcript) but also to observe the speaker's tone and demeanour. These elements of live testimony can assist a decision-maker in understanding a witness' testimony and in assessing the credibility of the witness and the reliability of their evidence. That is not always the case with mere transcripts.
>
> Also importantly, witnesses giving live testimony can be cross-examined by opposing parties. Moreover, hearing panel members themselves not infrequently obtain clarification by asking a witness questions of their own. Live testimony can thus be tested and elucidated in a way that transcript evidence cannot.
>
> Depending on the manner in which an investigative interview is conducted, there can be other differences. In administrative hearings before the Commission, witnesses testify under oath or affirmation and expose themselves to serious consequences if they do not tell the truth. They are entitled to the benefit of legal counsel. These can be factors in assessing the reliability of testimony and the fairness of the process.

[16] One transcript entered into evidence came from a November 1, 2022 investigative interview of Cerenzie (the **Cerenzie Interview**), at which Cerenzie was not represented by legal counsel. Cerenzie also testified in person at the hearing.

[17] We entered into evidence transcripts from the interviews of investors **RD** and **AK** (for privacy reasons, we refer to the investors by their initials).

[18] Also in evidence was a transcript from a recorded telephone conversation between an individual identified as Charles Gregor (**Gregor**) and investor **AL** (and her spouse). Gregor was

described by the Kiser Group as an "IPO expert" from Goldman Sachs who was helping GRS with its IPO and listing.

## C. Credibility and Conflicting Evidence

### 1. Staff's Witnesses

[19] Staff called six witnesses: two ASC investigative Staff members (including the primary investigator, **Wilkinson**); two investors (AL and **MF**); Stewart Tighe (**Tighe**), a representative from ATCO; and David Chelich (**Chelich**), a representative from the TMX Group (which operates the TSX). Cerenzie testified in his defence, and adopted the evidence from the Cerenzie Interview.

[20] Staff's investigator witnesses summarized important aspects of their investigation, introduced documents obtained during that investigation, provided an analysis of GRS's banking and financial records, and relayed information from investors who did not participate in formal investigative interviews. Investor witnesses' testimony about their GRS investments was consistent with and corroborated by documents in evidence, as were the investigative interview transcripts of investors who did not testify. The evidence from Tighe and Chelich was also credible and consistent with other evidence.

[21] We found Staff's witnesses to be credible and reliable.

### 2. Cerenzie

[22] Cerenzie's evidence was frequently incoherent and inconsistent with documentary evidence. Cerenzie's responses to questions were often difficult to follow and understand, which was exacerbated by apparent lapses in memory of important dates and names of individuals centrally involved in GRS operations, including members of GRS's executive team.

[23] Cerenzie was regularly unresponsive to questions posed to him by Staff, during both the Cerenzie Interview and his testimony. To illustrate, when asked during the hearing whether he knew if Miller or other GRS contractors had reviewed certain GRS Articles, he responded: "Far as I know, they - - they were part of the contracts that we had in hand and that relates to the technology information in the contracts". He was also asked whether he hired Kiser and the Kiser Group to be GRS's investor relations team, to which he responded that "[t]hey told me what they could offer for the service."

[24] The confusion and incoherence of much of Cerenzie's hearing testimony made it difficult to rely on such evidence, as did the frequent inconsistencies between his hearing testimony and his evidence during the Cerenzie Interview, often touching on critical factual issues. For example, he insisted during the Cerenzie Interview that GRS had a written contract with ATCO, which Cerenzie had provided to his legal counsel to be sent to Wilkinson in response to a subpoena. However, in the hearing he seemed to accept that there was no written contract, but instead asserted an oral offer or commitment between the two companies.

[25] The overarching theme of Cerenzie's evidence concerning the distribution of GRS Shares was that he had delegated responsibility for that work to the Kiser Group and to GRS's counsel. Much of his evidence on that issue consisted of conjecture or speculation from information he learned during the course of the ASC investigation or from Staff's witnesses' testimony in the

hearing. His evidence was a reconstruction of events from what he came to understand in retrospect. For example, his evidence in Staff's cross-examination included the following:

> Q. So you told us this morning that McLeod Law was working with Mr. Kiser's team to help distribute the GRS shares; is that right?
> A. Through the information - - what I've learned and understand is through the process - - before a lawyer can do a shares purchase agreement, these other steps needed to be completed by an investor, and that is the accredited investor, the terms and condition, and NDA needed to be sign up from them. And then through the process, we - - there was no direction of asking, when they talked to the investors, what I know, that they asked for money, we weren't asking for money in that style of way, that the investor relationship, you know, looked after those steps with - -
> So between Kelly Kiser's team and this direction, I was told that the lawyer is going to do up a shares purchase agreement, and that was new to me. I wasn't sure what that was, but I learned what it is through the process of - - of - - of Mr. - - McLeod Law through Rishi that did the shares purchase agreement.
> Q. So Kelly Kiser told you the lawyer was going to do the share purchase agreement?
> A. Well, through - - what I was told is that through the information that Kelly Kiser provided to these shareholders, it was the lawyer's job to do the shares purchase agreement. He would write this up.
> Q. You didn't have any involvement with the lawyer drafting the share purchase agreement?
> A. No. I wasn't even sure what it was. I had no understanding related to that. I learned it from the last two years of what I've been going through. [emphasis added]

[26] Given these concerns with Cerenzie's credibility and the reliability of his evidence, we placed little to no weight on his evidence unless corroborated by other reliable evidence.

## V. ANALYSIS

### A. Illegal Distributions

#### 1. Allegation

[27] Staff alleged that GRS contravened s. 110(1) of the Act by distributing GRS Shares during the Relevant Period without a prospectus, or an available exemption from the prospectus requirement for at least some distributions.

#### 2. Parties' Positions

[28] Staff submitted that the GRS Shares were securities, and that there were trades and distributions of GRS Shares. Staff further argued that the only exemption on which GRS could have relied would be the accredited investor criteria under the private issuer exemption (discussed below), and that the requirements for using that were not met for most shareholders.

[29] GRS made no submissions. As discussed later in this decision, Cerenzie denied that he authorized, permitted, or acquiesced in any breaches by GRS. In so doing, Cerenzie made no submissions on the merits of these allegations against GRS, but stated only that he assumed for the purpose of his argument that the allegations against GRS were made out.

#### 3. Summary of Conclusion

[30] For the reasons discussed below, we find that GRS breached s. 110(1) of the Act by raising $143,500 through its distributions of GRS Shares to 12 investors. Cerenzie, on behalf of GRS, hired Kiser to distribute GRS Shares. The Kiser Group did not take reasonable steps to ensure that investors met the criteria for the accredited investor category of the private issuer exemption. The

evidence was clear that several investors did not meet those criteria, and GRS did not meet its onus of proving that several others would have. GRS was responsible for those failures by the Kiser Group.

## 4. Legal Principles

[31] Section 110(1) of the Act provides:

> [n]o person or company shall trade in a security on the person's or company's own account or on behalf of any other person or company if the trade would be a distribution of the security unless
>
> (a) a preliminary prospectus has been filed and the Executive Director [of the ASC (the **Executive Director**)] has issued a receipt for it, and
>
> (b) a prospectus has been filed and the Executive Director has issued a receipt for it.

[32] Panels in previous ASC decisions have set out the elements Staff must prove to establish a breach of s. 110(1). For example, the panel in *Re Global 8 Environmental Technologies, Inc.*, 2015 ABASC 734 at para. 496 stated (also see *Re Aitkens*, 2018 ABASC 27 at para. 148):

> Thus, to find a contravention of section 110(1) of the Act we must conclude from the evidence that:
>
> - there was a security as defined in the Act;
> - there was a trade as defined in the Act by a person or company in relation to that security;
> - there was a distribution as defined in the Act of that security;
> - a prospectus was not filed and receipted for that distribution of securities; and
> - no prospectus exemption was available.

[33] Section 1(ggg) of the Act contains a broad definition of "security", including any "share" (in s. 1(ggg)(v)).

[34] Under s. 1(jjj) of the Act, a "trade" includes "any sale or disposition of a security for valuable consideration" and "any act, advertisement, solicitation, conduct or negotiation made directly or indirectly" in furtherance of a trade (such as collecting and depositing money from investors, meeting with prospective investors, providing documentation to prospective investors, and preparing and disseminating marketing material). A prospective sale does not have to be concluded for it to fall under this definition.

[35] Under s. 1(p) of the Act, a trade is a "distribution" if it is "a trade in securities of an issuer that have not been previously issued".

[36] Staff have the onus of proving that respondents distributed a security without a receipted prospectus, whereupon the onus shifts to respondents to show that they made "reasonable, serious effort – or [took] whatever steps were reasonably necessary – to satisfy themselves that the exemption was available" at the time of the distribution (*Re Robinson*, 2013 ABASC 203 at para. 151; *Re Homerun International Inc.*, 2015 ABASC 990 at para. 83 (***Homerun (Merits)***). It

is insufficient if only some, but not all, trades within a distribution met the conditions for the claimed exemption, and one may not "assume or hope that an exemption was available" (*Re Cloutier*, 2014 ABASC 2 at para. 308; *Ward* at para. 75).

[37] GRS relied on the private issuer exemption, which permits the distribution of a private issuer's securities to certain categories of purchasers without a prospectus. One such category is an accredited investor, defined in s. 1.1 of NI 45-106 to include an individual who meets one of three tests:

- the individual, either alone or with a spouse, beneficially owns financial assets – including cash or securities but excluding a personal residence – with an aggregate realizable value that exceeds $1 million (before taxes but net of any related liabilities) (the **Financial Assets Test**);

- the individual's net income before taxes in each of the two most recent calendar years exceeded $200,000, or exceeded $300,000 when combined with a spouse's net income, with a reasonable expectation (in either case) of exceeding that income level in the current calendar year (the **Income Test**); or

- the individual, either alone or with a spouse, owns net assets of at least $5 million (the **Net Assets Test**).

[38] Guidance on the interpretation and application of the various prospectus exemptions, including the private issuer exemption, is found in Companion Policy 45-106CP *Prospectus Exemptions* (the **Companion Policy**). In particular, s. 1.9 of the Companion Policy provides that a person relying on a prospectus exemption is responsible for determining whether the terms and conditions of the exemption were met, and should retain all documents necessary to demonstrate compliance with the exemption.

[39] The Companion Policy also provides that a seller who is distributing securities to accredited investors pursuant to the private issuer exemption should obtain information to confirm whether the prospective purchaser meets the criteria for the exemption before discussing investment details. Sellers are expected to ask questions about a purchaser's financial circumstances to ascertain the purchaser's income or assets (as the case may be). Such information is often verified by an investor in documentation provided by a seller, including a **Subscription Agreement**. However, it is not enough to rely solely on standard representations in a Subscription Agreement, a statement that "I am an accredited investor", or a purchaser's initials beside a category on a **Risk Acknowledgement Form** (Form 45-106F9 *Form for Individual Accredited Investors*). The seller should go beyond surface statements or formalities and take "reasonable steps to verify the representations made by the purchaser" (Companion Policy, s. 1.9(3)). Examples of reasonable steps are set out in the Companion Policy (s. 1.9(4)):

> Described below are procedures that a seller could implement in order to reasonably confirm that the purchaser meets the conditions for a particular exemption. Whether the types of steps are reasonable will depend on the particular facts and circumstances of the purchaser, the offering and the exemption being relied on, including:

- how the seller identified or located the potential purchaser
- what category of accredited investor or eligible investor the purchaser claims to meet
- what type of relationship the purchaser claims to have and with which director, executive officer, founder or control person of the issuer
- how much and what type of background information is known about the purchaser
- whether the person who meets with, or provides information to, the purchaser is registered

> We expect a seller to be in a position to explain why certain steps were not taken or to be able to explain how alternative steps were reasonable in the circumstances. It is the seller that is relying on the prospectus exemption and it is the seller that is responsible to ensure the terms of the exemption are met. If the seller has any reservations about whether the purchaser qualifies under the exemption, the seller should not sell securities to the purchaser in reliance on that exemption.

[40] Further, the Companion Policy reinforces that the seller is responsible for intermediaries acting on its behalf, including any employee, officer, director, agent, or other intermediary (whether registered or not). As stated by an ASC panel in *Robinson* (at para. 168), "[i]t is the seller's responsibility to take sufficient care in providing the requisite instruction and supervision of their agents". Specifically, the seller is expected to confirm that its intermediaries understand the terms and conditions of any exemption being relied on by the seller, and that they are able to describe the exemption to purchasers and know how to demonstrate compliance with the applicable requirements (Companion Policy, s. 1.9(4)(b)).

## 5. Facts Relevant to Alleged Illegal Distribution

### (a) GRS Retains Kiser

[41] In December 2021, Miller introduced Cerenzie to Kiser for the purpose of beginning "the process for raising the needed capital for GRS as we discussed". Cerenzie was unfamiliar with Kiser or his background, but understood that he was based in the Czech Republic and that he had a connection with some of Cerenzie's European consultants.

[42] Cerenzie stated that, following a call with Kiser, during which he was told that the Kiser Group had experience raising capital for private companies, Cerenzie retained Kiser to undertake an online promotional campaign for GRS, which included raising capital from investors by selling GRS Shares. Cerenzie understood that GRS would be relying on the private issuer exemption under NI 45-106 by selling to accredited investors, although it was unclear whether Cerenzie discussed this exemption with Kiser or the measures by which the Kiser Group would comply with Alberta securities laws. Based on Cerenzie's evidence that he had "learned" the Kiser Group had someone looking after securities compliance, we inferred that he did not engage in serious discussions about securities law compliance with Kiser in their call in December 2021. We are satisfied that when Cerenzie realized the ASC was investigating GRS's market activities, he then became aware of a Kiser Group employee ostensibly engaged in regulatory compliance.

### (b) GRS Website

[43] Soon after being hired by GRS in December 2021, the Kiser Group began development of the GRS Website, which became the primary marketing tool used to attract prospective investors. Investors stated that they discovered the GRS Website as early as April 2022 while conducting online searches for potential investment opportunities involving renewable-energy or hydrogen companies.

### (c) Kiser Group's Interactions with Investors

[44] The GRS Website allowed visitors to provide their contact details to obtain more information about GRS and the investment opportunity. Those who did were contacted via email from Kiser Group representatives, who communicated with prospective investors primarily through a series of standardized emails.

