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IN THE MATTER OF THE SECURITIES ACT
R.S.B.C. 1996, c. 418

AND

IN THE MATTER OF BARRY SHER GILL, ADRIENNE TUIJTHOF,
GORDON CHARLES CHAPPELL AND JAMES CALVIN LETENDRE

HEARING

PANEL: ADRIENNE R. WANSTALL MEMBER
PETER A. MANSON, Q.C MEMBER
DAVID HOOPER¹ MEMBER

¹David Hooper resigned from the Commission on January 4, 1997, and did not participate in this decision

DATES: JULY 8 to 12, 15 and 16, and AUGUST 19, 1996, FEBRUARY 10 to 14, 17 to 21, 24 and 26, and MARCH 17, 1997

APPEARING: TODD FOLLETT FOR COMMISSION STAFF
BARRY SHER GILL FOR HIMSELF
ADRIENNE TUIJTHOF FOR HERSELF
GORDON CHARLES CHAPPELL FOR HIMSELF
JAMES CALVIN LETENDRE FOR HIMSELF

DECISION OF THE COMMISSION

1. INTRODUCTION

This was a hearing under sections 144(1) and 144.1 of the *Securities Act*, S.B.C. 1985, c.83 (the “prior Act”), now sections 161(1) and 162 of the *Securities Act*, R.S.B.C. 1996, c.418 (the “Act”). A notice of hearing was issued on November 21, 1995, which alleged that:

- Barry Sher Gill traded and advised in the securities of Ambra Royalty, Inc. without registration, contrary to section 20 of the prior Act (now section 34 of the Act);
- Adrienne Tuijthof traded in the securities of Ambra without registration, contrary to section 20 of the prior Act;
- Gordon Charles Chappell traded and advised in the securities of Ambra without registration, contrary to section 20 of the prior Act, and telephoned people at their residences for the purpose of trading in the securities of Ambra, contrary to section 34 of the prior Act (now section 49 of the Act); and
- James Calvin Letendre traded and advised in the securities of Ambra without registration, contrary to section 20 of the prior Act, and telephoned people at their residences for the purpose of trading in the securities of Ambra, contrary to section 34 of the prior Act.

The notice of hearing was accompanied by temporary orders under section 144(2) of the prior Act that:

- Gill, Tuijthof, Chappell and Letendre comply with and cease contravening sections 20 and 34 of the prior Act;
- the exemptions described in sections 30 to 32, 55, 80 and 81 of the prior Act (now sections 44 to 47, 74, 75, 98 and 99 of the Act) do not apply to Gill, Tuijthof, Chappell and Letendre; and
- Gill is prohibited from becoming or acting as a director or officer of Ambra.

The hearing was adjourned, and the temporary orders extended, twice, by consent. The hearing began on July 8, 1996, but was adjourned on July 12 due to Gill’s ill health. After further applications for an adjournment on July 15 and 16, and August 19, the hearing was adjourned until February 10, 1997, on the basis of the testimony of Gill’s doctor. The hearing concluded on March 17, 1997, after a total of 21 days of hearing. Letendre was present in the early days of the hearing but absented himself for the remainder, and greater part, of the proceedings. He did not testify. Gill, Tuijthof and Chappell were present for the entire hearing and did testify.

2. BACKGROUND

Gill was registered under the Act as a salesperson with Wolverton & Company Limited in Vancouver from 1969 to 1982. Gill was not registered under the Act during the time

period relevant to this hearing. In 1980, Gill incorporated in British Columbia a company called Metric Resource Group Inc. Gill was the sole director and officer of Metric, whose office was at 700 - 890 West Pender Street in Vancouver.

Gill established within Metric a division called the Platinum Capital Division, to provide financial and management services to junior companies. According to a corporate profile of the Platinum Capital Division prepared by Gill in 1982, one of these services was "the administration and co-ordination of promotion and related public relations matters with a "hands on" approach or through consultation and supervision." The corporate profile also states that Platinum would directly invest in speculative and venture capital situations, with a priority given to those companies purchasing services from Platinum.

Tuijthof was the vice-president of Platinum. Gill referred to her as his "trusted executive assistant" and said that he admired her insight and valued her opinions. Tuijthof appears to have been the only employee of Metric during the period prior to Metric's involvement with Ambra. Tuijthof has never been registered under the Act.

Ambra was incorporated in Utah on January 27, 1984. Its business was to hold royalty interests in oil and gas properties. However, in 1989 Ambra disposed of its assets in settlement of its debts and ceased operations. On August 6, 1993, Ambra's shares began to be quoted on the NASDAQ OTC Bulletin Board (all Ambra share prices noted in this decision are in U.S. dollars). By that date, Ambra had not yet recommenced operations. The company had no money and no bank account.

Also in August 1993, Gill and Tuijthof were approached by a representative of Ambra, Billy Stephen Bailey, to manage and carry out investor relations for Ambra. Bailey, a resident of the United States, also indicated that he was looking for a gold property for the company. Gill responded quickly on a number of fronts.

Later in August, Gill introduced Bailey to Jaroslav Ruza, whose company, Ruza Resources Ltd., owned the Marathon mineral claims on Vancouver Island. On September 26, the directors of Ambra passed a resolution authorizing the then president of Ambra to negotiate with Ruza for the acquisition of the Marathon claims. In an examination under oath held on September 27, 1995, Ruza told Commission staff that Ambra was represented solely by Gill during the negotiations. However, in his testimony, Gill denied this and claimed that Bailey and Ruza negotiated the Marathon deal and that he assisted both of them.

Also in September, Gill introduced Bailey to Stockdeck Communications Ltd. Stockdeck is in the business of putting together packages of cards respecting various companies and mailing these packages to potential investors. An investor reviews the cards and, if he or she is interested in a particular company, either calls the company directly or returns the card to Stockdeck, which in turn passes it on to the company. Bailey contracted with Stockdeck to include a card respecting Ambra in 100,000 packages that were mailed out in October.

In November, Ambra appointed a new president, Gary Worley, a resident of the United States. Also in November, Bailey prepared a "corporate report" respecting Ambra. It is in the form of a brochure, on the front of which is Ambra's name, a reference to its NASDAQ quotation, its NASDAQ symbol, and a colour photograph of a vein of gold on the Marathon property. The brochure describes various Ambra projects and states:

The Company feels that AMBRA ROYALTY, INC. is an excellent opportunity at current levels for the speculative investor. With projected strong earnings and no corporate debt, AMBRA ROYALTY is primed for rapid growth and should yield a good return over the next several years.

The brochure contains a 1-800 telephone number. The address and telephone number provided for Ambra are in Utah, but the fax number is that for Metric's office in Vancouver. Over 100,000 copies of the brochure were distributed in the United States.

In December 1993 or January 1994, Bailey prepared a second version of the brochure. It is substantially the same as the first and contains the same statement quoted above. However, there is no 1-800 number, and the address and telephone and fax numbers provided for Ambra are those of Metric's office in Vancouver. Over 100,000 copies of this second brochure were also distributed in the United States.

In January 1994, Ambra moved into Metric's office in Vancouver. Bailey and Gill agreed verbally that Ambra would pay Metric US\$2,500 per month for rent and US\$2,000 per month for telephone, fax and secretarial services. The total rent paid by Metric for its office was \$2,879 per month. Gill testified that Bailey also gave him 900,000 free trading shares of Ambra "as a down payment for my future services" and "left it up to me to figure out what I should be paid." Gill also testified that Bailey hired Tuijthof to perform secretarial functions for Bailey and Ambra at a salary of US\$3,000 per month, to be paid by Ambra when the company could afford it. This employment was separate from Tuijthof's employment with Platinum. Tuijthof testified that she was employed only by Platinum, but that part of her duties consisted of work on behalf of Ambra, for which she would be paid by Ambra.

Gill testified that, from January 1994, Ambra's management function was performed solely in Vancouver, while its promotional function was performed solely in the United States. The management function included negotiating contracts and private placements, and preparing financial statements. The promotion function, according to Gill, was handled by sixteen "promoters of Ambra" in the United States. These promoters were large shareholders of Ambra, each of whom "had his own group of investors that were shareholders", and each of whom would check the market every day, review the latest news releases and tell their friends how great Ambra was. However, there was no longer a 1-800 number in the United States and there was no investor relations office in the United States.

In early 1994, at Bailey's request, Ambra's Vancouver office began performing an

investor relations function as well as the management function. Gill characterized the investor relations function as dealing with existing shareholders as well as following up with investors who had asked for information about the company. He testified that "as investor relations you can tell people what the company is telling and tell it in the highest - the best light possible. What you can't do is you can't solicit stock. You can't sell them stock like a stockbroker. That's the difference."

Gill hired Chappell, through Platinum, to do investor relations for Ambra. Chappell has never been registered under the Act. Chappell was to receive \$2,500 per month and, possibly in 1995, options on Ambra stock. From 1991 to 1993, Chappell had worked for a company that provided investor relations services for a number of venture capital companies, including a company called Bonaventure Resources. Gill testified that he hired Chappell because of his knowledge of investor relations and that Chappell was given total authority to organize Ambra's investor relations activities. Chappell started in February or March of 1994 and his initial responsibilities were to deal with the shareholders who had been calling with inquiries about Ambra's reactivation and to reply to potential investors who had responded to either the Stockdeck mailing or one of the brochures.