[45] An initial email from the Kiser Group highlighted "key features" of the GRS investment opportunity. That communication was quickly followed by another email outlining the step-by-step process to invest in GRS, which directed prospective investors to complete an account-opening form on the GRS Website. That form required prospective investors to provide certain information, including their names, contact details, and the amounts they wanted to invest. There was an option to disclose their salary and their current investment holdings.

[46] Once the online account form was submitted, many prospective investors received an email from someone identified as a GRS compliance officer. The email requested prospective investors to upload a scan of their photo identification and a current bill confirming their residential address, and told investors that they would be informed whether their account was approved but that any questions about their trade should be directed to their advisors, as "[w]e will not answer any questions in relation to your trade".

[47] In a subsequent email, prospective investors were sent four documents:

- a "Terms and Conditions" document (the **T&C**) relating to the sale of Class A voting GRS Shares;
- a "Mutual Non-Disclosure Agreement" (the **NDA**) between GRS and the GRS investor;
- an invoice; and
- payment instructions.

[48] The email stated that the T&C and NDA could be signed electronically. The ones sent to prospective investors were generally identical aside from the investor's name and the number of GRS Shares. While the T&C stated that GRS was relying on an exemption from the prospectus requirement, no particular exemption was identified nor was there any mention that prospective investors had to meet the accredited investor criteria (or other criteria) as a condition of their investments. The T&C also stated that it required prospective investors to disclose certain information, in part to determine their eligibility to purchase GRS Shares, but did not provide a means by which prospective investors could disclose such information.

[49] Aside from these emails, Kiser Group personnel answered questions from prospective investors by email or occasionally by telephone, and some prospective investors spoke with Gregor. None of these communications informed prospective investors about the private issuer exemption or the accredited investor criteria, or otherwise asked prospective investors to disclose financial information to confirm that they were accredited investors.

### (d) Capital Raised from Investors

[50] As noted, the evidence established that GRS raised $282,500 during the Relevant Period, with the illegal distribution allegation relating to $143,500 raised from 12 investors.

[51] There were two categories of investors. The first category consisted of the 12 investors on whose transactions Staff relied for the illegal distribution allegation (consistent with Staff's submissions, we are treating one couple as a single investor – the **DMTs**). The second category consisted of four investors who were shown to be accredited investors and who Staff did not include as part of the illegal distribution allegation (again, we are treating one couple as a single investor – the **DWs**). Evidence from this second category was not directly relevant to the illegal distribution allegation but did support the conclusions we drew about the Respondents' interactions with the first category. The evidence from those investors was also relevant to the other allegations.

[52] The Respondents did not tender any evidence showing that GRS had taken reasonable steps to determine whether any of the investors met the criteria for the private issuer exemption.

[53] The following summary outlines the pertinent evidence about GRS Share purchases by the 12 investors for whom Staff alleged illegal distributions:

- **BE** (an Ontario resident)
  - Two purchases in BE's name – payments made on April 14 and May 27, 2022 totalling $36,000 for 10,000 GRS Shares.
  - A Subscription Agreement was signed on June 7, 2022.
  - His Subscription Agreement indicated that he met the Income Test, but BE told Wilkinson that he was not an accredited investor.

- **UM** (an Alberta resident)
  - Three purchases in UM's name – payments made on April 28, May 12 and May 30, 2022 totalling $17,500 for 4,500 GRS Shares.
  - A Subscription Agreement was signed on May 31, 2022.
  - His documentation indicated that he met the Income Test, but there was no other evidence about his status.

- **AH** and **HH** (both Ontario residents)
  - Three purchases in AH's name – payments made on May 3 and May 5, 2022 totalling $5,000 for 1,000 GRS Shares.
  - One purchase made in HH's name – payment of $30,000 made on June 14, 2022 for 10,000 GRS Shares.
  - Two Subscription Agreements were signed on June 17, 2022.
  - Their respective documentation indicated that each met the Income Test, but there was no other evidence about their status.

- AK (an Alberta resident)
  - One purchase in AK's name – payment of $10,000 made on May 12, 2022 for 2,000 GRS Shares.

- A Subscription Agreement was signed on May 31, 2022.
- His Subscription Agreement indicated that he met the Income Test, but AK told Wilkinson that he was not an accredited investor.

- **MM** (residence not in evidence)
  - One payment of $3,000 made by MM on September 2, 2022 for an unknown number of GRS Shares.
  - Wilkinson testified that he was "almost certain" MM said that he did not qualify as an accredited investor.

- **AG** (an Ontario resident)
  - One payment of $7,500 made by AG on September 13, 2022 for at least 1,000 GRS Shares.
  - Wilkinson testified that AG told him that she was not an accredited investor.

- **MF** (an Ontario resident)
  - MF made three payments totalling $5,000 on August 1, 2022 for 1,000 GRS Shares.
  - MF testified that he was not an accredited investor and did not sign any documentation other than the T&C and NDA.

- **GF** (an Ontario resident)
  - GF made two payments totalling $8,000 on September 14 and October 4, 2022 for 2,000 GRS Shares.
  - There was no evidence as to whether GF was an accredited investor or signed any documentation.

- **DMTs** (Alberta residents), **AT** (an Ontario resident), and **RS** (an Ontario resident)
  - Bank records in evidence showed payments into GRS's bank account for $5,000 from the DMTs on June 30, 2022, $10,000 from AT on September 16, 2022, and payments totalling $6,500 from RS on September 2 and 12, 2022. Notes for the transactions referenced a unique code that was apparently used by the Kiser Group to identify purchasers of GRS Shares. We are satisfied that these transactions were all purchases of GRS Shares.
  - There was no share purchase documentation for any of these investors (other than the banking information mentioned), and no evidence as to whether any of them were accredited investors.

[54] The following summary outlines evidence about GRS Share purchases by the four investors who were accredited investors and for whom Staff did not allege illegal distributions:

- **AL** and her spouse (Alberta residents)
  - Two purchases in AL's name – payments made on April 11 and May 18, 2022 totalling $21,000 for 5,000 GRS Shares.
  - A Subscription Agreement was signed on May 31, 2022.

- AL testified that the couple met the Financial Assets Test, although the Income Test was marked on the Subscription Agreement.

- **RD** (an Ontario resident)
  - Two purchases in RD's name – payments made on June 6 and July 14, 2022 totalling $42,000 for 10,000 GRS Shares.
  - A Subscription Agreement was signed on June 17, 2022 reflecting only the June 6 investment.
  - RD told Wilkinson that he was an accredited investor, and his Subscription Agreement indicated that he met the Financial Assets Test.

- **DWs** (Ontario residents)
  - Two purchases – payments made on April 26 and May 16, 2022 totalling $50,000 for 14,000 GRS Shares.
  - Two Subscription Agreements were signed on May 31, 2022.
  - Wilkinson testified that the DWs told him that they were accredited investors, and their Subscription Agreements indicated that they both met the Income Test.

- **SH** (an Ontario resident)
  - Two purchases in SH's name – payments made on May 16 and May 25, 2022 totalling $26,000 for 6,000 GRS Shares.
  - A Subscription Agreement was signed on May 31, 2022.
  - Wilkinson testified that SH told him that he was an accredited investor, and his Subscription Agreement indicated that he met the Income Test.

**(e) Subscription Agreements**

[55] Investors who bought GRS Shares before June 14, 2022 were sent a Subscription Agreement. These Subscription Agreements were dated from May 31, 2022 to June 17, 2022 and electronically signed by Cerenzie on behalf of GRS. We had no evidence that investors who bought GRS Shares after June 14, 2022 were sent Subscription Agreements or were asked about the accredited investor criteria.

[56] The Subscription Agreements contained terms similar to those in the T&C, with additional provisions that referenced the private issuer exemption and the accredited investor criteria. In particular, the Subscription Agreements included a statement confirming the respective investor's status as an accredited investor within the meaning of NI 45-106 and that the investor would complete a representation letter (the **Representation Letter**) in a form attached to the Subscription Agreement.

[57] Each Representation Letter included a representation that each investor was an accredited investor within the meaning of NI 45-106, and referred to three appendices. The first appendix listed the various accredited investor categories – including those for the Financial Assets Test, the Income Test, and the Net Assets Test – and instructed investors to mark their initials beside the applicable category. Those who met the Financial Assets Test, the Income Test, or the Net

Assets Test were instructed to complete the Risk Acknowledgement Form in the second appendix and the Accredited Investor Questionnaire in the third appendix (the **Questionnaire**).

[58] The Risk Acknowledgement Forms similarly instructed investors to initial the applicable category. This document stated that GRS was responsible for ensuring that the investor was an accredited investor, and provided a contact name and telephone number for a representative "who meets with, or provides information to, the purchaser with respect to making this investment".

[59] The Questionnaire required investors to initial the applicable range of income or assets for the Income Test, the Financial Assets Test, or the Net Assets Test.

[60] Cerenzie claimed that the Subscription Agreements were prepared by the McLeod law firm, which worked with the Kiser Group to coordinate GRS's share distribution. Cerenzie acknowledged that he left it to the Kiser Group and McLeod to ensure compliance with the accredited investor criteria, and that he had been told the Kiser Group sent investors the T&C and NDA, along with another document related to accredited investors, which would then be provided to McLeod so that investors' information could be used to prepare the Subscription Agreements. He was also told that "it was the lawyer's job" to provide the Subscription Agreements, stating that this was "new to me" and that he had no involvement with the preparation of Subscription Agreements. As discussed below, we conclude that McLeod was not involved with the Subscription Agreements, prospective investors, or the distribution of GRS Shares.

[61] The evidence indicated that investors electronically signed the Subscription Agreements and attachments without any discussion about the private issuer exemption or whether they were accredited investors. In at least two instances, investors could not accurately complete their Subscription Agreements because the documents indicated that they met the Income Test when the investors instead qualified under the Financial Assets Test. For example, AL testified that her Subscription Agreement had been pre-populated with initials that were not hers and incorrectly indicated that she met the Income Test. She was unable to change that to reflect that she and her spouse met the Financial Assets Test. AL contacted a Kiser Group representative, who told her that the "form was filled out based on the account opening form . . .. It is not an issue that will affect your investment . . .. All is fine to sign as is . . .". AL testified that she then signed the Subscription Agreement despite the errors.

[62] RD also received a Subscription Agreement stating that he met the Income Test, and he was unable to change that to indicate that he instead met the Financial Assets Test. After he electronically completed the forms, RD sent an email to a Kiser Group representative to request that the documents be corrected to indicate that he met the Financial Assets Test, not the Income Test.

### 6. Analysis of GRS's Distribution

[63] The Respondents did not dispute that the GRS Shares were securities, that those securities were traded (actual sales of shares and acts in furtherance of such sales), and that the trades were distributions. We find that Staff proved all three of those elements.

[64] As there was no filed prospectus and no receipt issued, the remaining issue was whether there was an available exemption for the impugned distributions of GRS Shares. As GRS relied on the private issuer exemption and the investors' purported status as accredited investors, we needed to determine whether GRS complied with the terms and conditions of the private issuer exemption, including whether GRS took reasonable steps to ensure that the GRS Shares were issued to accredited investors.

[65] Staff did not dispute, and the evidence demonstrated, that GRS was a private issuer – it was not a reporting issuer or an investment fund, it had fewer than 50 shareholders, and its shares were subject to transfer restrictions.

[66] We are satisfied from the evidence that GRS did not properly rely on the private issuer exemption. As mentioned, at least five investors did not meet the accredited investor criteria, and there was insufficient evidence of whether several other investors were accredited investors.

[67] Our conclusion is supported by other evidence, including communications with prospective investors by the Kiser Group (including an ostensible compliance employee), none of which indicated that prospective investors had to meet one of the accredited investor criteria. While the online account-opening form allowed prospective investors the ability to provide some financial information that might have assisted in assessing whether they met the accredited investor criteria, there was no evidence that purchasers provided that information. Ultimately, anyone was able to participate in the GRS Share distribution regardless of financial circumstances, as neither GRS nor the Kiser Group took reasonable steps or had any basis to determine whether any investors were accredited investors at the time of the GRS Share distributions.

[68] The subsequent delivery of Subscription Agreements did not correct the failure of GRS or the Kiser Group to undertake reasonable inquiries of investors' financial circumstances. Such documentation was provided to a limited subset of investors – and only after they had paid for their GRS Shares – without any steps taken to ascertain whether these investors understood the accredited investor criteria and accurately completed their documentation. To the contrary, the documentation for at least two investors indicated that they met the accredited investor criteria when they did not, and another two investors were unable to complete the documentation to accurately reflect the applicable accredited investor category. That a Kiser Group representative encouraged an investor to sign incorrect documentation because it did not affect her investment was illustrative of the Kiser Group's approach to regulatory compliance.

[69] Therefore, investors bought GRS Shares without specific instruction regarding the investment requirements or criteria and without GRS (through the Kiser Group) taking reasonable steps to ascertain whether investors satisfied those conditions. The Kiser Group's lack of attention and diligence failed to meet the standard expected of market participants who seek to rely on a prospectus exemption.

[70] GRS was responsible for ensuring that the distribution of GRS Shares complied with the terms and conditions of the private issuer exemption on which it purported to rely. GRS could not absolve itself of responsibility by delegating its private placement process to the Kiser Group without any supervision and reasonable assurances that they understood the exemption and were

ascertaining whether investors met the accredited investor criteria at the time of the distribution. Cerenzie knew that the Kiser Group was in the Czech Republic, which elevated his responsibility to ensure that they properly understood and complied with the exemption relied on by GRS for the private placement.

[71] Cerenzie claimed that he hired the Kiser Group to follow a plan established by GRS's lawyer at McLeod. We reject that contention. There was no other evidence of any involvement by McLeod in such a plan and, as noted earlier, we could not rely solely on Cerenzie's testimony without more. Cerenzie's evidence on that point was, in fact, contradicted by an email in evidence from a McLeod lawyer stating that McLeod had been engaged to incorporate GRS and "potentially assist with GRS' plan to 'go public' at some point in the future", but the firm was not otherwise involved in or consulted "in any material respect with regards to GRS' future plans and processes" following GRS's incorporation. Finally, Cerenzie acknowledged that he was essentially uninvolved in the distribution of GRS Shares after he retained the Kiser Group, and there was no corroborating evidence to indicate that McLeod had been retained to supervise GRS's private placement or ensure that it complied with Alberta securities laws.

[72] Cerenzie testified that McLeod prepared the Subscription Agreements for GRS's distribution. As well as the previously mentioned email from McLeod which contradicted that claim, there was no evidence supporting Cerenzie's claim, and we reject Cerenzie's evidence on that point. However, even if McLeod had prepared the Subscription Agreements, the preparation of such documents and their delivery to some investors would not have discharged GRS's responsibility to ensure adherence to the private issuer exemption.

[73] For these reasons, we find that GRS distributed GRS Shares with no prospectus and no exemptions to 12 investors for $143,500 during the Relevant Period, contrary to s. 110(1) of the Act.

## B. Prohibited Representations and Misrepresentations

### 1. Allegations

[74] Staff alleged that GRS:

- breached ss. 92(3)(b)(i), (ii), and (iii) of the Act by making representations that GRS would list, had applied to list, or would apply to list the GRS Shares on the TSX;
- breached s. 92(4.1) by making representations that GRS would list, had applied to list, or would apply to list the GRS Shares on the TSX; and
- breached s. 92(4.1) by making representations that GRS entered into a production or supply contract with ATCO.

### 2. Parties' Positions

[75] Staff submitted that:

- the alleged representations about listing on the TSX were prohibited representations by GRS because GRS made those statements without the required permission, approval, or consent from the Executive Director or the TSX;

- the alleged representations about listing on the TSX were misrepresentations by GRS because GRS knew or reasonably ought to have known that those statements were materially misleading or untrue and that they would reasonably have been expected to have a significant effect on the market price or value of the GRS Shares; and

- the alleged representations about a contract with ATCO were misrepresentations by GRS because GRS knew or reasonably ought to have known that those statements were materially misleading or untrue and that they would reasonably have been expected to have a significant effect on the market price or value of the GRS Shares.

[76] GRS took no part in the hearing and made no submissions on these allegations.

[77] As discussed later in this decision, Cerenzie denied that he authorized, permitted, or acquiesced in any breaches by GRS. In so doing, Cerenzie made no submissions on the merits of these allegations against GRS, but stated only that he assumed for the purpose of his argument that the allegations against GRS were made out.

### 3. Summary of Conclusion

[78] For the reasons discussed below, we find that:

- GRS made representations that it would list, had applied to list, or would apply to list the GRS Shares on the TSX (the **TSX Representations**);

- GRS made representations that it had a contract with ATCO (the **ATCO Representations**);

- in making the TSX Representations, GRS breached ss. 92(3)(b)(i), (ii), and (iii) of the Act; and

- in making the TSX Representations and the ATCO Representations, GRS breached s. 92(4.1).

### 4. Facts Relevant to Alleged Representations

#### (a) Kiser Group

[79] In December 2021, Cerenzie hired the Kiser Group to undertake a marketing campaign on behalf of GRS and to manage GRS's investor-relations activities. The focal point for the campaign was the GRS Website, which was created, updated, and maintained by the Kiser Group. Cerenzie and Miller had input into the GRS Website, and we find below that Cerenzie had ultimate oversight and control over its content.

### (b) GRS Website

#### (i) Structure

[80] The GRS Website was active by at least early April 2022 when it was accessed by prospective investors, and it remained active until at least November 2022. In evidence were various screenshots from the GRS Website, as well as "web preserver documents" generated by Staff using an online tool that collects and preserves website information at a particular point in time. The screenshots and web preserver documents showed content from the GRS Website as at June 17, August 23, and November 3, 2022.

[81] In both the hearing and the Cerenzie Interview, Cerenzie minimized his and GRS's connection with the GRS Website, stating that it "was not a GRS website" and that it was "a GRS website but not our website". He claimed that GRS did not control the GRS Website and that he could only request changes because the Kiser Group controlled the server that hosted the GRS Website.

[82] Despite these protestations, Cerenzie acknowledged that GRS was responsible for the information on the GRS Website. He admitted that he sent Kiser information about GRS's contracts and projects to be added to the GRS Website, and that the Kiser Group prepared and sent GRS Articles and other information to him or others (such as Miller) before they were added to the GRS Website. Cerenzie said that he was familiar with the content on the GRS Website, and that he would note any issues and ask the Kiser Group to make the appropriate changes, including removing content.

[83] Further, Cerenzie claimed that he spoke with Kiser about once every three or four weeks, at least until September 2022 when he was alerted by his legal counsel at McLeod about certain statements on the GRS Website. Cerenzie realized that "a couple of the news stories they put out weren't exactly true", at which point he was talking with the Kiser Group "pretty much . . . every second day because I had to change stuff, what they were writing. I had to say, No. This is wrong." He also instructed the removal of references on the GRS Website to a TSX listing in response to Staff's request.

[84] GRS also paid the Kiser Group more than $130,000 during the Relevant Period – presumably Cerenzie could have stopped these payments had he disapproved of the Kiser Group's actions, including what the Kiser Group did with the GRS Website.

[85] Accordingly, we find that Cerenzie, on behalf of GRS, had, and exercised control over the content of the GRS Website.

#### (ii) GRS Articles on GRS Website

[86] Five GRS Articles were posted on the GRS Website (the **GRS Website Articles**). This was promotional material designed to appear to prospective investors as objective journalistic content. Cerenzie said that the Kiser Group added the articles to the GRS Website after sending them to him and to others.

[87] Three of the GRS Website Articles were "embedded" in the GRS Website as of August 23, 2022. These three articles each showed a publication source, author, and publication date, along with a box marked "Read":

- "GRS Hydrogen Solutions Founder Receives Highest Award From the World Energy and Environment Council", dated November 16, 2021 (the **Award Article**) (content from this article was not in evidence);

- "GRS Hydrogen Solutions, Bringing Forward a Green Future", dated December 22, 2021 (the **Green Future Article**); and

- "GRS Hydrogen Solutions Opens an Office in the Prague Stock Exchange", dated January 12, 2022 (the **Prague Office Article**).

[88] The Green Future Article was ostensibly published by the "Toronto Star Finance". The article stated, in part:

> Privately held GRS Hydrogen Solutions has announced its intention to go public in 2022. According to Charles Gregor, of Goldman Sachs, who is "heading up the Investor relations [team] for GRS," this Canadian-based renewable energy company is planned to list on the Toronto Stock Exchange (TSX)[.]
>
> If GRS and Charles Gregor can bring this company public via a successful IPO in 2022, it will result in a great step forward in the use of hydrogen as a fuel for electrical generation, transportation, and industry.

[89] The Prague Office Article was ostensibly published on "canadaglobal.news". It stated, in part:

> Second, to strengthening local relations is GRS Hydrogen Solutions planned listing on Prague's Stock Exchange. . . . Prague has an ever-increasing economy and, therefore, the right choice for a planned GRS listing on the European Exchange.
>
> . . .
>
> According to GRS, Prague may not be the only stock exchange listing that they are in the process of seeking. GRS has informed us that they have the intention to list on Canada's Toronto Stock Exchange (TSX) as well and have already begun the process of assembling the needed paperwork to do so.

[90] Although we have our doubts about the origin of these articles, their origin was irrelevant. As discussed below, the salient point is that they were on the GRS Website and thus they contained representations made by GRS.

[91] The other two GRS Website Articles were in a "Press" section of the GRS Website as of November 3, 2022 (the three already discussed were in that section as well). These last two titles were: "Caribbean Island goes green with GRS Hydrogen Solutions Inc Green Hydrogen Power Plant" (the **Caribbean Article**); and "GRS Hydrogen Solutions Sign with European Union Green Hydrogen Program" (the **EU Green Article**). Wilkinson described these articles as available by

links on the GRS Website. The content of the Caribbean Article and the EU Green Article was not in evidence.

[92] Of the five GRS Website Articles, we find that the statements in the Green Future Article and the Prague Office Article about listing on the TSX were TSX Representations. These statements were directly available to prospective investors on the GRS Website and, therefore, we consider them to have been made by GRS. As no content was in evidence from the Award Article, the Caribbean Article, or the EU Green Article, we do not discuss those three any further.

#### (iii) Other Representations on GRS Website

[93] In addition to the relevant statements in the Green Future Article and the Prague Office Article, the evidence showed other representations on the GRS Website at various times:

- On June 17, 2022, the "Investor-Relations" page of the GRS Website stated that GRS: "has begun the process of a public listing on the Toronto Stock Exchange in 2022"; and planned to make annual dividend payments of 8% "as a publicly-traded company". We find these two statements to be TSX Representations.

- On November 3, 2022, the "Investor relations" page of the GRS Website included the statements: "8% planned divided payment as a publicly-traded company"; and GRS "signs 18 year contract with ATCO energy company". We find the first statement to be a TSX Representation and the second statement to be an ATCO Representation.

- On November 3, 2022, the "FAQ" section of the GRS Website included the statement: "we are paying an 8% dividend payment annually to all shareholders after listing in 2022". We find that statement to be a TSX Representation.

### (c) Communications with Investors

#### (i) General

[94] In addition to the TSX Representations and the ATCO Representation on the GRS Website, we examined the information Kiser Group representatives told and gave to the investors for whom we had evidence.

#### (ii) TSX Representations

[95] An apparently standard email to prospective investors from the Kiser Group's Angela Colbert (**Colbert**), whose title was listed as "Investor relations GRS Hydrogen Group Inc.", outlined certain "key features of this fully regulated investment". The only feature relevant to the allegations was the "8% planned dividend payment as a publicly-traded company". Examples of this email in evidence were from Colbert on April 6, 2022 to JL, on April 24, 2022 to DW, on July 28, 2022 to MF, on May 12, 2022 to RD, and on August 4, 2022 to MM. We find that statement to be a TSX Representation.

[96] The Kiser Group's Heather Anderson (**Anderson**), who was identified as a personal assistant to Gregor, sent another standard email to prospective investors, including to AK on April 27, 2022 and to SH on May 8, 2022. The email stated in part (emphasis added):

> I suggest as part of your due diligence that you google search ' GRS Hydrogen Solutions' as well as "Charles Gregor IPO'. This way you have some third party source material to help you make an informed decision.
>
> I am one of the personal assistants to Charles Gregor. I am here to support you and answer any and all questions you may have in regards to this investment.
>
> We sold our first allocation at $2.50 in December 2021. That allocation sold out in 24 hours. We are currently selling our second allocation now at $5.00 per share. After this is sold out we will be doing one more allocation at $10.00 a share. We will then be listing on the TSX in Canada.

[97] Variations of this email from Anderson were sent to RD on May 13, 2022, to MF on July 28, 2022, and to MM on August 5, 2022. We find the underlined sentence ("We will then be listing on the TSX in Canada") to be a TSX Representation.

[98] We also found evidence of other TSX Representations made by Kiser Group personnel directly to investors:

- AL and her spouse had a conversation with Gregor on May 16, 2022, in which he stated that GRS would be listing on the TSX at the start of the fourth quarter, at which point GRS Shares would be "free trading".

- MF testified about various email communications he had with Anderson, and those emails were also in evidence. MF said that Anderson described Gregor as a "very seasoned IPO expert who was helping GRS bring . . . their company to IPO" by the end of 2022. Anderson also assured MF in a July 2022 email that his GRS Shares could be held in a tax-free savings account (**TFSA**) once listed on the TSX. In the same email, Anderson responded to MF's question about GRS's "potential listing date". She stated that GRS had "a timeline for our list date" but that she could not provide "the exact date at this time for legal reasons". MF testified that, despite that comment, it was "sufficiently clear" that the listing was expected to occur by the end of 2022.

- AK understood from his online research about the GRS investment opportunity that GRS was in the process of "an initial offering for shares to sell". He identified an April 27, 2022 email Anderson sent him, which included a statement that GRS would "be listing on the TSX" following the sale of the next tranche of GRS Shares. AK also stated that Anderson told him he could transfer his GRS Shares into a TFSA once GRS had listed on the TSX. In a May 19, 2022 email to AK, Anderson said she would arrange for AK to speak with Gregor, who would be able to discuss certain topics, including GRS's "list date".

- Wilkinson testified that RD told him that during a conversation with Gregor after his first investment, Gregor tried to convince RD to buy more GRS Shares. Anderson explained to RD that Gregor could address "the timeline of listing, how many shares have been issued and who owns them, some of our signed contracts and projected price at listing". RD recalled being told by Gregor that GRS would

go public by December 2022, that Gregor "would make sure that [RD's GRS Shares] got cashed out", and that the inherent value of the GRS Shares "was close to 10". RD was later told by Gregor and by Anderson that GRS was holding off on going public because the economy and the markets "were going down".

- Anderson told SH in a May 18, 2022 email that Gregor was available to provide him an update on various topics, including "the list date".

**(iii) ATCO Representations**

[99] Little was in evidence regarding statements made directly to prospective investors about ATCO. Staff noted that Gregor, in a May 16, 2022 telephone call with AL and her spouse, stated that GRS had an 18-year contract with ATCO, "worth 18 million annual rate". We find that statement to be an ATCO Representation.

**(d) Other GRS Articles – Not on the GRS Website**

[100] As mentioned, the Kiser Group typically recommended that prospective investors conduct online searches using certain search terms as part of their due diligence into GRS. Staff tendered into evidence several of these GRS Articles which were found by Wilkinson and other Staff members using such search terms. Staff relied on some of these as evidence of alleged representations.

[101] We have strong suspicions that some or all of these GRS Articles were not legitimate journalistic products and were intended to convince prospective investors that there was positive, independent commentary online about GRS. Despite those suspicions, we did not need to reach a conclusion on the provenance of those articles because the other evidence proved that GRS made the TSX Representations and the ATCO Representations. Therefore, we neither quoted from nor relied on statements from this category of GRS Articles.

**(e) Context of TSX Representations**

[102] Cerenzie stated that he intended when incorporating GRS in May 2021 that it would ultimately become a public company. He testified that he engaged McLeod to incorporate GRS and help with a plan for taking it public. No representative from McLeod testified. However, in an October 11, 2022 email to Staff, a lawyer at McLeod confirmed that McLeod was engaged "to potentially assist with [GRS's] plan to 'go public' at some point in the future", but McLeod had not been involved in a material way with GRS's "future plans and processes" since incorporation. Cerenzie said that "we" reached out to "different TXN [sic] Groups" to understand what was required and ensure that he covered "all the steps".