In late April 1994, Chappell had a disagreement with Gill and Tuijthof with respect to his activities. Chappell testified that he was called into Gill's office with Tuijthof and "sternly chastised by both parties in the way I was proceeding with the investor relations program." In a summary prepared by Chappell of the events that occurred while he was working for Ambra, the contents of which summary were largely confirmed by Chappell in his testimony, Chappell states:

During the last week of April Barry and Adrienne became highly upset to learn that in their eyes I was spending far too much time and postage in mailing company information to registered shareholders 'that would not amount to nothing'. I was ordered to bring everything that I was working on into Barry's office. From there both Barry and Adrienne questioned me on what people I was talking with, the ones to leave alone and then instructed to begin going through his own card data base.

I was then ordered to record all outgoing calls, list all shareholders who recently bought stock, and to continually do so on a monthly basis and report to Barry on a monthly basis.

Chappell complied with this request. In evidence is a two page trades tracking log prepared by Chappell covering the period from March 15 to May 12. It has columns for date, investor, number of shares purchased and brokerage house. The first page shows a sub-total for the period from March 15 to April 21 of 279,000 shares, under which are the following words, in Gill's writing: "Paid up B. Gill April 22/94 [17,900]". The second page shows a sub-total for the period from April 22 to May 12 of 605,000 shares, next to the words "10% stock due". Under this are the following words, in Gill's writing: "B Gill Paid June 2/94 - transferred 60,500 shares." Chappell testified that Gill had agreed to pay him a commission of ten percent of the shares purchased by the people Chappell had spoken with. Gill testified that he never paid a commission to anyone who worked in

the office and that these transfers of shares to Chappell were payment for hours that Chappell had worked. Gill claimed that it was just a coincidence that the 60,500 shares paid on June 2 exactly equalled ten percent of the 605,000 share total noted on the page. However, receipts signed by Chappell show that Chappell was paid \$5,000 in cash for the approximately two month period from March 14 to May 20, which is roughly the same period covered by the trades tracking log.

The negotiations respecting the Marathon claims had concluded in early 1994. On June 20, 1994, Ambra agreed to purchase the Marathon claims from Ruza Resources for 2,000,000 Ambra shares, to be issued in installments over the next year and a half. Ruza had previously agreed with Gill that Ruza would transfer to Gill two thirds of the shares Ruza Resources received for the Marathon claims, as a fee for Gill's assistance in the negotiations. In turn, Gill had agreed with Tuijthof that he would transfer to her one half of the shares he received from Ruza Resources, for the help she had been giving him on projects up to that time.

The Marathon agreement appears to be signed by Ruza, on behalf of Ruza Resources, and Worley, on behalf of Ambra. However, Chappell testified that he was present when the agreement was signed and that, in fact, Gill signed Worley's name to the document. Chappell also testified that he saw Gill sign Worley's name to several other documents during the period from June 1994 through the spring of 1995, including directors' resolutions, letters to Ambra's transfer agent and news releases. Gill did not deny this, but testified that he had been authorized by Worley to sign documents on his behalf and produced a "Release" signed by Worley on November 26, 1995, which states that "Gill has always acted or signed with full consent of Ambra and in the best interest of Ambra."

During the remainder of 1994, Chappell focused his investor relations activities on dealing with the Ambra shareholders who had been calling with inquiries about the company's reactivation and sending information to the people who had responded to the Stockdeck mailing or the brochures. However, in his summary, Chappell notes that in July, "Barry and Adrienne were still very upset that in their eyes I was not getting many people to buy stock."

In a memorandum from Chappell to Gill dated July 22, Chappell outlines a proposal that he be given Ambra shares for: actual salary and expenses of him and his wife (who worked part-time at the office) for the period from May 21 to July 29; projected salary and expenses of him and his wife for the month of August; and "bonus (10%) of 670,000 shares traded from July 01, to July 22, 1994". The total number of shares requested is 153,000. At the bottom of the page, in Gill's writing, are the words: "O.K. Barry Gill July 22/94", followed by Gill's signature and a check mark. Gill testified that he had agreed to pay only the actual salary and expense claims, not the projected amounts or the bonus. However, he admitted that this is not reflected in his notation on the document.

During the remainder of 1994, Gill was negotiating on behalf of Ambra for the acquisition of various properties. Most of these negotiations came to nothing but, on

December 8, 1994, Ambra acquired for 500,000 Ambra shares an option to purchase 1000 acres of the Abbecombec property in Nova Scotia for \$2,300,000 payable in six installments, the first due May 31, 1995, and the last due November 15, 1999. Ambra then retained legal counsel to prepare a real estate prospectus in order to market the Abbecombec lots.

While the prospectus was being drafted, Gill, Tuijthof and Chappell turned their attention to a database of investors that Gill had been compiling for 25 years. Gill testified:

In the meantime, Gordie [Chappell] is saying that he needs help, that the Stockdeck cards are there, we've got a massive amount of database that I've collected over the last 25 years. I was a broker from 1969 to 1982. That was a client base. I've added whatever names, addresses -- whenever somebody calls me for information, I qualify them, I get their name, address, phone number, and I stick the name in the database. So I had some 6,000, 7,000 names that had never really done anything.

So I met with Mr. Chappell and Ms. Tuijthof sometime in January [1995] to look at this massive job we had in front of us to see what could be done...

We're sitting down and we're talking about what to do, and out of that conversation I'm sort of saying, "Why don't we just take this whole system and update it all, okay," and "Why don't we find out who these people are, if they're still interested," you know, "I've collected all these names and let's find out what exists."

Gordie had no time to really get involved, in that he's got his hands full of investor relations. So an ad is put in the paper for people to help us with updating the database...

I must add, what was the purpose of updating the database? The purpose of updating the database is I was trying to raise money to make the [Abbecombec] payment on May the 1st and I'm looking for a private placement. And I'm busy with the private placement. Gordie is busy with the present calls coming in. And I believe that you've got Bailey and Worley running around in the background and there's another mail drop done in February. Now we've got more calls coming in...

Now, when we started the updating of the database, what we were looking for is that these people had, over a 20-year period, called in, phoned in, wrote in to me, for information on various public companies. And every time that -- any time that a person calls in and I have a conversation with them and they may be inquiring about one company or another, I inform them that would they like to

go on our -- we used to call it the mailing list. And we may have information and we would like to send this information on other companies that they hadn't acquired -- inquired about.

And invariably, they categorically say "Well, put me on your mailing list. Whenever you have any information, please feel free to send it out to me." I asked them for their name, their address, their phone numbers and I stick that in the database. And that's how the database was built up.

Chappell's recollection of his January 1995 meeting with Gill and Tuijthoff to discuss the database is somewhat different. In his summary he states:

In the first week [of January 1995] Barry Gill asked me in to Adrienne's office. He asked me what I felt was the best option in that of hiring a public relations company in Vancouver or, to hire more people internally to move stock.

My answer being that as I had not been payed for many months, I questioned the fact that, where was the money going to come from? Barry's answer to my question was "don't worry about it, I'll look after it". Barry and Adrienne then went on to discuss employment advertisements.

Chappell testified that he understood the phrase "to move stock" to "imply more buying of the company stock."

On January 10, 1995, Ambra issued a news release announcing "the purchase of" the Abbecombec property and projecting \$3,000,000 of gross sales of lots in each of 1995 and 1996. In February 1995, a card respecting Ambra and its "acquisition of" the Abbecombec property was included in a Stockdeck mailing of 100,000 packages. The card repeats the gross sales projection of \$6,000,000 over the next two years.

Later in February, Tuijthof handed Chappell a memo and called him into a meeting with her and Gill in Gill's office. The memo was dated February 24, 1995, and was from Tuijthof to Chappell. It outlines a number of concerns that had come to her attention while "updating the computer and analyzing the efficiency of our operations". Parts of the memo read as follows:

...

6. This last week, you have come in to my office with a lot of excuses for things not done correctly by your self, trying to blame either the computer or myself. This is unacceptable.

7. Your organization is a total disaster and chaos and is a large part of the problems we have encountered.

8. Your excuses are becoming as much of a problem as the problems we have encountered. We are aware of the problems,

your excuses don't cancel the problems, nor do they defend it, it is an insult to our intelligence to listen to it and a waste of our time.

...

10. I am aware of some of the games you play, please know that I am watching you.

...

d. As of February 20, 1995 you stated to Barry and myself that you no longer would make such long phone calls (20 minutes or more), I will be monitoring all the phone bills from that date on to see that you are doing so.

...

Gordon I expect you to implement these changes immediately, without hearing any more excuses about the past "so called misunderstandings". Barry and I are partners, I have a lot at stake here and I do not like to be exposed any further. I am willing to ignore past mistakes, if you will not repeat them and cooperate with us. Every time you refuse to work with our system, you are working against us. If you work against us, you are working against your self. Don't question my authority or you will force me to exercise it.

Chappell testified that the atmosphere in the meeting was "charged" and that Tuijthof was "venomous". He also testified that there was a difference of philosophical views between Gill and Tuijthof, on the one hand, and himself, on the other, in the way they wanted to see the company handled "in that I thought they had a short term vision; move stock, to hell with the rest." He testified that: "At that time, to me, it was clearly evident that she was on a parallel footing with Mr. Gill in the day-to-day running of Ambra Royalty".

Chappell also testified that when people from outside the office came to the office to meet with the head of Ambra respecting potential acquisitions or other business functions, they would generally meet with Gill and Tuijthof. No one else from the office would attend.