[103] On November 29, 2021, Cerenzie made an unsolicited call to Chelich, Head of Global Energy and Diversified Industries, Toronto Stock Exchange and TSX Venture Exchange. Chelich testified that he did not take any notes of their telephone conversation, nor could he recall specifics of their discussion. Chelich did say the conversation was "exploratory" in nature, and that he was essentially "in listening mode".

[104] Chelich followed up their telephone discussion with an email request to Cerenzie for some of GRS's investor materials, and suggested that they might schedule another call once he had a

chance to review those materials. Cerenzie provided certain GRS-related documents and asked Miller – who was included on the communication and introduced as GRS's "Manager Director/Shareholder" – to provide another document. Miller did so, advising Chelich that GRS was "preparing for an IPO plan next year once we check a few more boxes".

[105] Chelich testified that:

- The documents provided by Cerenzie and Miller were "technical" and not useful in assessing GRS's readiness for a listing application to either the TSX or the TSX Venture Exchange.

- GRS was not in a position to apply for a listing at that time (consistent with Miller's statement).

- Chelich had no further contact with Cerenzie or anyone else on behalf of GRS and did not know of any further communications between any representatives of the TSX or the TSX Venture Exchange and GRS, Cerenzie, or Miller.

- Although not recalling all the details of the interactions with Cerenzie, Chelich stated emphatically that he would not have told Cerenzie that GRS was approved to list on the TSX, nor would he have said that GRS had approval to make representations about a listing. There was no application for the former, and he had no authority for the latter.

[106] Chelich's testimony was truthful and reliable, and it was consistent with the limited documentary evidence on this point. Where Chelich's testimony conflicted with Cerenzie's testimony and the Cerenzie Interview, we had no hesitation accepting Chelich's over Cerenzie's.

**(f) Context of ATCO Representations**

[107] Cerenzie claimed that the ATCO Representations were accurate. He initially told Staff investigators during the Cerenzie Interview that GRS had signed an 18-year, natural gas supply contract with ATCO, which was "going to provide us this gas, they figured, in 11 months for the project". After the Cerenzie Interview, Cerenzie indicated – in both an email to Wilkinson and in his hearing testimony – that ATCO had verbally "committed" to an 18-year contract in response to GRS's request for a six-year gas contract.

[108] As part of its investigation, Staff requested that GRS produce any documents and records relating to its contract or agreement with ATCO. GRS did not provide a signed contract between GRS and ATCO. Instead, GRS provided Staff with various email communications from February 2022 between Cerenzie and ATCO personnel, along with certain property plans for lands located in the County of Grande Prairie. That information did not show a contract with ATCO. GRS also provided an "OffTake Methanol Agreement" dated July 7, 2022 between GRS and CFR Chemicals Inc., which ostensibly related to GRS's project with ATCO. However, ATCO was neither a party to that agreement nor mentioned in it. Those documents did not establish the existence of any contract between GRS and ATCO.

[109] Cerenzie's claim of a contract with ATCO was contrary to the testimony of Tighe. Tighe was Manager of Key Accounts for ATCO's natural gas utilities system during the Relevant Period, and Reed Thacker (**Thacker**) was an ATCO account manager who reported to Tighe. Tighe and the documentary evidence confirmed that ATCO and GRS had preliminary discussions about a natural-gas connection in the Grande Prairie region, but there was never a contract.

[110] In response to a request from another ATCO employee, Thacker introduced himself to Cerenzie in a February 4, 2022 email and asked for certain technical information in relation to Cerenzie's inquiries about a potential project. At an April 2022 meeting, ATCO provided GRS with a "high-level cost estimate" for a natural gas connection. At the time, ATCO told GRS that no infrastructure installation would begin until GRS executed a commitment agreement, and entered into a natural gas services agreement.

[111] In his testimony, Cerenzie seemed to consider ATCO's presentation at the April 2022 meeting as the basis for his claim of an 18-year contract, stating: "ATCO laid out a huge presentation, had ATCO's name on it with GRS's name trying to work out a plan. It states in there that they want to give an 18-year contract in that document." However, that document did not refer to a precise term for either of the two requisite agreements, nor was it a contract in itself.

[112] Cerenzie also referred to a conference call involving Thacker, and said that GRS had requested a six-year contract with ATCO but Thacker responded by indicating that ATCO would commit to an 18-year contract. Cerenzie did not give the date of that supposed call, and there was no evidence supporting Cerenzie's claim. We do not believe Cerenzie on this point.

[113] According to Tighe, Thacker did not indicate that he had made any contractual offer to GRS, nor was he authorized by ATCO to offer or execute an 18-year contract – or any service contract. Tighe also testified that GRS never entered into a commitment agreement or a natural gas service agreement with ATCO. In particular, Tighe said that once ATCO provided their high-level cost assessment, GRS and Cerenzie were directed to submit a service application through ATCO's portal (referred to as Quick Connect, or "QConnect"), but that step was not "fully completed" despite ongoing dialogue between Thacker and GRS.

[114] Documentary evidence corroborated Tighe's testimony, including that Thacker followed up with Cerenzie in September 2022 to reiterate the need for GRS to submit its service application through the Quick Connect portal. A few weeks later, Thacker again prompted Cerenzie to submit an application and inquired whether he required any support. Cerenzie stated in his response that he thought the application had been properly submitted, but Thacker again confirmed that GRS did not have an active application in the system. On October 20, 2022, Cerenzie sent Thacker a confusing email that referred to an 18-year, natural-gas-supply commitment and stated: "This is our contract between GRS & ATCO falls under QConnect". Tighe discussed this with Thacker, and although neither understood the basis for Cerenzie's reference to an 18-year commitment, they determined it was best to redirect Cerenzie to submit GRS's service application through ATCO's portal. That was conveyed by Thacker to Cerenzie in an October 21, 2022 email:

> I believe the intent was to view this email as a substitute for the required information we need in Quick Connect to properly process your site in Grande Prairie. Unfortunately, this won't suffice as we will require some more information on the job. . . .

[115] Tighe did not recall if there was any further discussion with GRS or Cerenzie. Tighe testified that when he learned of the statements on the GRS Website and in an online news article about an 18-year contract between GRS and ATCO, ATCO ceased further communications with GRS.

[116] Tighe's testimony was truthful and reliable, and it was consistent with the documentary evidence. We conclude that Cerenzie was either lying or mistaken when he contended there was an oral agreement or any other agreement, and we need not address that position further. Where Tighe's testimony conflicted with Cerenzie's testimony and the Cerenzie Interview, we had no hesitation accepting Tighe's evidence over Cerenzie's.

## 5. Discussion

### (a) Representations Made

[117] We found above that GRS made several TSX Representations and ATCO Representations.

### (b) Representations Made in Relation to Trades

[118] We are satisfied that GRS made the TSX Representations and the ATCO Representations, either directly or through the Kiser Group and those acting on its behalf. Kiser was hired by GRS precisely for the purpose of marketing GRS – including through investor relations activities via the GRS Website – and did so.

[119] The TSX Representations and the ATCO Representations were statements on the GRS Website, statements in GRS Website Articles, and statements made to investors orally and in writing. We earlier found that GRS traded in securities, both through actual sales and through acts in furtherance of such sales. The GRS Website and the other statements by GRS were intended to sell GRS Shares to investors, and such shares were sold. Accordingly, we find that the TSX Representations and the ATCO Representations were made in relation to trades in GRS Shares.

### (c) Alleged Prohibited Representations

#### (i) Legal Principles

[120] Section 92(3)(b) of the Act provides:

> (3) Subject to the regulations, no person or company, in relation to a trade in a security or derivative, shall
>
> . . .
>
> (b) except with the written permission of the Executive Director, make any representation
>
> (i) that the security will be listed on any exchange or quoted on any quotation and trade reporting system, unless the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the security, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation, or
>
> (ii) that application has been made to list the security on any exchange or to quote the security on any quotation and trade reporting system, unless

> (A) application has been made to list or quote the security on such exchange or quotation and trade reporting system and securities of the same issuer are currently listed on that exchange or quoted on that quotation and trade reporting system, as the case may be, or
>
> (B) the exchange or quotation and trade reporting system has granted approval to the listing or quoting of the security, conditional or otherwise, or has consented to, or indicated that it does not object to, the representation,
>
> or
>
> (iii) that application will be made to list the security on any exchange or to quote the security on any quotation and trade reporting system,
>
> . . .

[121] The purpose and scope of an earlier version of this provision were discussed by previous ASC panels in, respectively, *Re Limelight Entertainment Inc*, 2007 ABASC 710 (at para. 128) and *Re Smylski*, 2010 ABASC 320 (at para. 84) (also see *Re Global Social Capital Partners, Inc.*, 2016 ABASC 27 at paras. 77-78):

> This prohibition is directed at unauthorized representations that might induce investment in securities based on the prospect, frequently baseless, of a liquid market in which to trade them and possibly an increased value. Evidence of the words "going public" being used can sustain a violation of section 92(3)(b) when accompanied by cogent contextual evidence, including clear evidence of the investor's understanding that the words "going public" meant being listed on an exchange (see *Re Maitland Capital Ltd.*, 2007 ABASC 357 at paras. 163-165).
>
> . . .
>
> This provision is intended to protect investors by prohibiting representations that suggest an imminent liquidity event – a listing of securities on an exchange – which might be an attractive incentive to prospective investors. Such a statement is only permitted if it has prior regulatory approval, which, after regulatory review of all relevant facts, might be granted if there were some reasonable basis for such a representation.

### (ii) Assessment of TSX Representations

[122] We conclude that the TSX Representations found above meet all three categories alleged by Staff: that the GRS Shares would be listed on the TSX, that an application had been made to list them, and that an application would be made to list them. The TSX Representations included statements that GRS: intended "to go public in 2022"; would be listing on the TSX in the fourth quarter of 2022 and after the next tranche of GRS Shares was issued; "planned to list on the [TSX]"; "had begun the process of" listing on the TSX; and would be making dividend payments "as a publicly-traded company".

[123] Sections 92(3)(b)(i), (ii), and (iii) require the Executive Director's written permission before the particular type of listing representation can be made, even if the listing representations were true (which they were not here, as discussed below when addressing the s. 92(4.1)

allegations). The evidence was unequivocal that GRS did not have written permission (or, in fact, any permission) from the Executive Director to make any listing representations.

[124] Under ss. 92(3)(b)(i) and (ii), written permission from the Executive Director is not needed for, respectively, a representation that a "security will be listed on any exchange" and that "an application has been made to list the security on" an exchange if the exchange (here, the TSX) granted approval to the listing, consented to the representation, or indicated that it did not object to the representation. For s. 92(3)(b)(ii), the Executive Director's permission is also not required if securities of the same issuer are currently listed. The evidence was clear that the TSX did none of those things and that no securities of GRS were listed on the TSX. Accordingly, none of the exceptions in ss. 92(3)(b)(i) or (ii) applied.

[125] Therefore, Staff proved the elements required by ss. 92(3)(b)(i), (ii), and (iii) of the Act, and we find that GRS breached those sections. GRS's TSX Representations are precisely the types of statements at which s. 92(3)(b) is directed because GRS deliberately created expectations in the minds of investors that they would imminently have GRS Shares which could be traded on the TSX.

### (d) Alleged Misrepresentations

#### (i) Legal Principles

[126] Section 92(4.1) of the Act provides:

> (4.1) No person or company shall make a statement that the person or company knows or reasonably ought to know
>
> (a) in any material respect and at the time and in the light of the circumstances in which it is made,
>
> (i) is misleading or untrue, or
>
> (ii) does not state a fact that is required to be stated or that is necessary to make the statement not misleading,
>
> and
>
> (b) would reasonably be expected to have a significant effect on the market price or value of a security, a derivative or an underlying interest of a derivative.

[127] As stated by an ASC panel in *Aitkens* (at para. 134) (see also *Re Arbour Energy Inc.*, 2012 ABASC 131 at para. 753 and *Ward* at para. 135), to establish a s. 92(4.1) misrepresentation, Staff must prove that:

> (a) a statement was made by a respondent;
>
> (b) the respondent knew or reasonably ought to have known that the statement was, in a material respect, untrue or omitted a fact required to be stated or necessary to make the statement not misleading; [and]

(c) the respondent knew or reasonably ought to have known that the statement would reasonably be expected to have a significant effect on the market price or value of a security.

[128] The panel in *Aitkens* also set out helpful principles when assessing misrepresentation allegations (at paras. 137-139):

> . . . with respect to the element of materiality, a prior decision of an ASC panel noted that "[c]ommon-sense inferences . . . may suffice in certain cases" (*Arbour* at para. 764, citing *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23 at paras. 58 and 61). While investors' evidence with respect to the impact the information may have had on their investment decisions may be considered (see, for example, *Aurora* at para. 146), neither that evidence nor expert evidence on market price or value is required to meet the legal test (*Arbour* at paras. 763-66; see also *R. v. Zelitt*, 2003 ABPC 2 at paras. 32-34, distinguishing, *inter alia*, *R. v. Coglon*, [1998] B.C.J. No. 2573 (British Columbia Supreme Court)). That is because an ASC panel is itself an expert tribunal with the specialized knowledge and experience necessary to "draw inferences as to the objective view of a reasonable investor" (*Arbour* at para. 765).
>
> A hearing panel will find that a statement or omission would reasonably be expected to have a significant effect on the market price or value of a security if it can reasonably be concluded that the misrepresentation would influence an investor's decision to purchase the security and the price that investor would be prepared to pay for it. Stated another way, the determination is "whether there is a substantial likelihood that such facts would have been important or useful to a reasonable prospective investor in deciding whether to invest in the securities on offer at the price asked" (*Arbour* at para. 765, citing *Sharbern* at para. 61).
>
> A panel can find a breach of s. 92(4.1) even in the absence of proof that any particular investor relied on any particular misrepresentation or omission (*Arbour* at para. 768; see also *Re Cloutier*, 2014 ABASC 2 at para. 360):
>
> > Securities regulation does not focus on what the market or investors do with mandated information provided to them. Rather, the objective of securities regulation is to oblige those who seek money from public investors and the capital market to provide current, truthful and accurate information in prescribed formats, which can then be used by those in the capital market as a basis for making reasonably informed investment decisions. That a particular investor or investors may not read or rely on such information in making investment decisions does not relieve an issuer of its obligations to provide accurate and reliable information and to comply with Alberta securities laws when soliciting money from the public. . . .

### (ii) Assessment of TSX Representations

[129] We have concluded that the TSX Representations were that the GRS Shares would be listed on the TSX, that an application had been made to list them, and that an application would be made to list them.

[130] We find that, at the time GRS made the TSX Representations, the GRS Shares were not listed on the TSX, GRS had not made an application for such a listing, and there was not even a remote possibility that the GRS Shares would be listed on the TSX or that GRS would be making a legitimate application for such a listing.

[131] The TSX Representations were, therefore, clearly misleading or untrue (or both) – and materially so, given the importance of a listing or potential listing to prospective investors. They also omitted facts which would make the statements not misleading, such as qualifying statements that GRS faced numerous regulatory hurdles before it would be in a position to consider submitting a listing application, let alone a listing application with a prospect of success.

[132] We also find that the TSX Representations would reasonably have been expected to have a significant effect on the market price or value of the GRS Shares. In assessing the effect of an imminent listing of securities (by the end of 2022, according to the TSX Representations) on a reasonable prospective investor, we considered whether such an investor's decision would be influenced by that information – whether such information "would have been important or useful" (*Aitkens* at para. 138). The prospect that the GRS Shares would soon be listed on the TSX meant that investors would soon have the prospect of greater liquidity for their GRS Shares. A reasonable prospective investor would understand that an application for a listing is a complex procedure which takes some length of time. A reasonable prospective investor would also understand that a company can be listed only if it meets certain financial thresholds and if its directors and officers are considered suitable and qualified. Making representations about a listing, a listing application, or a future listing therefore conveys heightened standards of legitimacy, corporate governance, and success.

[133] Reinforcing our objective conclusion, there was convincing evidence that particular investors' decisions to buy GRS Shares at the price asked were influenced by the TSX Representations. AL and her spouse were very interested in Gregor's suggestion that they could sell half of their GRS Shares after the listing, which would allow them to recoup their initial investment and retain their remaining GRS shares. Although MF planned to hold his GRS Shares for the long term, he was pleased that the GRS Shares would be listed on the TSX by the end of 2022. He stated that "holding private shares is possibly one of the best ways of a little investor like me getting . . . involved in companies as soon as they . . . list on a stock exchange". MF and AK were each told that they could hold GRS Shares in TFSA accounts after the shares were listed, which would give them greater flexibility in their investment options. RD told Anderson in an email that his investment decision was influenced by his understanding that "the IPO would come out soon permitting a fast exit of cash".

[134] We find that GRS had the requisite knowledge: GRS knew or reasonably ought to have known that the TSX Representations were misleading or untrue, and that they would reasonably have been expected to have a significant effect on the market price or value of the GRS Shares. Cerenzie, as GRS's guiding mind, knew GRS had not applied for a listing, knew significant hurdles remained before GRS might be in a position to make a listing application, knew GRS might well never proceed with a listing application, and also knew that information would affect the value of the GRS Shares.

[135] As an example of that knowledge, we note the following information provided by Cerenzie in an October 10, 2022 email to Wilkinson, following up on Wilkinson's instruction to remove TSX listing information from the GRS Website (which Cerenzie did):

> . . . as discussed the company does have a plan to go public, however, this is only a plan and plans can change, we may list next year, in 3 years, or not at all.

> The company is only in the early stages of this plan and it will be undertaken by our law firm which has experience in doing so.
>
> We may list on the TSX, CSE, NOX OTC, or other global exchange options as all are undecided as again the plan is in the early stages.
>
> Yes, I do understand that more directors and shareholders are required to go public as you mentioned and I do understand a prospectus is required as well as further qualifications and requirements that the law firm has reviewed with us.
>
> We are in the early stage of this plan and will follow the direction of the law firm in this possible future undertaking.

[136] Cerenzie's knowledge was GRS's knowledge. Cerenzie and GRS did not share the true information with prospective investors because they knew it would be easier and more lucrative to sell GRS Shares if investors thought a listing was imminent.

[137] Therefore, we conclude that GRS breached s. 92(4.1) of the Act by making the TSX Representations.

### (iii) Assessment of ATCO Representations

[138] We have concluded that the ATCO Representations were certain statements by GRS that GRS had an 18-year contract with ATCO.

[139] We find that GRS never had a contract with ATCO, whether written, oral, final, or preliminary. This was not a misunderstanding or even a careless exaggeration transforming preliminary and tentative discussions into statements about a signed contract. These were false statements about a non-existent contract. The ATCO Representations were, therefore, clearly misleading or untrue (or both) – and materially so, given the importance such a contract would have had for GRS.

[140] We also find that the ATCO Representations would reasonably have been expected to have a significant effect on the market price or value of the GRS Shares. In assessing the effect of a lengthy and major contract on a reasonable prospective investor, we considered whether such an investor's decision would be influenced by that information – whether such information "would have been important or useful" (*Aitkens* at para. 138). If GRS had a substantial long-term supply contract with an industry-leading company, investors would benefit from tangible and potentially lucrative business opportunities in an emerging clean energy industry.

[141] Reinforcing our objective conclusion, there were also indications that at least one investor's decision to buy GRS Shares at the price asked was influenced by the ATCO Representations. In a May 16, 2022 telephone conversation, Gregor told AL and her spouse that "we've [GRS has] an 18-year contract with [ATCO]". AL paid for a second investment in GRS Shares two days later.

[142] We find that GRS had the requisite knowledge: GRS knew or reasonably ought to have known that the ATCO Representations were misleading or untrue, and that they would reasonably have been expected to have a significant effect on the market price or value of the GRS Shares. Cerenzie, as GRS's guiding mind, knew GRS did not have a contract with ATCO. We already

concluded that we did not believe his claims that he thought there was an oral agreement such that ATCO had verbally committed to GRS. However, even if he did have that belief, it was unreasonable. In these circumstances, Cerenzie's knowledge was GRS's knowledge. GRS and Cerenzie also knew that a contract with ATCO would affect the value of the GRS Shares; it would be easier and more lucrative to sell GRS Shares if investors thought GRS had a contract with ATCO.

[143] Therefore, we conclude that GRS breached s. 92(4.1) of the Act by making the ATCO Representations.

## C. Authorized, Permitted, or Acquiesced

### 1. Allegation

[144] Staff alleged in the Notice that Cerenzie authorized, permitted, or acquiesced in the breaches alleged against GRS. Staff did not assert that Cerenzie contravened any specific provision of the Act. We have found that GRS breached ss. 110(1), 92(3)(b), and 92(4.1) (the **GRS Breaches**). Accordingly, Staff's allegation is that Cerenzie authorized, permitted, or acquiesced in the GRS Breaches.

### 2. Parties' Positions

[145] Staff submitted that the relevant consideration for determining authorizing, permitting, or acquiescing was the level of Cerenzie's "control over and contributions to the activity in question", and that Cerenzie's knowledge of the specifics of the GRS Breaches was not relevant in that determination. Staff emphasized the broad and purposive approach to interpreting securities regulatory provisions and contended that it cannot have been the legislature's intention to allow directors and officers to avoid responsibility through abdication of their duties.

[146] Cerenzie argued that the panel is bound by two decisions of the Alberta Court of Appeal (the **ABCA**): *Del Bianco v. Alberta Securities Commission*, 2004 ABCA 344; and *Alberta (Securities Commission) v. Workum*, 2010 ABCA 405. He submitted that those decisions established that the authorizing, permitting, and acquiescing wording in s. 199(1)(a)(ii) of the Act is subject to a *mens rea* standard – meaning that "Staff have to prove on a balance of probabilities both knowledge of underlying act[s] of the contravention, and where appropriate like with misrepresentations, requisite intent". Staff suggested that Cerenzie also likely intended his submission to include reference to s. 198(1.2). Cerenzie did not dispute that. Therefore, we also considered that provision in our analysis.

[147] GRS did not participate in the hearing and took no position on this allegation against Cerenzie.

### 3. Summary of Conclusion

[148] For the reasons discussed below, we find that Cerenzie authorized, permitted, or acquiesced in the GRS Breaches. He had responsibilities as the director and officer of GRS, and he did not fulfil those responsibilities. We conclude that ss. 198(1.2) and 199(1)(a)(ii) do not require Staff to prove, or the panel to find, that Cerenzie had the *mens rea* to commit the underlying GRS Breaches (although we would have found *mens rea*, had that been required).

[149] In the discussion below, we first set out ss. 198(1.2) and 199(1)(a)(ii) of the Act and the general meaning of the three terms. We then set out the relevant principles and apply them to the evidence. Finally, we address Cerenzie's arguments relying on the ABCA decisions in *Del Bianco* and *Workum*, along with the classification of offences discussed by the Supreme Court of Canada (the **SCC**) in *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299, and the reason that line of cases was irrelevant to our determination.

## 4. Discussion

### (a) Statutory Interpretation Principles

[150] Staff and Cerenzie both pointed to the principles of statutory interpretation used when classifying offences under the *Sault Ste. Marie* taxonomy. As discussed below, that case and its taxonomy did not apply here because ss. 198(1.2) and 199(1)(a)(ii) of the Act do not create "offences", meaning that there were no offences to categorize. However, as we were dealing with wording in statutory provisions, we remained cognizant of the fundamental tenet of the modern approach to statutory interpretation: words in legislation "are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R 27 at para. 21). It has also long been recognized that the ASC is a regulatory body focusing on the public interest. Staff also noted that the Act is to be construed as remedial (under s. 10 of the *Interpretation Act* (Alberta)), and thus given "the fair, large and liberal construction and interpretation that best ensures the attainment of its objects".

### (b) Sections 198(1.2) and 199(1)(a)(ii) of the Act

[151] The wording of ss. 198(1.2) and 199(1)(a)(ii) of the Act has changed over time. During the Relevant Period, the provisions at issue stated:

> 198(1.2) The Commission may, after providing an opportunity to be heard, make an order under subsection (1)(a) to (h) against a director or officer of a company or of a person other than an individual who authorizes, permits or acquiesces in the contravention of Alberta securities laws or conduct contrary to the public interest.
>
> . . .
>
> 199(1) If the Commission, after a hearing,
>
> (a) determines that
>
> (i) a person or company has contravened or failed to comply with any provision of Alberta securities laws, or
>
> (ii) a person or company authorized, permitted or acquiesced in a contravention or failure to comply with any provision of Alberta securities laws by another person or company,
>
> and
>
> (b) considers it to be in the public interest to make the order,
>
> the Commission may order the person or company to pay an administrative penalty of not more than $1 000 000 for each contravention or failure to comply.

[152] In these two sections, an ASC panel is given the jurisdiction to make public interest orders against a person or company that authorized, permitted, or acquiesced in someone else's breach of Alberta securities laws. Neither section creates a separate breach or offence of authorizing, permitting, or acquiescing. The category of those that may have authorized, permitted, or acquiesced is narrower in s. 198(1.2) than in s. 199(1)(a)(ii) because the former uses the wording "a director or officer" and the latter uses "a person or company". That distinction was irrelevant in the present case.

[153] Sections 198(1.2) and 199(1)(a)(ii) are, therefore, derivative provisions allowing an ASC panel to impose sanctions against one that has authorized, permitted, or acquiesced in a breach by another. The sections do not give an ASC panel the jurisdiction to make a separate finding that such authorizing, permitting, or acquiescing is, in itself, a breach of Alberta securities laws. Moreover, an ASC panel's public interest jurisdiction is protective and preventive, not punitive or remedial (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras 39-45). In contrast, as discussed below, Cerenzie's proposed approach involved cases such as *Del Bianco*, *Workum*, and *Sault Ste. Marie*, which discussed penal provisions and those creating separate offences or breaches.

**(c) Meaning of Terms**

[154] Many cases have attempted to define or describe the terms "authorized", "permitted", and "acquiesced", including decisions cited by the parties (some of which were not administrative decisions and not in the securities law context):

- "Authority over the acts of a corporation generally rests, ultimately, with its directors and officers – who in consequence will bear responsibility for having approved or condoned (authorized, permitted or acquiesced in) those acts. The concept is reflected in the Act, including (since 1 July 2006) in sections 198(1.2) and 199(1)(a)(ii)" (*Re Aurora*, 2011 ABASC 501 at para. 199, cited in *Re Mandyland Inc.*, 2012 ABASC 436 at para. 181).

- ". . . *acquiesce* means to agree or consent quietly without protest. *Authorize* is defined in part as to give official approval or permission, to give power or authority, to give justification for and *permit* is defined as to allow, consent to tolerate, to give permission, authorize permission especially in writing, a document granting permission, licence, warrant" (*R. v. Armaugh Corp.* (1993), 1 C.C.L.S. 87 at para. 20 (Ont. Ct. J. (Prov. Div.)), citing *Webster's New Word Dictionary*, 3rd college edition; this passage has been followed in other cases, including *R. v. Boyle*, 2001 ABPC 18 at para. 42).

- Authorize means to "sanction formally" or "give authority". Permit means to "give permission or consent to", "authorize", "allow", "give an opportunity to", "admit" or "allow for". Acquiesce means to "agree, esp. tacitly", "raise no objection", or "accept". (*R. v. Felderhof*, 2007 ONCJ 345 at p. 84, using the "ordinary dictionary meaning" from the *Canadian Oxford Dictionary*).

- "The terms, 'directed', 'authorized', 'assented to' or 'acquiesced' or 'participated in', perhaps some more clearly than others, by ordinary meaning definitions, do not refer only to express or positive action. They include omissions, the failure to act, for example, to take preventive steps. . . ." (*R. v. A & A Foods Ltd.* (1997), 120 C.C.C. (3d) 513 at para. 24 (B.C.S.C.); cited in *R. v. Mossman*, 2024 BCSC 443 at para. 75).