Shortly after his meeting with Gill and Tuijthof in late February, Chappell prepared another memorandum to Gill outlining the share consideration to which Chappell believed he was entitled. The first page is a schedule listing the numbers of shares purchased by the people with whom Chappell spoke during each of the months from August 1994 to February 1995, with a seven month total of 2,134,000 shares. The next line reads: "February 24, 1995 10% share bonus owed = 212,000 shares." The remainder of the schedule describes a further 553,000 shares owed to Chappell for other reasons, such as loans of shares made by him, shares purchased by him but not received, and reimbursement for expenses incurred by him.

The monthly share purchase totals listed in the schedule are supported by five pages of trades tracking logs for that seven month period, showing, as in the earlier logs: date, investor, number of shares purchased and brokerage house. The telephone number and address of the investors are also provided in the logs.

At the bottom of the schedule, in Gill's writing, is the following notation: "Agreed that the certificate for 450,000 shares of Ambra plus option to purchase 300,000 @ 10¢/share completes all outstanding share commitments to March 31/95". Beneath the notation are Gill's and Chappell's signatures. Chappell testified that the 450,000 shares were to come from Gill, while the optioned shares were to come from Ambra.

During Gill's cross-examination of Chappell, Chappell agreed with Gill's suggestion that the 450,000 shares represented a partial reimbursement of Chappell's claim for the 553,000 shares owing for reasons other than the 10% bonus and, therefore, that Gill had rejected Chappell's claim for a commission. However, in redirect, Chappell agreed with Commission staff's suggestion that Gill had previously agreed to pay Chappell this commission but, when the time came for Gill to actually transfer the shares to Chappell, Gill had lined up others to sell the stock for him and Chappell's bargaining position was such that he could no longer insist that Gill pay him the commission.

At about this time, Gill hired six new people to work in the office, all of whom started work in March and all of whom were paid by Ambra. Gill testified that five of the six - Rob Nuttall, John Hickey, Gary Noble, Don Gulliman and Joseph Fernando - were hired to update the database, which Gill characterized as his property, rather than Ambra's. Each took his direction from Gill and each was responsible for confirming, by telephone, the names, addresses and telephone numbers of the people in the database. The database consisted not only of the names compiled by Gill over the past 25 years, but also of names compiled by Chappell during his involvement with Bonaventure, names generated from the two Stockdeck mailings and names from various other sources. Once they had confirmed the information, that is "qualified" the person, the information was given to Tuijthof, who would enter it in the new computer database and generate a document called a client contact sheet. The client contact sheet had information fields for: name, address, telephone and fax numbers; source; account representative and qualifier; date of last contact; number of shares purchased, price, date and brokerage house; information mailed and date; and comments.

Gill testified that the sixth person, James Letendre, was hired to assist Chappell in Ambra's investor relations activities. Chappell testified, however, that ["Letendre's] role to me was not clearly defined, although it was my impression that he was hired to act more in the stock promotion than actually qualifying, per se... As I saw it, it [Letendre's job] was to move stock." Letendre has never been registered under the Act.

Gill characterized the updating of the database and Ambra's investor relations activities as two independent, but parallel, operations. However, when asked whether the information generated by the qualifiers for the database was then turned over to Chappell and Letendre, the investor relations people, Gill replied:

I don't think it went like that but the end result was that, yes. But I think the end result -- when you call someone to check their name and address, I believe that to qualify them, you ask them if they were still interested on being on our database and receiving

information. And if they said yes, we followed up by saying, "We have information on a company, Ambra. Would you like that mailed out?"

And we did a two-fold function. One, the person would say, "Yes, I'm interested" "No, I'm not interested" and if they weren't interested they were taken off the database. These -- these people had been qualified before. I mean, that's how we got their name. They had contacted us. And then we mailed out the information to them.

And Gordon Chappell and Letendre were -- would call these people after they'd received the information to see if they had any questions that they could help them with. You know, there was -- that's how you, you know, tell about the company. "Is there more information? Did you have the right financials? No, I got the quarterlies. I wanted the annual report." Or vice-versa. "I want more information on the real estate. I want more information on the gold. Do you have the engineer's report?" There's a variety of things, of information, and in your initial mailout you don't -- you just -- it's impossible to include all the information that the person wants. Investor relations itself is presenting the company in the best light possible.

Tuijthof testified that the purpose of the database was to maintain a timely and accurate database of contact with investors and potential investors in Ambra.

The information generated by the follow up calls would be recorded by hand on the client contact sheet and then given to Tuijthof. Tuijthof would have Gill review and approve the handwritten comments; sometimes he would edit the comments or add his own instructions. Tuijthof would then enter this new information into the database. Every time new information was entered, Tuijthof would generate a new client contact sheet.

Also in March, Gill opened a bank account for Ambra, on the instructions of Worley. Only Gill and Tuijthof had signing authority on the account.

On April 1, Gill appeared on a Vancouver radio show called Wealth Investment Strategies for Everyone, where he talked about the investment opportunity represented by the Abbecombec property. At the end of the show, listeners who wanted more information about the lots or Ambra were encouraged to call Ambra's 1-800 number.

On April 10, Ambra issued a news release announcing that the marketing of the Abbecombec property was progressing "extremely well" though, in fact, the marketing plan was still at the preliminary stage, awaiting finalization of the prospectus. The news release noted that Ambra had received "many serious inquiries" for more information about the Abbecombec property after the radio show and that Ambra had established prearranged financing packages for purchasers of the lots. Finally, the news release projected \$3,000,000 of gross sales of lots in each of 1995 and 1996.

Also in April, Gill purchased 1000 leads from Mediacomm Media and those names were included in the database. Chappell testified that these leads were acquired to gain new Ambra stock buyers.

Chappell testified that, in April, the office “became a very heightened realm of activity, energy and motivation” and that there was “a competitive edge to see who was going to have people buy more stock.” Stockdeck cards were coming in; they had the 1000 new Mediacom leads; the radio show generated calls, as did the issuance of the news release. According to Chappell’s testimony, Hickey and Noble, who had been hired as qualifiers, were now starting to sell the stock. (Nuttall and Gulliman had left in March and, as Fernando worked only in the evening, Chappell was not generally cognizant of his activities.) Chappell testified that Gill was urging that they call people back to get them to buy stock even before they could have received the material that had been mailed to them.

Chappell was particularly concerned about Letendre’s behaviour. Chappell testified that Letendre was loud, with “boisterous enthusiasm”, and that he urged people to buy Ambra stock without first ensuring that they were adequately informed about the company. Chappell considered Letendre to be too free in offering his opinions about Ambra stock, in that he used phrases such as “It’s a great buy”. Chappell also disapproved of Letendre’s tendency to use the phrase “I work for you” during his calls. When Chappell raised these concerns with Letendre, they were shrugged off. When Chappell raised the same concerns with Gill, Gill told him to “lighten up”.

Chappell testified that Letendre told him that Letendre received a commission in addition to his salary of \$2,500 per month. In evidence is a trades tracking log with Letendre’s name, listing trades in April 1995. In an examination under oath held on February 8, 1996, Letendre told Commission staff that Tuijthof and Chappell had told him to keep track of the people he had spoken to who had purchased Ambra shares, but that he did not know why he was supposed to record this information.

Also in evidence are five cheques payable to Letendre drawn on Ambra’s account, all for the month of May 1995 and all signed by Gill and Tuijthof. One cheque is for \$500 and is labelled “Advance”. The other four cheques are for \$854.16, \$1,700, \$750 and \$500, and all are stated to be for “Consulting Services”. Thus, Ambra’s payments to Letendre for May 1995, totalled \$4,304.16. Gill denied that the payments exceeding \$2,500 were a commission based on sales of Ambra shares and testified that the \$1,700 payment had had something to do with Letendre’s moving costs. As well, in an examination under oath held on July 13, 1995, Letendre told Commission staff that he did not receive a commission while working for Ambra and that the \$1,700 payment was a reimbursement for his moving expenses. However, neither Gill nor Letendre submitted any documentary evidence in support of this explanation.

Chappell testified that he found a faxed document entitled “Questions for Qualifying” on his desk when he arrived one morning in late March or early April. He gave the

document to Tuijthof, who typed it up and circulated it to everyone in the office. Chappell testified that it was used as a script or guide for talking to prospective investors.

Various iterations of this document were developed. The original version read as follows:

Questions for Qualifying

Are you active in the Stock market? If so, which one?
When was the last time you invested?
Are you looking to invest in a company now?
What do you look for in a company?

Qualify for Ambra!

Would you like an opportunity to see more information on Ambra Royalty for investment purposes?
When you decide to invest in Ambra, what kind of position do you like to start off with, 20-30,000 shares?

Later versions had several additional questions at the end:

What brokerage house do you go thro? Brokers name?
Can you afford to buy Ambra (10,000 sh of Amby @
8¢=\$800+comm)
How many shares do you have of Ambra?
If you can afford 10,000 shares at 15¢, why are you not buying now?

Chappell testified that these were the questions used by Letendre when he called people.

One copy of the original version had the following comments noted on it, in Gill's writing:

"Don't mortgage the wife & kids!
Sell them!
and Buy! the Stock!"

25,000 - .07 Terry Plumber

Gill testified that the words in quotation marks were a joke and guessed that the remainder referred to a call that Plumber had made with a message for Letendre that Plumber had purchased 25,000 shares of Ambra at \$.07. Gill also testified that when the qualifiers were talking to people many things could come up and that these "Questions for Qualifying" were guidelines provided by Chappell for those conversations. Gill denied that the qualifiers were told to ask these questions and denied that they were soliciting purchases of Ambra shares.