[155] Staff summarized that authorize, permit, and acquiesce "encompass both direct and indirect involvement, both positive acts and omissions to act through passivity or negligence". According to Staff, the terms are broad so as to capture "the many ways a person with the power to do otherwise can allow a breach of securities laws to happen". As examples, Staff stated:

> Authorize can refer to giving express approval or official sanction, but also to delegation of authority, to enable to empower. Permit can be understood in terms of granting permission or approval, but also in the sense of affording opportunity for, or allowing an event to happen. Acquiescence can refer to passive acceptance, tacit consent or agreement or a failure to intervene. . . .

[156] Cerenzie contended that the three terms lie on a spectrum, and also added a knowledge component to each term which was not found in the decisions cited:

> a. **Authorized**: Not only knew of the impugned conduct, but directed or approved the impugned conduct before or during its occurrence.
>
> b. **Permitted**: Knew of the impugned conduct, did not authorize it, but took some sort of action to allow it to happen before or during its occurrence.
>
> c. **Acquiesced**: Knew of the impugned conduct, did not authorize it, did not permit it by taking positive action to allow it, but was able to stop or mitigate it and did not, before or during its occurrence. [original emphasis]

### (d) Principles

[157] Relevant principles are found in previous administrative decisions (as discussed later, quasi-criminal and criminal decisions were not helpful on this point).

[158] In the *Homerun (Merits)* decision, an ASC panel found that Candice Anne Graf breached several sections of the Act, and authorized, permitted, or acquiesced in corporate breaches. The panel also found that Christopher Robert Hayward authorized, permitted, or acquiesced in corporate breaches. The panel concluded that Graf was a director and senior officer of most of the corporate entities and the guiding mind of all of them. She was involved with investors, executed important documents, and was directly involved in many of the illegal distribution and misrepresentation contraventions found against the corporate entities. The ASC panel concluded the evidence was compelling that Graf authorized, permitted, or acquiesced in the corporate breaches.

[159] Hayward's situation was somewhat comparable to Cerenzie's, in that there were also no direct allegations of breaches against Hayward. In finding that he authorized, permitted, or acquiesced in the corporate breaches, the panel stated (at para. 460):

> Hayward's role was less prominent overall than Graf's, and he did not directly sell securities. Still, the evidence made clear that he was fully aware that the Homerun Group [of corporate entities] depended on continual capital injections from investors, for which it was more-or-less continually developing and selling investment products. Moreover, Hayward held – and was presented to the investing public as holding – similar positions as officer or director (or both) of each [corporate respondent except one]. Such positions carry with them important responsibilities, among them the need to ensure that a business over which one presides or has oversight is operating within the law. Hayward was in a position at least to ask probing questions to satisfy himself as to the propriety of what was happening with the various [corporate respondents] and the accuracy of what was being communicated to their existing or prospective investors. The evidence indicated that he was less than diligent in this regard, and there was certainly no indication that he ever tried to avert or rectify any of the proved contraventions.

[160] Graf and Hayward had blamed a person in a subordinate position, but tendered no evidence of that person's supposed fraud or deceit. The panel noted that, without any such evidence, "it is difficult to conceive of circumstances in which senior officers and directors could justifiably disclaim both knowledge of and responsibility for actions taken on their watch" (at para. 462). We note that knowledge in that sense is not a *mens rea* standard for each specific action taken by others, but a recognition that directors and officers must have a level of awareness about their company's operations (the requisite level would vary in different situations).

[161] During the sanction phase of that proceeding (*Re Homerun International Inc.*, 2016 ABASC 95), Graf and Hayward claimed, apparently as a mitigating factor, that they had "unknowingly acquiesced" in the corporate misconduct. The panel rejected such claims from Graf, given her extensive direct involvement. Regarding Hayward, the panel stated (at paras. 116-117):

> [Hayward] seemed not to have been directly engaged in the impugned securities-selling activities, and no findings (indeed no allegations) of direct involvement were made against him. It is plausible, and we accept, that he went along with what was being done in the sale process – likely without undertaking much, if any, questioning, supervision or diligence (although he apparently became somewhat more attentive after his registration). It follows that, at least until then, Hayward may indeed have unknowingly authorized, permitted or acquiesced in the contraventions by those companies.
>
> In this, we find some mitigation of Hayward's misconduct. Such mitigation is limited, however, given that it turned on his having abdicated important responsibilities that he owed to the capital market. Directors and senior management must ensure that their companies' capital market activities are appropriate and legal. Hayward was in a position to avert much of the illegality found here. He should have done so, but he did not. . . .

[162] The *Homerun* decisions therefore set out helpful principles in a somewhat comparable context to the present case. Those decisions clearly stated that directors and officers have responsibilities and must be diligent in satisfying themselves that the business is operating within the law. The phrase "unknowing acquiescence" was proposed by Graf and Hayward in that case. We do not take the panel's discussion of that phrase and submission as referring to knowing or unknowing in a *mens rea* sense. The panel's finding that authorization, permission, and acquiescence may, in some limited circumstances, occur "unknowingly" is incompatible with *mens rea*. The panel also stated that the level of knowledge may be a mitigating factor for sanction in appropriate circumstances.

[163] In *Aurora*, an ASC panel found each of four individual respondents personally liable for the illegal trades and distributions by Concrete Equities Inc. (**CEI**) of securities in various limited partnerships (**LPs**), which were managed by associated general partnerships (**GPs**). The panel stated (at paras. 199, 201, 203, 205-207):

> The Units sold illegally by CEI were securities issued by LPs 1 through 5, 7 and 8. By the terms of the respective LP Agreements, responsibility and authority for managing of those LPs rested with the respective GPs. Corporations (which CEI and the GPs were) act through individuals. Authority over the acts of a corporation generally rests, ultimately, with its directors and officers – who in consequence will bear responsibility for having approved or condoned (authorized, permitted or acquiesced in) those acts. The concept is reflected in the Act, including (since 1 July 2006) in sections 198(1.2) and 199(1)(a)(ii).
>
> . . .
>
> Throughout most of the Relevant Period Aurora, Humeniuk and Jones were the directors and officers of CEI. . . .
>
> . . .
>
> The evidence satisfies us that neither Aurora nor Jones did much work at CEI that might be expected of individuals bearing their impressive executive titles. We do not, however, accept that ignoring or shirking the duties of a directorship or office voluntarily assumed – and announced to the world – suffices to discharge one of the associated responsibilities.
>
> . . .
>
> In sum, we find that each of Aurora, Humeniuk and Jones authorized, permitted and acquiesced in CEI's role in the illegal trades and distributions.
>
> Throughout the Relevant Period – and, more specifically, at the times of the illegal trades and distributions of Units of LPs 1 through 5, 7 and 8 – each of Aurora, Humeniuk and Jones was a director or officer of one or more of GPs 1 through 5, 7 and 8. We find that each of Aurora, Humeniuk and Jones bear responsibility for – authorized, permitted and acquiesced in – the manner in which each GP of which that individual was a director or officer (or both) conducted itself in the illegal trades and distributions.
>
> De Palma came to assume director positions at CEI and with GPs 1 through 5 and 8 in December 2008, quite late in the Relevant Period. (We do not consider his vice-president titles at CEI demonstrative of his having been an officer, or having assumed executive responsibilities, there.) We accept the evidence (mainly Aurora's testimony) that De Palma came aboard in these director roles with good intentions of salvaging an operation that had already gone badly wrong. Although illegal trades and distributions (sales of LP 8 Units) continued after De Palma took on these positions – and although we think he could have done more to ensure that this stopped, or at least to ensure that everything being done was done legally – we consider that, in these roles, he was largely the inheritor of a mess, and acted (with Aurora) in good faith (if not immediacy) to try to resolve matters, including engaging (within a few months) E&Y. We therefore do not find De Palma to bear responsibility for the illegal trades and distributions of Units of LPs 1 through 5 and 8 by virtue of his roles as director of CEI and of GPs 1 through 5 and 8. However, given his assumption of director and officer positions with GP 7 in April 2008, we find that De Palma bears responsibility for – authorized, permitted and acquiesced in – the manner in which GP 7 conducted itself in the illegal trades and distributions of LP 7 Units.

[164] As in other relevant cases, *Aurora* set out the important principles for assessing the concepts of authorizing, permitting, and acquiescing: (1) the responsibilities of the director or officer; and (2) that person's actions in that role – diligence (or lack thereof), fulfilling duties (or shirking and ignoring them), and overseeing legal responsibilities (or failing to do so).

[165] An appeal by one of the *Aurora* respondents was dismissed in *Alberta (Securities Commission) v. De Palma*, 2012 ABCA 295. Part of the appeal was from the ASC panel's finding that De Palma authorized, permitted, or acquiesced in certain breaches (that was the finding in para. 207 of *Aurora* – as reproduced above and referred to in the following passage from *De Palma* at para. 4):

> The appellant argues that the [ASC] was in error (at para. 207) in finding him liable, as an officer or director of LP 7, for illegal distributions of LP 7 units. He argues that there was no evidence that he knew that these sales were illegal, and therefore he could not have "authorized, permitted or acquiesced in" those sales as required by s. 199(1)(a)(ii). The [ASC] found at para. 207 that the appellant was a director and vice president in charge of sales staff at the time. The distributions were found by the [ASC] to be illegal. The [ASC] found at para. 175 that compliance with the legal requirements was "more in the nature of a charade". It was open to the [ASC] to conclude that the appellant was acting as an officer and either knew, or was willfully blind, with respect to the deficiencies in the offering memorandum and the ineligibility of the investors. While it might have been open to the appellant to raise a "due diligence" defence, the [ASC] was entitled to disregard his suggestions that he did not intend the natural consequence of his conduct because he failed to conduct any proper review of the sales documents his staff were using. Ignorance of the legal requirements of the Act would be no defence. There is no reviewable error shown.

[166] Therefore, in *De Palma*, the court specifically discussed the wording in s. 199(1)(a)(ii) of the Act and held that the ASC could conclude that De Palma either knew about the problems or was wilfully blind to them. The court also said a due diligence defence could be raised (with the ASC panel able to find no such due diligence). In other words, the court upheld the ASC panel's finding that De Palma authorized, permitted, or acquiesced in corporate misconduct and that it was appropriate for the ASC panel to consider knowledge, wilful blindness, due diligence, lack of intention, a failure to review documents, and the fact that ignorance of the law is not an excuse. This is clearly not a *mens rea* requirement.

[167] Significant to the discussion below about Cerenzie's *Del Bianco* and *Workum* submissions, the ABCA decided *De Palma* in 2012 – eight years after that court decided *Del Bianco* and two years after it decided *Workum*. *De Palma* also directly addressed s. 199(1)(a)(ii) of the Act (and *Aurora* also addressed s. 198(1.2)), unlike *Del Bianco* and *Workum*.

[168] An ASC panel considered the three terms again in *Mandyland*, holding that three individuals committed their own breaches of the Act and also authorized, permitted, or acquiesced in contraventions by the corporate respondents. Two of the individuals were officers and directors; the other was a de facto director. The ASC panel in *Mandyland* (at para. 181) relied on the statement from *Aurora* at para. 199 (quoted above) that directors and officers ultimately bear responsibility for authorizing, permitting, or acquiescing in the acts of the corporate entities.

[169] In light of these decisions directly on point, we did not find useful certain other cases cited by the parties, as those considered provisions whose wording and context was different than

ss. 198(1.2) and 199(1)(a)(ii) of the Act. We discuss some of those below when explaining the errors in Cerenzie's proposed *mens rea* approach.

**(e) Determination on Authorizing, Permitting, or Acquiescing**

[170] There is no *mens rea* requirement when assessing authorizing, permitting, or acquiescing in ss. 198(1.2) and 199(1)(a)(ii) of the Act. These sections allow an ASC panel to make orders in the public interest. They do not create offences for which proof is required on a *mens rea*, strict liability, or absolute liability basis (as set out in *Sault Ste. Marie*) for the elements of such an offence. We conclude that Staff did not have to prove that Cerenzie had *mens rea* for each element of each of the GRS Breaches. However, as noted, some knowledge-related factors may still be considered in making the public-interest determination.

[171] The key factors in determining if a director or officer has authorized, permitted, or acquiesced in another's breach of the Act are the responsibilities of those positions and the diligence with which the director or officer carried out those responsibilities. A director's and officer's responsibilities are well-known, and include "the need to ensure that a business over which one presides or has oversight is operating within the law" (*Homerun (Merits)* at para. 460). The level of diligence required and exercised will depend on positive and negative elements, such as the director's or officer's knowledge, awareness, involvement (or lack thereof), ability and attempts to prevent or rectify the misconduct, reliance on ignorance, abdication of responsibility, shirking duties, wilful blindness, and intention. (Those elements may also be relevant when considering sanctions at a future stage of a proceeding.) Although knowledge and intention may, therefore, be among the factors considered by an ASC panel when determining if a director or officer authorized, permitted, or acquiesced in another's breaches of Alberta securities laws, that is not a *mens rea* requirement. As stated by the majority of the ABCA in *Workum* at para. 135 (discussed further below), "the *mens rea* that would go to prove an offence under section 194 would merely be taken into account in the determination of the public interest [for a public interest order under s. 198]".

[172] We also agree with the ASC panel's statement in *Homerun (Merits)* at para. 462 that "it is difficult to conceive of circumstances in which senior officers and directors could justifiably disclaim both knowledge and responsibility for actions taken on their watch". Further, we consider it crucial in upholding legislative intention and our public interest mandate that directors and officers not be able to rely on neglect or ignorance of their duties and responsibilities in attempting to avoid responsibility for an issuer's non-compliance with securities laws.

[173] Based on our earlier determinations of the relevant facts, we find that Cerenzie authorized, permitted, or acquiesced in the GRS Breaches, including for the following reasons and conduct:

- General:
    - Cerenzie was GRS's founder, sole director, president, CEO, and 80% shareholder. He was GRS's guiding mind and responsible for its decisions during the Relevant Period. Cerenzie hired the Kiser Group to "look after all the marketing", provide teams for investor relations and sales, build the GRS Website, and publish articles online about GRS. We earlier found that

Cerenzie exercised some control over the content of the GRS Website. Although the Kiser Group was selling GRS securities, it was ultimately Cerenzie's responsibility as a director and officer to ensure GRS and the Kiser Group were aware of the legal requirements and were properly supervised in conducting the sales. In that position, it was also his responsibility to ensure that GRS operated within the law in other areas under his control (through its actions, including actions directed by the Kiser Group). It was no excuse or justification for Cerenzie to claim that he did not know the law, relied on others to learn and follow the law, and did not know what the Kiser Group was saying and doing on behalf of GRS. In any event, we are confident that Cerenzie knew more than he admitted and was likely aware that his delegation decisions were less than prudent.

- Cerenzie paid the Kiser Group, including 17 payments during the promotional campaign.

- Although making limited admissions and acknowledgments about his involvement with the Kiser Group and its activities, Cerenzie disclaimed knowledge or understanding of specific facts, including certain of the GRS Articles and mentions of the purported ATCO contract and the purported TSX listing. We did not believe his denials.

- Regarding the GRS Website:

  - Cerenzie knew that the Kiser Group set up the GRS Website and was using that as part of its process of attracting prospective investors and raising capital from those investors for GRS.

  - We earlier found that Cerenzie exercised some control over the content of the GRS Website.

- Regarding the illegal distributions:

  - Cerenzie stated during the Cerenzie Interview that the Kiser Group had a compliance officer in place in the course of raising funds for GRS. Although we were not satisfied that the Kiser Group took adequate compliance measures, this statement by Cerenzie showed at least some awareness that rules existed and compliance was important. That he apparently did not follow up on this by taking reasonable measures to ensure proper compliance did not absolve him from responsibility.

  - Cerenzie testified that McLeod worked with the Kiser Group to ensure distributions of securities met the necessary requirements. As noted, we rejected this testimony, because it was inconsistent with other evidence and because it seemed to be based on what Cerenzie learned about securities laws after the fund-raising had occurred. We were satisfied that Cerenzie

could have informed himself about securities law before or soon after engaging the Kiser Group for GRS and ultimately knew or was wilfully blind to the fact that securities laws were being ignored and breached.

- The money raised from investors by the Kiser Group went to GRS's bank account. Cerenzie knew that money was there, knew it was from investors, and used the money for various purposes, including making 17 payments totalling $132,205 to Kiser during the Relevant Period.

- In summary, Cerenzie was the guiding mind of GRS at all times, with the ability – and the duty – to inform himself of the distribution requirements and to take reasonable steps to ensure they were followed. He hired and paid the Kiser Group for that specific purpose, but went no further. As with Hayward in *Homerun (Merits)* (at para. 460), Cerenzie was fully aware that GRS was raising money from investors and he "was in a position at least to ask probing questions" about how it was raised. That Cerenzie made no attempts to fulfil his responsibilities is no defence. We conclude that Cerenzie authorized, permitted, or acquiesced in the illegal distributions by GRS.

- Regarding the prohibited representations:

  - Cerenzie confirmed to Staff on September 29, 2022 that references on the GRS Website to GRS's pursuit of a TSX listing in 2022 would be removed by October 4, 2022, and that was done. Cerenzie reiterated in an October 10, 2022 email to Staff that GRS was planning to "go public" and "may list on" one or more exchanges. We earlier found that Cerenzie exercised some control over the content the Kiser Group put on the GRS Website. We also conclude that Cerenzie at a minimum knew the Kiser Group was making that prohibited representation on the GRS Website or, more likely, that Cerenzie was the source of the listing information used in the Kiser Group's promotional activities.

  - In emails to prospective investors, the Kiser Group also made prohibited representations about GRS obtaining an exchange listing. We found that the Kiser Group made the prohibited representations, acting as GRS's delegate, and that GRS knew they were being made and knew they were materially misleading and untrue and made without the required approvals.

  - We conclude that Cerenzie authorized, permitted, or acquiesced in the prohibited representations by GRS. He was the guiding mind of GRS at all times. He had opportunities to inform himself of the legal requirements and take reasonable steps to ensure they were followed. He was aware early on that GRS was making the prohibited representations through the Kiser Group, and was either wilfully blind to how it was proceeding or shirking his duties as a director and officer. By the date of the September 29, 2022

communication with Staff, at the very latest, Cerenzie had actual knowledge of the prohibited representations, although actual knowledge was not necessary for our conclusion.

- Regarding the misrepresentations:

  - Cerenzie claimed that he did not tell Kiser about an 18-year ATCO contract. However, the evidence showed that Cerenzie considered there to be an 18-year ATCO contract, and that he told Miller and Zimmerman about it, who in turn must have provided that information to Kiser. We are satisfied that Cerenzie was aware this information could be used for marketing purposes.

  - Cerenzie knew by at least the time of the July 20, 2022 email from Kiser that the Kiser Group was preparing GRS Articles containing misleading or untrue information about an ATCO contract. Although Cerenzie testified that he did not reply to that email, that (if true) does not obviate the fact that he was aware of its content. In fact, not replying to the email further showed Cerenzie's lack of diligence. As stated by the ASC panel in *Homerun (Merits)* regarding the respondent Hayward (at para. 460), Cerenzie "was in a position at least to ask probing questions to satisfy himself as to the propriety of what was happening with the various [corporate respondents] and the accuracy of what was being communicated to their existing or prospective investors". He did not do so.

  - We conclude that Cerenzie authorized, permitted, or acquiesced in the misrepresentations by GRS. He was the guiding mind of GRS. He was aware of the misrepresentations and either wilfully blind to their content and the fact that they were being communicated to prospective investors or shirking his duties as a director and officer. He did not engage in appropriate supervision, seemed content to rely on his own ignorance, and ultimately failed to act in accordance with his responsibilities as the director and officer of GRS.

[174] Although we reject Cerenzie's assertions that there is a *mens rea* requirement to reach such conclusions in the context of ss. 198(1.2) and 199(1)(a)(ii) of the Act, we would have reached the same conclusions had *mens rea* been required. We also note that Cerenzie may choose to make submissions on his level of knowledge and intent during the sanction portion of this proceeding, as well as a claim that any due diligence should moderate otherwise appropriate sanctions.

### 5. Cerenzie's *Mens Rea* Contention

#### (a) Summary

[175] Cerenzie argued that ss. 198(1.2) and 199(1)(a)(ii) of the Act are *mens rea* offences, based on what he referred to as the "binding" decisions of the ABCA in *Del Bianco* and *Workum*. He contended that Staff therefore had to prove Cerenzie had knowledge at the time not only that GRS was committing the GRS Breaches but also of each element of each of the GRS Breaches. Cerenzie

seemed to interpret all mentions of "knowledge" as meaning "*mens rea*", although that was clearly not intended in the decisions discussed below.

[176] Staff argued that neither *Del Bianco* nor *Workum* is binding authority for the points cited by Cerenzie because the statements he referred to were *obiter* and because the decisions did not deal directly with ss. 198(1.2) and 199(1)(a)(ii) of the Act. Staff highlighted that no *mens rea* language is used in the provisions at issue here.

### (b) *Sault Ste. Marie*, *Del Bianco*, *Workum*, and Related Cases

#### (i) Summary of Relevance

[177] Both Staff and Cerenzie raised several cases to support their respective interpretations of ss. 198(1.2) and 199(1)(a)(ii) of the Act. We summarize and comment on many of these cases here (or earlier in this decision). Most of these were court decisions involving penal or criminal provisions. Some were administrative proceedings in which the *Sault Ste. Marie* taxonomy was relevant because the proceeding involved offences and the word "offences" can be construed broadly enough to apply in securities administrative proceedings (*Aitkens* at para. 90) – typically as strict liability offences unless there is explicit wording importing *mens rea*.

[178] For the reasons stated below, we conclude that:

- Sections 198(1.2) and 199(1)(a)(ii) do not create offences, thus the categorization of offences is irrelevant to the allegation and findings against Cerenzie.

- Even had the comments relied on by Cerenzie from *Del Bianco* and *Workum* been relevant, those comments are *obiter* and are not binding on this panel.

- As noted above, the *De Palma* decision, which directly addressed s. 199(1)(a)(ii), was made several years after *Del Bianco* and *Workum*, further minimizing any utility of the *obiter* statements in *Del Bianco* and *Workum*.

#### *(ii) Sault Ste. Marie*

[179] In *Sault Ste. Marie*, the SCC set out three categories of "offences" (at pp. 1325-1326):

> I conclude, for the reasons which I have sought to express, that there are compelling grounds for the recognition of three categories of offences rather than the traditional two:
>
> 1. Offences in which *mens rea*, consisting of some positive state of mind such as intent, knowledge, or recklessness, must be proved by the prosecution either as an inference from the nature of the act committed, or by additional evidence.
>
> 2. Offences in which there is no necessity for the prosecution to prove the existence of *mens rea*; the doing of the prohibited act *prima facie* imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event. These offences may properly be called offences of strict liability. . . .

> 3. Offences of absolute liability where it is not open to the accused to exculpate himself by showing that he was free of fault.
>
> Offences which are criminal in the true sense fall in the first category. Public welfare offences would *prima facie* be in the second category. They are not subject to the presumption of full *mens rea*. An offence of this type would fall in the first category only if such words as "wilfully," "with intent," "knowingly," or "intentionally" are contained in the statutory provision creating the offence. . . .

[180] There has been some debate among decision-makers as to whether this categorization of offences applies in administrative proceedings. We agree with the statement by the panel in *Aitkens* at para. 90 that "the word 'offences' should be construed broadly enough to apply to securities administrative enforcement proceedings".

[181] We consider the *Sault Ste. Marie* classification when analyzing the sometimes confusing and contradictory language in later decisions.

### *(iii) Del Bianco*

[182] Del Bianco appealed the 2002 merits and 2003 sanctions decisions of an ASC panel, and the ABCA dismissed the appeal in 2004. There were four grounds of appeal, one of which was that the ASC panel incorrectly characterized itself "as carrying out a purely administrative function" (*Del Bianco* at para. 12) in the context of s. 194(4) of the Act, as it read at the time. Staff had contended before the ASC panel that Del Bianco was vicariously liable for a company's actions as a director and officer, under that version of s. 194(4):

> (4) If a company commits an offence under this section, whether or not in respect of that offence a charge has been laid, a finding of guilt has been made or a plea of guilty has been entered with respect to that company,
>
> (a) every director and every senior officer of the company who authorized, permitted or acquiesced in the offence, and
>
> (b) every person, other than a director or senior officer of the company, who authorized or permitted the offence,
>
> also commits the offence and is liable to a fine of not more than $1,000,000 or to imprisonment for a term of not more than 5 years less one day or to both fine and imprisonment.

[183] The ABCA agreed with the ASC panel that s. 194(4) had no application in that case because s. 194 was for penal proceedings before a court, not administrative proceedings before a regulator. The ABCA referred to s. 194(4) as a "specific vicarious liability provision", and noted that the ASC panel instead used the Act's expansive definition of "trade" to ground Del Bianco's liability. The ABCA then continued (*Del Bianco* at para. 12) with what Cerenzie argued was a binding statement regarding a *mens rea* element in the current ss. 198(1.2) and 199(1)(a)(ii) of the Act (although those sections did not exist at the time of the ASC or ABCA decisions):

> Practically speaking, it makes little difference which section [s. 194(4) or the definition of "trade"] was used, as the [ASC] would have to find knowledge or intent and consider such defences as mistake of fact and due diligence under either section. Here, the [ASC] found the requisite knowledge and none of the defences were raised. . . .

[184] This passage is clearly not binding authority for Cerenzie's proposition for several reasons:

- The sections at issue did not exist at the time of the ABCA decision so were not addressed by the ABCA.

- The context and wording of the former version of s. 194(4) of the Act are different than the context and wording of the current sections at issue. Section 194 is used for court proceedings, not administrative proceedings. Further, s. 194(4) at the time and the current s. 194(3) both have wording making authorizing, permitting, and acquiescing a separate offence. Sections 198(1.2) and 199(1)(a)(ii) do not.

- In addition, other sections of the Act do have a knowledge component in conjunction with the concept of authorizing permitting, and acquiescing. For example, ss. 211.06 and 211.07 (in the context of damages under the statutory civil liability regime) refer to one who "authorized, permitted or acquiesced in the making of the misrepresentation or the failure to make timely disclosure while knowing [it to be] a misrepresentation or a failure to make timely disclosure". This indicates that the Legislature could have chosen to include a knowledge component in ss. 198(1.2) and 199(1)(a)(ii), but did not.

- The ABCA's statement was unquestionably *obiter* – it was not a necessary part of the decision and, therefore, it cannot be binding. Moreover, this sentence referred to "knowledge or intent" and mistake of fact (which Cerenzie took to impose a *mens rea* standard) and to a defence of due diligence (which would imply a strict liability standard).

- Nothing in *Del Bianco* indicated that the ABCA would have considered that an administrative enforcement provision would be categorized the same way as a penal enforcement provision.

***(iv) Workum***

[185] In *Workum*, the majority of the ABCA dismissed appeals from three ASC panel decisions: a procedural ruling; a merits decision; and a sanction decision. The ASC panel made findings against Proprietary Industries Inc. (**PPI**) and two of its officers (Theodor Hennig and Peter Workum, who was also a PPI director). Staff had alleged that PPI's breaches were caused by the two individuals, and they were therefore responsible for those acts. Staff had not alleged that Hennig and Workum authorized, permitted, or acquiesced in PPI's breaches (ss. 198(1.2) and 199(1)(a)(ii) were not in force during the relevant period there, although they were in force by the time of the ASC's decision in the ***Workum (ASC)*** matter (*Re Workum and Hennig*, 2008 ABASC 363)). The ASC panel found that Hennig and Workum did bear responsibility for the breaches. Of the several grounds of appeal, the relevant one was the claim that the ASC panel erred by holding Hennig and Workum liable for misrepresentations and improprieties in PPI's financial statements. The majority dismissed that ground, although the dissenting justice would have set aside the finding.

[186] Section 199 was considered by the ASC panel and the ABCA because Hennig and Workum argued that the higher administrative penalty available under s. 199 as of 2006 should not apply retrospectively. The ASC panel and the ABCA rejected that argument. The ASC panel and the ABCA majority did not consider the terms authorized, permitted, or acquiesced in s. 199, although the ABCA dissent considered these terms in the context of s. 194(4).