Another copy of the original version had the following additions, in Hickey's writing:

20 @ 7 is only 1400 + 50 Brokerage fee. A good starting point to watch from. When stock doubles to 15¢ you can decide to leverage up or take profit.

Do you use a full service or discount broker?

What is your fax number?

Hickey testified that these additions were from notes he took at a meeting with Chappell, on either April 19 or 20, but that he did not actually say these things during calls. Chappell, however, testified that, in his calls, Letendre frequently used the phrase about leveraging up or taking profit when the stock doubled.

Another document, in Hickey's writing, dated April 19, 1995, reads as follows:

Ask directly Do you have a full service broker

Go direct with the questions

What brokerage firm

Use humour to develop relationships

Only .07 - you're not buying GM

Take stress off the person - ask for a good time to call

Tell him how good deal is for him

Scan the person - Turn qualifieds over to person best suited to their personality

Get office number or daytime number

Do you buy lottery tickets?

Hickey testified that these were notes he made at a meeting that he and Noble attended with Chappell on April 19, in which Chappell suggested questions they could ask if the person being qualified indicated interest in Ambra, but Chappell and Letendre were unable to take the call. However, Hickey also testified that he did not use these questions himself and that he had not been asked by Gill, Tuijthof or Chappell to sell shares of Ambra. However, he admitted that, if asked, he would discuss with the person how many shares the person should purchase and that he may have said: "At five cents it's a heck of a buy."

The nature of the calls handled by the qualifiers, Letendre, Chappell and Gill during this period are evidenced by the comments on the more than 50 client contact sheets submitted at the hearing. There are frequent references to whether the person contacted is active in the market, whether they have a broker, whether they have a large amount in investments, and whether they might be interested in buying Ambra shares. Almost every client contact sheet has instructions or comments on it in Gill's writing, most frequently "Mail Ambra" or "1-2 P".

The latter stands for "1-2 punch". Hickey testified first that this phrase referred to a situation where he, or another qualifier, was unable to answer certain questions about the company and would have Chappell or Gill speak to the person. Chappell concurred with this description. Hickey later testified that it could refer to a person being interested in both the lots and the stock. Gill testified that it meant just the latter. However, Gill's "1-2 P" notation appears on several client contact sheets where the comment section indicates that the person is interested only in the stock.

Several of the client contact sheets have comments in Hickey's writing. Some examples of these comments follow.

- A sheet for J. Hansen of British Columbia shows the account representative as Gill, the source as "SDC/ORI" and notes that material was mailed on March 8, 1995. The comments note calls on March 16, 17 and 31. A comment, in Hickey's writing, reads: "April 11/95. Doesn't want to have anything to do with it. I asked if he read info etc but couldn't change his mind"
- A sheet for Charles Brewer of Montana shows the account representative as Gill, and the qualifier as Gulliman, the source as "SDC/AMBY" and notes that material was mailed on March 20, 1995. The comments note calls on April 10 and 11. A subsequent comment, in Hickey's writing, reads: "April 17/95. Feels that he has enough investments. I tried to get him to invest a minimal amount but he wouldn't budge (send him more information down the line)".
- A sheet for Larry Bartsoff of British Columbia shows the account representative as Gill, the source as "SDC/ORI" and notes that material was mailed on March 8, 1995. The comments note calls on March 13 and April 5, 12 and 18. A subsequent comment, in Hickey's writing, reads: "April 19/95. Told me same story as he told Joe April 5. Wants to lie low. Doesn't even want a small position at .07. Even Jim [Letendre] couldn't have changed his mind".

Many of the client contact sheets have comments in Chappell's writing. Some examples of these comments follow.

- A sheet for Dean Baker of Ontario shows the account representative as Chappell, the source as the 1995 Stockdeck card and notes that material was mailed on April 4. The comments, in Chappell's writing, are: "Uses a discount + does own search. Gave pitch on stock and projections. Could buy 20-30K shares. Took SYM [stock symbol] + 800#". Additional comments, in Gill's writing, are: "Mail Ambra - Keep comments - 1-2 P".
- A sheet for Kent Britton of Alberta shows the account representative as Chappell, the source as the 1995 Stockdeck card and notes that material was mailed on April 4. The comments, in Chappell's writing, are: "High interest in stock, gave pitch and projections, has Kevin North as his broker, gave Dean Skeptyski's no. very easy to talk with, likes golf". Additional comments, in Gill's writing, are: "Mail Ambra - Excellent - Keep comments - Keep sheet - 1-2 P".
- A sheet for Randy Gold of Ontario shows the account representative as Chappell and the source as the 1995 Stockdeck card. The comments, in

Chappell's writing, are: "April 17 Home today Easter Monday - Usually in 2-3 p.m. pst - Mail Good interest, in markets Could handle 10-20 K". Additional comments, in Gill's writing, are: "Mail Ambra".

Letendre's comments are noted on several of the client contact sheets. Unlike Chappell and Hickey, Letendre did not testify. However, four people whose client contact sheets are in evidence did testify as to their conversations with him.

- The client contact sheet for Robert Anhorn of British Columbia shows the account representative as Gill, the source as "SDC/ORI" and notes that material was mailed on March 8, 1995. There is nothing in the share purchase or comment fields.

Anhorn sent in a Stockdeck card respecting Ambra and was telephoned at home by Chappell in early 1995. After speaking to Chappell four or five times, Anhorn bought 25,000 shares of Ambra at \$.07 on April 7. Anhorn testified that Chappell had encouraged him to buy, as it would be a good deal for him, but that Chappell had not been forceful or pushy. Starting in mid-May, Letendre rather than Chappell began calling Anhorn. Anhorn testified that Letendre called him many times, was excited about Ambra and came on a little bit strong. He also testified that Letendre told him first, that the stock would go to \$1.00 and that he could sell some stock to buy a lot, and second, that the Marathon property was going to be good and that he should buy more shares before it took off. As a result of his conversations with Letendre, Anhorn bought 30,000 more shares of Ambra on June 5. Both Chappell and Letendre had asked him to let them know if he bought any stock, and he did. There is no explanation as to why the April 7 purchase was not recorded on Anhorn's client contact sheet.

- The client contact sheet for Al Dean of British Columbia originally showed Gill as the account representative and Gulliman as the qualifier, but both these names are crossed out and Letendre's name written in. The source is "GPR"; Gill had spoken to Dean about GPR (Gold Power Resources) stock in 1980.

The sheet notes that material was mailed to Dean on March 13, 1995. The comment field notes calls on March 15, 16, 21 and 22 and 31, but the first call that Dean recalled was the March 31 call. The sheet states: "M31 - Possible 20-30,000/ said stock will move". Dean testified that he received this call at work, from Letendre. Letendre was enthusiastic and encouraged him to buy the stock, saying that it was a good time to take a position, at either \$.08 or \$.09. Dean testified that Letendre called him again on April 4, to tell him that if he bought 10,000 shares at \$.08 he would do well, and again on Wednesday, April 5. In that call, Letendre told

him that “the president or principal” of Ambra had been a broker with Wolverton and gave him information on the Abbecombec property. The sheet records a call as follows: “Wednesday - He called - we had a good talk - may buy 10,000 - 20,000”. This comment is in Gill’s writing rather than Letendre’s. Dean and Letendre had another conversation on April 12. At this point, Dean assumed that Ambra owned the Abbecombec property outright, as Letendre had told him that Ambra was debt free with \$4 million worth of assets. Letendre had also told him that it was hoped the share price would go to \$.20 by the summer and \$1.00 by the end of the year. On April 13, Dean bought 20,000 shares at \$.07 and, on April 17, he bought an additional 20,000 shares.

Dean described Letendre in the following manner: “he was a very good sales person. I felt - see, I was on the fence, and he knew it, because I had not advised him that I had committed to purchasing shares, in the early phone calls, and therefore he was doing his job to basically get a commitment from me that I would buy some stock.” Letendre called Dean again three times and sent him the news release of May 3. On May 5, Dean received a call from Scott Bridge, an investigator with the Commission, who told him that the Commission was investigating a complaint about Ambra. On May 6, Gill called Dean at home to elaborate on the news release and Ambra’s activities. In that call, Gill told him that there were 20 confirmed sales of Abbecombec lots but that the prospectus had not been completed. Gill also told him that the Marathon property was entirely owned by Ambra and that there was enough ore from the Marathon property from the blasting and trenching to send to processing to pay for a year’s drilling on the property (\$50,000). Gill had called him because Dean had questions about Ambra that Letendre was unable to answer. In the call, Gill did not suggest that Dean purchase more shares. On May 8, Dean sold his stock. He spoke with Letendre another two times in May. Dean testified that if he had known that Gill was a substantial net seller of Ambra shares during late spring/early summer of 1995, he might not have bought the shares.