[187] Cerenzie stated that the ABCA majority concluded that "the director or officer must have knowledge of the impugned conduct committed by the corporation". The ABCA majority did not state that knowledge was required, although it found knowledge in those circumstances (e.g., *Workum* at para. 160):

> On the facts as found by the [ASC], there is more than an adequate basis to hold Workum and Hennig personally liable for the misstatements contained in the 1998, 1999 and 2000 PPI financial statements. Accordingly I find them so liable on the basis that the evidence disclosed that Workum and Hennig orchestrated the various transactions in question which led directly to the resultant misrepresentations contained in the financial statements (which included knowing non-compliance with [generally accepted accounting principles (**GAAP**)]). Accordingly, this ground of appeal is dismissed and the liability of Workum and Hennig is affirmed.

[188] Such statements by the majority could not import a *mens rea* – or any type of – requirement into ss. 198(1.2) and 199(1)(a)(ii) of the Act because those two sections were not under consideration. Staff erroneously alleged a misrepresentation as an "offence" under what is now s. 194 of the Act. Staff acknowledged during the *Workum* merits hearing before the ASC panel that it was not a s. 194 proceeding, and the ASC panel ultimately did not consider or rely on s. 194 (*Workum (ASC)* at para. 1285). The majority of the ABCA held that the allegations did not track the Act's "precise wording", but met the required standard (*Workum* at para. 131). As the ASC panel had not relied on s. 194 and the majority of the ABCA held that Staff's allegations met the standard, the majority's (and dissent's) discussion of s. 194 was unnecessary when adjudicating on the findings made by the ASC panel. The ABCA's statements were clearly *obiter* and, as noted, did not involve the sections before us. However, given the nature of Cerenzie's argument, we discuss those statements briefly here.

[189] The majority of the ABCA (*Workum* at para. 134) referred to the statement from *Del Bianco* (at para. 12) that s. 194(4) offences require a finding of knowledge or intent. The majority then contrasted that with s. 198, stating that no contravention of Alberta securities law is required before an ASC panel can make a public interest order under s. 198, so "the *mens rea* that would go to prove an offence under section 194 would merely be taken into account in the determination of the public interest" (*Workum* at para. 135). (We note this is contrary to Cerenzie's position that *mens rea* is required for s. 198.) The majority further stated that an administrative penalty cannot be imposed under s. 199 without finding a contravention of Alberta securities laws. The majority then linked s. 199 to s. 194 by citing *Del Bianco* (at para. 12) for the proposition that "knowledge or intent is required to ground the contravention" required for a s. 199 administrative penalty.

[190] In our view, this last statement was a source of the confusion and of Cerenzie's erroneous submissions. Liability for s. 194 offences is adjudicated by a court. Section 199 grants an ASC panel the jurisdiction to impose administrative penalties. Sections 194 and 199 are, therefore, unconnected and do not grant jurisdiction to the same bodies or for the same purpose. There is no need to consider them together. Further, although a contravention of Alberta securities laws is

required before an ASC panel can impose an administrative penalty under s. 199, the finding of such a contravention occurs under the relevant liability provision in the Act, not under s. 199.

[191] Cerenzie also relied on statements by the dissent in *Workum* (at paras. 206-207) about s. 194 of the Act. The dissent started from the proposition that s. 194(4) was relevant because it created an offence for "every director and every senior officer of the company who authorized, permitted or acquiesced in" an offence found against a company. The dissent stated that the phrase authorized, permitted, and acquiesced in s. 194(4) provided "a means of imposing personal liability" on directors and officers (*Workum* at para. 206). The dissent also referred to the decision of the ABCA in *Re Ironside*, 2009 ABCA 134, which upheld personal liability against individuals who were officers (one also was a director) of a corporate entity that engaged in certain conduct. The dissent cited the notice of hearing in that case, which referred to authorizing, permitting, or acquiescing under s. 194. However, because *Ironside* was an administrative proceeding, the ASC panel did not impose liability based on s. 194 – that reasoning was apparently not addressed by the parties during the *Workum* hearing. As this was a dissenting decision and s. 194 was not directly at issue before us, we need not consider this further.

**(v) Other Related Cases**

[192] Similarly, the other cases cited did not support Cerenzie's position. We discuss only some of them.

[193] Cerenzie highlighted the conclusion in *R. v. Aitkens*, 2020 ABPC 129 that the offences there required *mens rea* and *actus reus*. That case engaged the general offence provisions in s. 194 of the Act. In making that statement, the court noted the possibility of imprisonment, wording which required knowledge of false statements, and reliance on the definition of fraud in the *Criminal Code* (Canada). Those factors are not present here.

[194] In *Boyle*, the court also was dealing with charges under s. 161 of the Act (what is now s. 194). This was a decision allowing in part a defence application for a directed verdict after the Crown closed its case, using a threshold of "any evidence", "some evidence", or a "scintilla of evidence" (at para. 27). The Crown accepted that the offences at issue were not *mens rea* offences, but were strict liability offences with due diligence defences available (at para. 35). The court distinguished between a regulatory proceeding at the ASC to protect market integrity and court proceedings requiring proof beyond a reasonable doubt of the charges (at paras. 76-77). As this was a court proceeding, "authorized, permitted and acquiesced" had to be construed "having regard to the penal consequences which attach to a breach of the [Act]" (at para. 79). The court also accepted "that within a regulatory test in a review by the regulator charged with maintaining the integrity of the market, the active or passive conduct of a director is relevant. However, in my view, applying that test and level of conduct where charges have been laid in the Provincial Court would set the bar too low and would not pay proper regard to the nature of the proceedings before this Court in which the accused find themselves" (at para. 80). The court concluded that the phrase in what is now s. 194 meant a conviction could be made only if the Crown established "some evidence that the Director or senior officer had some knowledge of the acts or circumstances of another person which other person's acts are alleged [to] constitute breaches of the [Act] for which the Director is liable under [that section]" (at para. 89).

[195] Although Cerenzie quoted some of these passages from *Boyle*, he quoted them out of context. The court in *Boyle* specifically referred several times to the context being penal, not regulatory (with regulatory proceedings having a lower bar). The present case is regulatory, does not involve the prospect of a conviction or penal consequences, and does not involve s. 194. Staff suggested that there was some confusion in certain passages from *Boyle* dealing with *mens rea* and strict liability, but those points are irrelevant to our analysis, and we need not address that submission.

[196] Cerenzie argued that the reasons and conclusions in *Homerun (Merits)* (at paras. 457-462) were "bad law" because they were inconsistent with *Del Bianco* and *Workum*. As noted above, we found *Homerun (Merits)* helpful. Regarding this specific submission, we note that *Homerun* was a regulatory proceeding, not a penal proceeding. Section 194 of the Act was neither invoked nor applicable. The *obiter* statements relied on by Cerenzie from *Del Bianco* and *Workum* were not relevant.

[197] A panel of the Ontario Securities Commission (**OSC**) had to decide in *Re Momentas Corporation*, 2006 ONSEC 15, if two individuals had authorized, permitted, or acquiesced in Momentas's breaches of the *Securities Act* (Ontario) (the **Ontario Act**). Both Cerenzie and Staff quoted the same passage as support for their respective positions (at para. 118):

> Although these terms [authorized, permitted, and acquiesced] have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 [of the Ontario Act] is a low one, as merely acquiescing [in] the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge [or] intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.

[198] Section 122 of the Ontario Act is comparable to s. 194 of the Act. Section 129.2 of the Ontario Act deems directors and officers, among others, who authorized, permitted, or acquiesced in non-compliance with the Ontario Act to have also not complied. Because of that deeming provision, the latter is not directly comparable to ss. 198(1.2) or 199(1)(a)(ii) of the Act. In any event, the OSC panel's use of the phrases "some form of knowledge or intention" and a "low" liability threshold do not support Cerenzie's contention of a *mens rea* standard.

[199] *Felderhof* also considered a quasi-criminal allegation of "authorizes, permits or acquiesces" in s. 122(3) of the Ontario Act. The court found that to be a strict liability offence with a due diligence defence available, not a *mens rea* offence (at p. 29). Had we been dealing with provisions creating quasi-criminal offences, the extensive analysis in *Felderhof* would have been of assistance.

[200] Staff cited *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, 2013 SCC 63 (Cerenzie made no submissions on that case). There, the majority of the SCC relied on *Sault Ste. Marie* and other authorities in reiterating "the presumption established by this Court that regulatory offences are generally strict liability offences" because they are enacted to protect the public (at paras. 31 and 42). The majority rejected the applicability of a standard based on the "party to an offence" concept from criminal law (at para. 39). At issue in *La*

*Souveraine* was the responsibility of an insurance company for using an unlicensed broker to sell insurance products. Because the majority found the relevant provision to be a strict liability offence, the company did not need to know the broker was violating the licence requirement. After noting again the requirement for *mens rea* in the criminal context, the majority stated (at para. 49):

> . . . I consider the situation to be quite different in the context of regulatory offences. Those who engage in regulated activities agree in advance to adhere to strict standards, and they accept that they will be rigorously held to those standards, which are typical of such spheres of activity. It is therefore not surprising in the regulatory context to find strict liability offences that encompass forms of secondary penal liability for the ultimate purpose of vigilantly ensuring compliance with a regulatory framework established to protect the general public.

[201] Staff also referred to *A & A* and *Mossman* in support of their position. Cerenzie argued those were irrelevant because they were not securities or commercial cases, and did not have any effect on what he claimed were the two binding ABCA decisions.

[202] In *A & A*, the company did not have an effective system to deal with unlabelled products, and it was contrary to the regulations to possess unlabelled products. The court held that it was the director's or officer's (referred to there as the agent's) responsibility to set up such a system, but he had failed to do so. Although not a securities regulatory case, some of the language used in the decision also fits Cerenzie's actions (at para. 55):

> [The director and officer] controlled the activities of the company, and had the power and authority to see that proper precautions were taken, and, indeed, to see that the offence did not occur. He could have prevented its occurrence, which was clearly foreseeable, if not inevitable, but he chose not to . . . take steps in that regard. It was he who should have put in place a preventive system and ensured that it was adhered to. He actually gave direction[s] to [a subordinate] which were contrary to an effective system. He apparently treated the offence, or potential offence, with complete indifference. He controlled its happening. He enabled, allowed or permitted it to happen. He tacitly agreed or consented to its happening. It might even be said that he participated in or was privy to it. In any event, his conduct was such that the learned trial judge had no alternative but to find that he authorized, assented to or acquiesced or participated in the commission of the offence, and that he was a party to and guilty of it.

[203] The court held this was a strict liability situation, with neither knowledge nor intent required, stating, for example: "the Crown does not need to prove knowledge or intention on the part of the appellant, and consent or tacit agreement with, or approval of, the foreseeable event constituting the offence, can be inferred, for example, from the fact that the accused did nothing to prevent it, or in effect allowed it to happen" (at para. 34).

[204] We agree with the logic of the statements from *A & A*, although those factors were unnecessary to consider here given our earlier conclusion that ss. 198(1.2) and 199(1)(a)(ii) of the Act do not create an offence and thus there is no relevant application of the *Sault Ste. Marie* taxonomy.

[205] *Mossman*, an environmental case about the discharge of mine waste, also considered a provision in which a director or officer would be found to have committed the same offence as the corporation if the director or officer "authorized, permitted or acquiesced" or "directed, authorized, assented to, acquiesced in or participated in" the offence. The court in *Mossman* followed *A & A*

in concluding the provisions at issue were strict liability offences. Again, this was not relevant to the provisions of the Act under consideration in the present case.

### 6. Conclusion

#### (a) *Del Bianco* and *Workum Obiter* Statements Are Not Binding Here

[206] We rejected Cerenzie's assertion that the statements he cited from the ABCA decisions in *Del Bianco* and *Workum* are binding for the issue before us. Those decisions did not deal with the interpretation of authorizing, permitting, or acquiescing in ss. 198 and 199 of the Act, and the comments on what is now s. 194 were in the quasi-criminal context, not the regulatory context. The statements Cerenzie relied on were *obiter* and were irrelevant here.

#### (b) Nature of Authorizing, Permitting, or Acquiescing Provisions

[207] Sections 198(1.2) and 199(1)(a)(ii) are entirely derivative and do not create an offence. They give an ASC panel the power to make public interest orders against an individual who authorizes, permits, or acquiesces in a breach of Alberta securities laws by another person or company. Such orders are, therefore, available if a panel finds a breach and finds that the individual authorized, permitted, or acquiesced in that breach. Even if these sections did create an offence of "authorizing, permitting, or acquiescing", either separate from or connected to the underlying breach, they are precisely the type of public interest provision referred to by the SCC in decisions such as *Sault Ste. Marie* and *La Souveraine*, when stating that public interest regulatory offences do not have a *mens rea* requirement without specific wording – and no such wording is present in ss. 198(1.2) and 199(1)(a)(ii).

#### (c) Findings

[208] We already found that GRS committed the GRS Breaches. We have also found that Cerenzie was the director, officer, and guiding mind of GRS.

[209] In light of Cerenzie's positions with GRS and the actions he took while in those positions, we had no hesitation concluding that Cerenzie authorized, permitted, or acquiesced in the GRS Breaches for the reasons set out above. He created the situation with the Kiser Group by purporting to abdicate his authority as a director and officer of GRS, then claiming complete ignorance of the GRS Breaches. That is one type of conduct by directors and officers at which the authorizing, permitting, and acquiescing provisions are targeted.

[210] Although we concluded there was no *mens rea* requirement, we would have found *mens rea* here had it been required.

## VI. CONCLUSION

[211] This proceeding now moves to a second phase to determine what, if any, sanction and cost-recovery orders ought to be made against the Respondents.

[212] By noon on Monday, January 5, 2026, Staff and the Respondents are directed to inform each other and the ASC Registrar in writing:

(a) whether they intend to adduce new evidence on the sole issue of appropriate sanction and cost-recovery orders; and

(b) if so, their expected timing for the same and their suggested dates.

[213] After we have received and considered the parties' responses to this direction (or after the date and time specified for such responses has passed), the ASC Registrar will inform the parties of the timing for the next steps in this proceeding.

December 1, 2025

**For the Commission:**

"original signed by"
Tom Cotter

"original signed by"
Kari Horn, K.C.

"original signed by"
Bryce Tingle, K.C.