- The client contact sheet for Michael Timoffee of British Columbia shows the account representative as Gill and that material was mailed to him on March 9, 1995. The printing company for which Timoffee worked had done some printing for Gill in 1989, and Gill had put Timoffee’s card in his database. Letendre called him several times in March and these calls are noted on the client contact sheet. Timoffee testified that Letendre “was actually promoting it [Ambra], so he was telling me that it was in a position that it is a good - a good time to buy.” Timoffee, however, did not buy any Ambra shares.
- The client contact sheet for Don Taylor of British Columbia shows the account representative and qualifier as Letendre and the source as “talk show”. Taylor testified that he heard Gill speaking about Ambra on a radio

talk show about investments and called Ambra a week later to request information about the lots and the shares. The sheet shows that material was mailed on April 3, 1995. The comment field is blank. However, Taylor testified that Letendre called him periodically over the next few weeks. Initially, Letendre advised him where he could buy the shares and the price at which they were trading, which was about \$.07. Letendre also told him that he could sell some shares later at \$.10 and take some profits. Letendre also asked him to let Letendre know if he bought any shares. The stock purchase field of the sheet records two purchases, the first of 20,000 shares at \$.075 on April 3 through Scotia McLeod, and the second of 10,000 shares at \$.07 through Scotia McLeod. Taylor testified that he did make the first purchase, but not the second. He explained this as follows:

He [Letendre] seemed - he was trying to sell me something. He was - he was directing me or steering me along the lines of purchasing more stock. That's why I kind of told him that I'd probably pick up 10,000 more, but I never did. I didn't want to. I just wanted to satisfy him to kind of get off the phone. Twenty thousand of this small, speculative company was enough for me.

Taylor also testified that Letendre came across to him as being a little bit aggressive. Letendre also told him that Gill was the "head man" and that he had a lot of experience in projects like Ambra. On one occasion, Taylor spoke to Gill, as he wanted more information than Letendre was able to give him. Gill told Taylor that Gill had run \$20 million companies of this kind before and that he was just starting a new one. Gill also gave Taylor some background respecting the real estate. However, Gill did not ask Taylor to buy any Ambra shares.

A client contact sheet respecting Ted Chase of Arizona which was found in Gill's office shows the account representative as Chappell, the source as "BOC/GC" and that material was mailed on November 15, 1994. The only comment is in Gill's writing and reads: "February 22/95 - Left message on his answer machine - Called back - Told him to buy 10,000 more - Said he would call his broker." Gill testified that he had no memory of this conversation and that he could not think of what the comment could mean. There are two client contact sheets in evidence respecting J.W. Ball of Alabama. One was generated by staff from Ambra's database. The comment field contains the following comment: "Investment club has 21 members - 50 years old - 50,000 @ 7 - this will be Gary's first score!!!!"

The other sheet appears to be the document from which this information in the database was generated, and was found in Tuijthof's work area. It shows the account representative as "Gary" and contains various comments in a variety of handwriting, including: "50,000 @ 7¢" and "Mail Ambra - This will be Gary first score! - Hi Hi Hi." Gill testified that the latter comment was in his writing, but that he did not know who wrote

the other comment. When it was put to Gill that these comments related to Noble having persuaded Ball to buy 50,000 shares of Ambra at \$.07 and that this would be Noble's first sale or "first score", Gill denied the suggestion, though he was unable to provide an alternative explanation of the comments.

After Gulliman left Ambra at the end of March, he had contacted the Commission and advised staff of concerns regarding Ambra's operations. On April 10, Langley Evans, a compliance officer with the Commission, telephoned the 1-800 number on Ambra's most recent Stockdeck card. Evans had worked at the Vancouver Stock Exchange in the mid 1980s and, while there, had dealt with Gill. In his testimony, Evans admitted that he and Gill had had disagreements at that time and that he, in fact, disliked Gill. In any event, as Evans assumed that Gill would remember him, he used the name Todd Sinclair during the call and did not identify himself as an employee of the Commission. An unidentified male answered the telephone, said that Ambra was a NASDAQ listed company that had a real estate project in Nova Scotia, and said that if he was interested in more information, he could speak to one of the principals of the company. Gill then came on the line. Gill described the Abbecombec project and told him that Gill had been a broker for 13 years. When Evans asked whether he could buy the stock and the lots from Gill, Gill replied that he could buy the lots, but not the stock, from Gill and that he would have to buy the stock through his brokers. Evans described the next part of the call as follows:

He [Gill] said that the – he thought the stock was an excellent buy, words to that effect, that I could hardly go wrong at six and seven cents, there was limited downside. I asked him what he thought the stock would do, or how the stock would do. He said it was just a matter of getting the promotion going. The only promotion that they were – that they had done to date was the Stockdeck. They had 1,000 leads from Stockdeck, they'd expected another 1,500 more. I took it from that that he expected, once the promotion was ongoing, that the stock would do well.

Evans testified that Gill referred to the stock as a "helluva buy". The call concluded with Evans arranging to pick up more information at Ambra's office and giving Gill his address and telephone number. The information was picked up from Ambra's office by a member of Commission staff and contained a business plan, brochures and news releases.

In his testimony, Gill denied that he told Evans that the stock was a "helluva buy" and that Evans could hardly go wrong at six and seven cents. He denied that he told Evans to buy any securities. However, he admitted that he may have said something about getting the promotion going, because Evans was very pushy and sounded very anxious.

On April 11, Letendre telephoned the number provided by Evans and left a message for Evans to call him. Evans called Letendre on April 12. Evans described the call as follows:

I said I was Todd Sinclair, I was phoning - I was returning the call of Jim Letendre. Jim Letendre came on the line. He asked me

whether I'd received the package; I said, "Yes, it was interesting ." Letendre asked whether I was interested in buying the stock or the real estate. I said that the real estate didn't interest me, but the stock did. Mr. Letendre said that that was fine with him, because he worked in investor relations with Ambra.

...

Yes, Mr. Letendre suggested at six and seven cents it was in a - it was well priced and that I should - he advised me to purchase between 10,000 and 20,000 shares if I was in a position to do so. He added that that day or the day prior, I believe, it had traded 100,000 shares and he thought that that was good - good volume for the stock.

...

Mr. Letendre went on to say that there was going to be a news release issued that day announcing that the Bank of Nova Scotia was going to provide financing for purchasers of the real estate lots at the Abbecombec real estate project, and he expected that the market would act favourably to this and the price would go up...

...He went on to describe that his expectations for the stock would be a price of 30 cents by the end of September, and a dollar a share by the end of the year. The way that things were proceeding, he thought the company could easily reach those marks, and it was a both good and - good short term and long term investment.

...

He offered that at six and seven cents there wasn't much downside.

...

Mr. Letendre said that he essentially looked forward to speaking to me in the future, assured me that he wasn't a broker who worked on commission, that he was working for me and that I would be put on his personal list, that he would be in regular contact with me.

I'd responded that I'd only invested in mutual funds prior to that and, in any event, didn't have a broker who was familiar with - with stocks, and Mr. Letendre offered the name of - I asked whether he could - asked Mr. Letendre whether he could recommend a broker, and he gave me the name of a Dean Shapiki (sic) or Shepytski with C.M. Oliver in Calgary, and then asked that I hold the line and he would get somebody for me locally.

Then Barry Gill came on the line and offered the name of Barry Butler at Yorkton Securities and that I should contact him at a number provided by Mr. Gill...

Over the next week, Letendre left five messages on Evans' answering machine for him to call Letendre. On the morning of April 20, Evans again called Ambra's office and spoke to Letendre. Evans described the call as follows:

Mr. Letendre, I believe, asked me whether I'd purchased the stock. I said that I was considering acting on his advice, that I'd buy \$10,000 to \$20,000 worth and was waiting for some GICs to mature so I'd have the available cash.

Mr. Letendre was taken aback. He was surprised at the amount of my investment and said that - that he'd suggested earlier that I consider an investment of 10,000 to 20,000 shares of - and not \$10,000 to \$20,000. So his suggested investment was about \$1,600 U.S.

I asked whether that was too much and he said, "No" but he didn't want me to go into the market too quickly and get hurt.

...

Mr. Letendre suggested that I consider the smaller amount as to - basically to get comfortable with the stock. Also suggested some urgency in that he was dealing with another individual that he expected to buy 200,000 shares of the company.

As he understood it, there was only currently posted in the market 150,000 shares for sale between seven and 10 cents, that when this order came through that he expected the price to go up, so that if I acted quickly I could get the stock at seven cents, and then when it went up to 10 cents I could discuss him - with him the options at that time of either buying more or maybe perhaps taking some profits.

...

Mr. Letendre then repeated that the company's goals were to see a stock price of 30 cents by September and prices in excess of a dollar by the year end, and he was confident that they could achieve those.

A client contact sheet respecting Todd Sinclair shows the address and telephone numbers provided by Evans. The account representative is Letendre and the qualifier is Noble. The sheet notes that material was sent on April 10, 1995. There is one typed remark in the comment field: "Wants info on lots plus stock - secretary pick up pkg - would like a video in the future as well". A handwritten note reads: "Talked & got Barry Butler's # @ Yorkton". The various attempts to contact Sinclair are recorded in writing. The last written notation reads as follows: "A-20 - lft message - /Called - 40,000 - 50,000 today".

In his examination under oath of July 13, 1995, Letendre told Commission staff that, in his conversation with Evans of April 12, he did not tell Evans that he thought Ambra's share price would rise, that he thought Ambra was a good investment or that he thought Evans should purchase Ambra shares. However, in his examination under oath of February 8, 1996, Letendre told Commission staff that he did not recall the words used in either of his two conversations with Evans. He also stated that he "never, anytime,

anywhere, advised anyone to purchase any securities.”

Later on the morning of April 20, Commission staff conducted a search of Ambra’s office pursuant to an order obtained from the Supreme Court of British Columbia on April 19. All documents respecting Ambra’s affairs were taken by staff for examination and copies were made of the computer databases. There were several different databases maintained on Tuijthof’s computer. One contains a list of the lots associated with the Abbecombec property. The second contains a list of individuals who responded to an advertisement in the Vancouver Sun for “telemarketers”, including Gulliman, Nuttall, Fernando, Noble and Letendre. The third contains a list of brokers, with 180 individual records; 29 records indicate brokers who had been contacted since December 31, 1994. The fourth contains records relating to corporate entities; there appear to be no entries later than December 31, 1994. The fifth contains a list of people who had expressed an interest in purchasing one of the Abbecombec lots.

By far the largest is the database that contains the information used to generate the client contact sheets. In this database were 4,700 different records, each with a different name. 1,382 of those records indicated that there had been either telephone or mail contact with the person since January 1, 1995. The addresses of these people were in several states, as well as a number of provinces, including British Columbia. Commission staff called 41 people whose names were on this database in order to determine whether they had been contacted by telephone by representatives of Ambra and, if they had, the nature of that contact. All 41 had been contacted and 31 said that the call had been unsolicited. 32 of the 41 had been called at their residences. Most of the 32 were unable to remember the name of the person from Ambra who had called them, but three said that the call had come from Chappell. Chappell testified that he did not recognize the names of these three people.

Chappell also testified that, after the search, Tuijthof printed off new copies of the client contact sheets so that Chappell, Letendre and Hickey could continue their follow up calls. (Noble and Fernando left in late April or May.)

Chappell testified that, after the search, the efforts to sell Ambra stock continued, though at a subdued level. However, the level of activity increased in May, when Ambra issued two news releases. A news release dated May 3 announces the start of the spring 1995 exploration on the Marathon property, which “is 100% owned by Ambra Royalty, Inc.” The news release also states that assays from samples showed gold values as high as 16.425 ounces per ton and that further testing was being done. A news release dated May 23 is entitled “Marathon Gold Property/Extremely High Assay Results/Gold 19.040 oz/ton - Silver 64.6 oz/ton” and announces that the further testing “resulted in even higher assay returns than anticipated.” The news release states again that the Marathon property is 100% owned by Ambra and outlines a three phase work program for the property.

In late May, Ambra placed an edited version of the May 23 news release as an advertisement in Barrons. Also, in May, Gill arranged for another advertisement relating

to Ambra and the Marathon property in Investors Business Daily, to run for a two week period.

Chappell notes in his summary: "With the assay results back from the lab and with results showing excellent results, Barry Gill urged on the promotional pursuit of new investors and more investing by current shareholders." Chappell testified that he came to work one morning in June to find that Gill had taken from Chappell's office the binder holding the names of all the registered and street name shareholders. Chappell testified that he saw Gill and Letendre step over each other in their efforts to contact long term shareholders in order to get them to buy more stock.

Chappell testified that, also in June, Gill, Tuijthof, Chappell, Letendre, Hickey and Noble began attending meetings to prepare for their upcoming interviews with Commission staff. He described this process as follows:

Q Now, I'd like to, in the rest of the time we have today, if I can, deal with something you raised in your June 1995 portion [of Chappell's summary]. Your second paragraph:

It was during this period that Barry began in earnest to 'toughen-up' work with all of us in preparation towards the up-coming hearing with the B.C.S.C. Barry and Adrienne were particularly wary of Jim Letendre, specifically in what had transpired during telephone conversations with 'Todd Sinclair'. It was Barry's desire to make sure that a 'sameness' of storyline was to be portrayed by all of us through our 'question and answer period' ordeal and that the B.C.S.C. would portray themselves like the Gestapo, who would stop at nothing in gaining what they wanted.

So, what's going on here? What's the toughen up process?

A Well, on one side Mr. Gill's saying there's nothing to worry about. On the other side of the coin, he is saying, "Well, basically, let's get the same storyline down so that we understand each other and can walk into the hearing process feeling a sense of comfort," and he described the BCSC as using gestapo-like tactics and, I believe, using it in context to put a sense of fear into ourselves, and that's the process that we would be looking at.

Q Now, I gather that this was actual meetings where people were drilled?

A Yes.

Q Okay. Were there very many of those meetings?

A How many I'm unsure of, but there were many, yes.

Q Now, was any particular strategy suggested that should be adopted towards the British Columbia Securities Commission inquiry?

A The only one I'm aware of is, if asked questions, deny, and if asked again, deny and deny and - it's the only one I'm aware of.

Q Okay, well that's a strategy. In fact, I think you refer to it in your Arizona transcript as "Deny, deny, deny."

A Yes.

Q What was the deny, deny, deny strategy?

A Any specific question relating to "Can you recall" any particular question, and the response would be "I don't know," "Don't recall," "I don't know." Deny, deny.

Chappell testified that the "drill" would always be with either Gill and Tuijthof, or just Gill. After Tuijthof had her interview, they would hold mock interviews, with Tuijthof asking the questions and Gill evaluating.

Chappell's interview with Commission staff was on July 13. Gill had arranged and paid for Jim Nielsen, a former Minister of Consumer and Corporate Affairs, to attend with Chappell. Chappell was of the view that Nielsen attended as "[a] set of ears" for Gill, so that Nielsen could report back to Gill the questions and answers at the interview. Though Nielsen told Chappell to keep it "short and sweet", Nielsen did not suggest to Chappell that he lie. However, Chappell admitted that, despite being examined under oath, he did not tell the truth at all times in that interview. Chappell testified that, because he was concerned about what Nielsen would report back to Gill, Chappell decided to "act as dumb and bewildered as possible." In a later telephone interview with Commission staff from Arizona, on October 6, 1995, Chappell admitted to having lied in the first interview.

In connection with their investigation of the activities being carried out at the Ambra office, Commission staff reviewed the telephone bills for the office during the period from January to June 1995. These telephone bills reveal a staggering amount of telephone activity. During the period from January 5 to June 12, 1995, there were over 15,000 outgoing long distance calls on the office six-line business number. More than 2,600 of these calls were over two minutes in length. During the same period, there were approximately 1,300 outgoing fax calls from a separate fax number and 4,900 incoming calls to a 1-800 number (of which approximately 2,600 calls completed). The total telephone bill for the period was \$17,450.58.

There is, of course, no way to confirm that each of these calls related to Ambra. However, Tuijthof produced the telephone bills to Commission staff in response to a summons issued under section 128 of the prior Act that required her to bring copies of "all telephone records for all telephone numbers used by Ambra Royalty, Inc. for the period January 1, 1995, to May 31, 1995, inclusive". As well, there is no evidence to suggest that there was any other activity taking place in the office during this period other than that relating to Ambra or the updating of the database. No one testified to that effect. All of the people hired in March were paid by Ambra. Evans testified that the

vast majority of the records at the office, and all of the most current material, appeared to be associated with Ambra.

Commission staff also reviewed Gill's and Tuijthof's trading in Ambra shares during the period from January 1 to June 30, 1995.

Gill's Trading in Ambra Shares

The following table shows, for these six months, total purchases and sales of Ambra shares through ten accounts over which Gill had trading authority. Eight of the accounts were in the name of Gill, one of his companies, or his wife's company. The other two accounts were in the name of Bailey. The table also shows the total volume of trading in Ambra shares reported on the NASDAQ OTC Bulletin Board for the six months, and the percentage of that trading accounted for by Gill.

Month	Gill's Purchases	Gill's Sales	Gill's Total Purchases and Sales	Total Shares Traded	Gill's % of Total Shares Traded
January	115,000	10,000	125,000	597,000	21
February	50,000	285,000	335,000	1,066,800	31
March	85,000	520,000	605,000	1,174,230	52
April	50,000	197,500	247,500	1,197,831	21
May	0	1,021,000	1,021,000	6,718,408	15
June	<u>80,000</u>	<u>441,000</u>	<u>521,000</u>	<u>1,953,905</u>	<u>27</u>
Total during period	380,000	2,474,500	2,854,500	12,708,174	22

The table shows a massive increase in both Ambra's trading volume and Gill's sales of Ambra shares after January. Trading volume almost doubles in February and then continues to rise, peaking at 6,718,408 shares in May. Gill's sales leap from 10,000 shares in January to 285,000 shares in February, rise significantly again in March, fall off in April and then peak at 1,021,000 shares in May. During the period from January to April, Ambra's share price fluctuated between \$.04 and \$.10. In May, however, while Gill was selling over 1,000,000 shares, the share price reached a high of \$.20 and closed the month at \$.155. During June, the price fell again and closed the month at \$.12. The table also shows that Gill's purchases of Ambra shares were insignificant compared to his sales; during these six months, he was a net seller of 2,094,500 shares.

Also during these six months, Gill was a significant player in the market. His trading represented over 50 percent of total trading in March and 22 percent of total trading for the six months.

Gill testified that part of this trading was done as a means of financing Ambra's activities during this period. He explained that he would receive Ambra shares from various sources, put the shares into one of these accounts, sell the shares, get a cheque from the dealer, and either deposit the cheque directly into Ambra's bank account or cash the cheque and deposit part of the cash into Ambra's bank account. He would use the

remainder of the cash for purposes unrelated to Ambra. Of the \$205,029.25 withdrawn from these accounts during this six month period (all of which was derived from the proceeds of sales of Ambra shares and none of which was withdrawn from the Bailey accounts), Gill testified that \$124,689.01 was deposited into Ambra's bank account. It follows that \$80,340.24 was retained by Gill for other purposes.

When questioned about the nature of these financing transactions, Gill responded as follows:

Q Let's be clear on that. My actual suggestion is that your funds and Ambra's funds were essentially intermingled. Shares would come in, some of those shares would be used for Ambra purposes, some of those shares would be used for cash to your wife, some would be used to other purposes. You sort of called them as you saw them at the time.

A That's correct.

Q Okay. And the funds were essentially intermingled?

A Somewhat, yes.

Gill also gave a detailed description of one of these financing transactions. Ambra required \$100,000 by May 31, 1995, to make the first payment on the Abbecomec property, but did not have the money. In mid May, one of Ambra's U.S. promoters, Charles Yourshaw, loaned 600,000 of his Ambra shares to Gill. These shares were deposited by Yourshaw directly into the account of Targa Management Ltd. (Gill's wife's company) at Union Securities Ltd. Gill sold 300,000 shares from that account during the remainder of May and received cheques from Union Securities totalling \$46,500, some part of which was deposited into Ambra's bank account. Gill also made two transfers from Targa's account in late May.

On May 24, Gill transferred 200,000 shares from Targa's account into the account of Cathedral Management (one of Gill's companies) at Canaccord Capital Corporation. Gill sold 175,000 shares from that account during the remainder of May. On May 25, Canaccord issued a cheque to Gill for \$38,000 which Gill deposited directly into Ambra's bank account.

On May 25, Gill transferred 25,000 shares from Targa's account into the account of IO Holdings Ltd. (one of Gill's companies) at Georgia Pacific Securities Corp. On May 16, Gill had sold short 22,500 shares from that account. The 25,000 shares transferred in on May 25 were used to cover the short sales. On May 26, Georgia Pacific issued a cheque to Gill for \$3,337.40. We are unable to determine whether this money was eventually deposited into Ambra's bank account or was retained by Gill.

In any event, Gill testified that, during May or June, Ambra issued 300,000 shares valued at \$.10 per share to Yourshaw in repayment of his loan to Gill of 600,000 shares. Ambra's audited financial statements for its financial year ending June 30, 1995, show

that Ambra issued 2,550,000 shares for cash; Gill testified that the 300,000 shares issued to Yourshaw are included in that 2,550,000.

In his testimony, Gill summarized this Ambra financing transaction involving Yourshaw's shares as follows:

He [Yourshaw] lent me the stock first. We sold the stock, I put the money in the company [Ambra], then the company issued – it became a loan to the company and it was retired by issuing stock to Mr. Yourshaw. It was, in fact, a private placement but it flowed through my accounts.

Tuijthof's Trading in Ambra Shares

The following table shows the total purchases and sales of Ambra shares for the period from January 1 to June 30, 1995, through five accounts in the name of Tuijthof. Also shown, for each month, are the combined purchases and sales through these accounts as well as the total trading volume of Ambra shares.

Month	Tuijthof's Purchases	Tuijthof's Sales	Tuijthof's Total Purchases and Sales	Total Shares Traded
January	0	160,000	160,000	597,000
February	0	0	0	1,066,800
March	0	60,000	60,000	1,174,230
April	30,000	180,000	210,000	1,197,831
May	0	100,000	100,000	6,718,408
June	<u>0</u>	<u>8,500</u>	<u>8,500</u>	<u>1,953,905</u>
Total during period	30,000	508,500	538,500	12,708,174

The total volume of Tuijthof's trading is much less than that of Gill's. However, like Gill's, Tuijthof's purchases of Ambra shares were insignificant compared to her sales. During these six months, Tuijthof was a net seller of 478,500 Ambra shares. She sold 100,000 of these shares during May, when Ambra's share price was at its highest.

We do not know Tuijthof's net profits from her purchases and sales of Ambra shares during this period. However, cheque withdrawals from the five accounts for this period total \$32,944.24; there were no cash deposits to any of the accounts and all of the trading in the accounts was in Ambra shares.

3. FINDINGS

Commission staff allege that

- Gill, Tuijthof, Chappell and Letendre traded in the securities of Ambra without being registered, contrary to section 20 of the prior Act;

- Gill, Chappell, and Letendre advised in the securities of Ambra without being registered, contrary to section 20 of the prior Act; and
- Chappell and Letendre telephoned people at their residences for the purpose of trading in the securities of Ambra, contrary to section 34 of the prior Act.

Unregistered Trading

Section 20 of the prior Act provided that a person must not trade in a security without being registered. “Trade” was defined in section 1(1) of the prior Act (now section 1(1) of the Act) to include:

...

(c) the receipt by a registrant of an order to buy or sell a security

...

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (d).

As the Commission noted in *In the Matter of Morgan-Taylor International Inc., Paul Kevin Groat and James Morris Durward* (1989) 107 B.C.S.C. Weekly Summary Ch.2, the definition of “trade” is very broad, and is intended to encompass a wide range of activities related to the selling of securities. In that case, Morgan-Taylor had contracted to provide public relations services for Pan World Ventures Inc. Groat and Durward, the principals of Morgan-Taylor, culled names and telephone numbers from discarded brokerage firm records and had Morgan-Taylor’s employees call these people respecting Pan World, using tout sheets as scripts for the calls. The Respondents claimed that the callers simply provided information about Pan World and that they were told not to solicit purchases of shares or to make unrealistic claims about Pan World, but to refer to brokers any clients who showed interest. The Commission said:

We find that the calls were indeed made for the purpose of trading in a security. It is clear from the evidence that the primary motivation of the calls was to induce in the individuals called an interest in purchasing Pan World shares. Whether or not specific offers to sell or specific representations as to the future price were made is irrelevant. The callers were clearly conveying a message that this was a company about to do something that would increase the value of its shares and that investors could profit from this opportunity by purchasing Pan World shares through their brokers. This message was an act or solicitation that was at least indirectly in furtherance of an order to a registered dealer to buy a security.

It therefore falls squarely within the meaning of the term “trade” as defined in the Act.

It is within the context of this very broad definition of trade that we must consider the activities of the various people in the Ambra operation.

In describing the activities being carried out in Ambra's office, Gill characterized the updating of the database as being independent of Ambra's investor relations activities. We are unable to accept this characterization. The qualifiers hired to update the database were paid by Ambra. Further, Gill admitted that if the person being qualified expressed an interest in remaining on the database and receiving information, they were asked if they wanted information on Ambra.

In fact, the various versions of the "Questions for Qualifying" document strongly suggest that the qualifiers went well beyond the types of factual questions described by Gill. Questions such as "When you decide to invest in Ambra, what kind of position do you like to start off with, 20-30,000 shares?" and "If you can afford 10,000 shares at 15¢, why are you not buying now?" clearly constitute solicitations to purchase Ambra shares.

One of the qualifiers, Hickey, added some notes to this document during a meeting with Chappell, including the following: "20 @ 7 is only 1400+50 Brokerage fee. A good starting point to watch from. When stock doubles to 15¢ you can decide to leverage up or take profit." Hickey testified that he never actually asked anyone these questions and was never asked to, or tried to, sell Ambra shares to anyone. We do not accept his testimony. We are of the view that Hickey's comments on the client contact sheets for Hansen, Brewer and Bartsoff, such as "I tried to get him to invest a minimal amount but he wouldn't budge....", clearly show that Hickey, one of the qualifiers in the operation, was soliciting purchases of Ambra shares.

Gill also admitted that, once a person was qualified, the person's name would be passed on to Chappell and Letendre for follow up. According to Gill, this follow up would consist of Chappell and Letendre simply confirming that the person had received the information they wanted and answering any questions they might have. Once again, we are unable to accept Gill's characterization of this process. There is a substantial body of evidence establishing that both Chappell and Letendre were soliciting purchases of Ambra shares.

First, the "Questions for Qualifying" document was used by both Chappell and Letendre. It was actually Chappell who had the document typed up and circulated to everyone in the office as a script for talking to prospective investors. Chappell also testified that Letendre used these questions in his calls.

Second, the comments on the client contact sheets show that both were doing much more than simply answering questions about Ambra. Some of Chappell's comments are: on the Baker sheet, "...Gave pitch and projections. Could buy 20-30K shares..."; on the Britton sheet, "High interest in stock, gave pitch and projections..."; and on the Gold sheet, "...Good interest in markets Could handle 10-20K". Letendre noted on the Dean sheet, "...Possible 20-30,000/said stock will move". Indeed, Letendre seems to have acquired a reputation in the office for his persuasiveness. Hickey noted on the client contact sheet for Bartsoff: "Doesn't even want a small position at .07. Even Jim couldn't have changed his mind".

Third, the testimony of the five people who had spoken with Chappell or Letendre on the telephone clearly shows that they were encouraging these people to purchase Ambra shares. Anhorn testified that Chappell had encouraged him to buy Ambra shares, but had not been forceful or pushy. Anhorn also testified that Letendre came on a little bit strong and told him that the stock would go to \$1.00, that the Marathon property was going to be good and that he should buy more shares before it took off. Dean testified that Letendre was enthusiastic and “a very good salesperson” and encouraged him to buy the stock. Timoffee testified that Letendre was promoting Ambra and told him that it was a good time to buy Ambra shares. Taylor testified that Letendre was a little aggressive and was trying to sell him something, to steer him into purchasing more stock; he actually lied to Letendre about purchasing Ambra shares to get Letendre off the telephone. Finally, Evans testified that, in one of the Todd Sinclair calls, Letendre told him that the shares were well priced, that Letendre expected the share price to go up and that he should purchase between 10,000 and 20,000 shares if he was in a position to do so. Letendre denied ever having advised anyone to purchase securities. However, the evidence to the contrary is so overwhelming that we are unable to accept his denial.

Fourth, we are of the view that both Chappell and Letendre were being paid a commission based on the number of Ambra shares purchased by the people with whom they spoke. Both Gill and Letendre deny that such commissions were paid. However, there is strong evidence to the contrary and, once again, we are unable to accept their denial. Chappell testified that, in 1994, Gill had asked him to track stock purchases and had paid him a 10% commission on those purchases. Chappell may not have received any commission payments in 1995, but this could well have been because he had fallen into disfavour with Gill and could no longer insist upon payment. Chappell also testified that Letendre had told him that he was receiving a commission as well as salary. Both Chappell and Letendre kept trades tracking logs recording shares purchases and Anhorn confirmed that both Chappell and Letendre asked him to let them know if he bought any stock. Finally, Letendre was paid \$4,304.16 in May by Ambra, an amount considerably greater than his \$2,500 salary. While both Gill and Letendre claimed that \$1,700 of this was for moving expenses, they produced no documentary evidence to support that claim.

On the basis of the evidence outlined above, we find that Chappell and Letendre solicited people, directly or indirectly, to place orders with registrants to purchase Ambra shares and were therefore trading in securities without being registered, contrary to section 20 of the prior Act.

Gill's role in the Ambra operation was more significant and more complex. It appears that he took steps to distance himself somewhat from the telephone activity, coming on the line only when required to answer a question the qualifiers, Chappell or Letendre could not answer. For example, both Dean and Taylor testified that Gill spoke with them about Ambra, but did not suggest that they purchase shares.

There were exceptions to this, however. The client contact sheet for Chase has a comment in Gill's writing that Gill was unable to explain: "Left message on his answering machine - Called back - Told him to buy 10,000 more - Said he would call his broker." As well, Evans testified that, during one of the Todd Sinclair calls, Gill told Evans that "he thought the stock was an excellent buy, words to that effect, that I could hardly go wrong at six and seven cents, there was a limited downside" and that Gill referred to Ambra shares as a "helluva buy".

Gill denied having made these comments. Also, Gill, as well as Tuijthof, vigorously challenged the credibility of Evans' testimony, particularly with respect to the Todd Sinclair calls. First, they argued that Evans was biased against Gill, because of disagreements Evans had had with Gill in the mid 1980s while Evans was working at the Vancouver Stock Exchange and because Evans admitted in his testimony that he disliked Gill. Second, they argued that Evans' use of an assumed name during the Todd Sinclair calls constituted entrapment and that his evidence with respect to those calls should be excluded.

With respect to their first argument, Gill and Tuijthof produced no evidence of bias on the part of Evans. In the absence of such evidence, the fact that Evans disliked Gill is not relevant. With respect to their second argument, neither Gill nor Tuijthof produced any authority for the proposition that the use of an assumed name under these circumstances constitutes entrapment or would require the exclusion of this evidence. The reality is that a member of Commission staff would be unlikely to obtain a realistic sample of what the public is being told if he or she is known to be a member of Commission staff, as Evans was known to be by Gill. Finally, many aspects of Evans' testimony are supported by documentary evidence, as well as by the testimony of the four investors. There is no independent corroboration of Evans' testimony respecting his telephone conversations with Gill and Letendre, but that was to be expected, given the circumstances of the calls. We have therefore concluded that Evans' testimony should be accorded a high degree of credibility and that we accept his version, rather than Gill's or Letendre's, of the Todd Sinclair calls.

What was of greater importance, however, than Gill's telephone activity was that Gill was clearly the directing mind, the "head man", of Ambra's office. At the time Bailey asked Gill to manage and carry out investor relations for Ambra, the company had no operations and no money; all it had were a number of "promoters" in the United States who carried out some amorphous promotional activities. Gill very quickly took charge of Ambra's affairs.

Ambra's office moved into the premises of Metric Resource Group Inc., Gill's company. Gill brought both the Marathon claims and the Abbecombec property to Ambra and played a key role in both sets of negotiations. Gill opened Ambra's bank account and, with Tuijthof, had sole signing authority on the account. Gill arranged private placement financing for Ambra. Gill drafted news releases and prepared financial statements, and signed Worley's name to a number of documents. Despite Gill's contention that Ambra's promotional activities were handled by the promoters in the United States, it is clear that

Gill was active on this front as well; Gill arranged for the Stockdeck mailings and the Investor Business Daily advertisements, purchased the Mediacom leads and appeared on a radio show to talk about Ambra's Abbecombec project. Finally, Gill hired Chappell, Letendre and the qualifiers, and supervised their work as well as that of Tuijthof.

Gill's supervision of these people was direct and pervasive. He was clearly familiar with the "Questions for Qualifying" document, as a copy of it was found with the comment, in his writing: "Don't mortgage the wife and kids! Sell them! and Buy! the Stock!" Gill claimed that this was a joke, which it certainly appears to be, but it is clearly a joke made in the context of an operation that was soliciting people to purchase Ambra shares. He reviewed all trades tracking logs and, as we determined above, paid commissions to at least Chappell and Letendre. He also reviewed client contact sheets and therefore must have seen the comments noted on those sheets by Hickey, Chappell and Letendre. Gill would frequently add his own instructions and comments on the sheets, one example of which was his note on the Ball sheet: "Mail Ambra - This will be Gary first score! - Hi Hi Hi." Gill denied that this referred to Noble's first success in persuading someone to purchase Ambra shares but, as he was unable to tell us what he had meant by the comment, we reject his denial of this obvious interpretation.

Gill's close supervision continued even after the search. Assisted by Tuijthof, he seems to have gone to great lengths to prepare the people in the office for their interviews with Commission staff. Gill held "drills" and mock interviews, and even paid for Nielson to accompany Chappell on his interview.

On the basis of this evidence, we find that Gill himself solicited people, directly or indirectly, to place orders with registrants to purchase Ambra shares. We also find that Gill orchestrated and closely supervised the activities carried out in the Ambra office and that this constituted acts or conduct indirectly in furtherance of people placing orders with registrants to purchase Ambra shares. We therefore find that Gill traded in securities without being registered, contrary to section 20 of the prior Act.

Tuijthof's role in the Ambra operation was less obvious. She characterized her responsibilities as merely clerical - providing secretarial services to Gill and Bailey, and reorganizing and maintaining the database.

However, there is evidence that she played a more critical role in Ambra's operation, that of Gill's trusted second in command. Tuijthof had been involved with Gill for many years as vice-president of the Platinum Capital Division of Gill's company, Metric. Gill referred to her as his "trusted executive assistant" and said that he admired her insight and valued her opinions. He agreed to give her one half of the shares he received from Ruza Resources as a fee for his assistance in the Marathon claims negotiations.

Tuijthof had signing authority on Ambra's bank account and, with Gill, attended meetings respecting Ambra's business activities with people from outside the office. She also assisted Gill in his preparation of the office staff for their interviews with Commission staff. Letendre claimed that it was Tuijthof and Chappell who told him to

keep track of the people he had spoken to who had purchased Ambra shares.

In his testimony, Chappell described two key meetings in which he was called into Gill's office and chastised about his investor relations activities, one in April 1994 and the other in February 1995. Tuijthof was present at both and took an active role. Indeed, Tuijthof prepared a memorandum for the February 1995 meeting in which she lists a number of concerns that came to her attention while "updating the computer and analyzing the efficiency of our operations". Several of her comments indicate that she had a considerable amount of power in the Ambra organization, such as: "I am aware of some of the games you play, please know that I am watching you."; "Barry and I are partners, I have a lot at stake here and I do not like to be exposed any further."; and "Every time you refuse to work with our system, you are working against us. If you work against us, you are working against your self. Don't question my authority or you will force me to exercise it."

Chappell testified that, at that time, it was clear to him that Tuijthof "was on a parallel footing with Mr. Gill in the day-to-day running of Ambra Royalty."

Both Gill and Tuijthof argued strenuously that Chappell's testimony in respect of this and all other matters should be disregarded because he admitted to lying under oath during his first interview with Commission staff and because he is motivated by hostility against both of them. In support of Chappell's credibility, we note that much of his evidence is an admission against his own interest, such as his testimony that Gill had agreed to pay him a commission, and that he realized that the purpose of the operation was to "move stock". We also note that much of Chappell's evidence is supported by documents and by other testimony. For example, his testimony that Tuijthof was on a parallel footing with Gill in the running of the Ambra office is supported by Tuijthof's own memorandum described above. Finally, we accept Chappell's explanation that he lied in the interview because of his concerns about what Nielsen would report back to Gill, in light of Gill's instructions to use a "deny, deny, deny strategy".

We are of the view that Tuijthof was an integral part of the Ambra operation. She was responsible for reorganizing and maintaining the database, which was the core of the operation, and she was Gill's powerful second in command in the management of that operation. Without her involvement, it could not have been carried out on the scale and with the sophistication with which it was. We find that Tuijthof's involvement in the Ambra operation constituted acts or conduct indirectly in furtherance of people placing orders with registrants to purchase Ambra shares. Therefore, we find that Tuijthof was trading in securities without being registered, contrary to section 20 of the prior Act.

On the basis of these findings against Gill, Tuijthof, Chappell and Letendre, we have concluded that the Ambra operation in Vancouver was a boiler room of great scope and sophistication. In his testimony, Evans defined a boiler room as an operation that, without registration, contacts the public and solicits them to purchase shares in a company. The evidence is overwhelming and we have found that people working in Ambra's office were soliciting purchases of Ambra shares. It is also clear that this

solicitation was carried out on a massive scale.

During the period from January to June 1995, there were 2,600 completed calls to Ambra's 1-800 number and over 15,000 long distance calls made from the Ambra office, over 2,600 of which were over two minutes in length. There is no evidence as to how many local calls were made from the Ambra office. In any event, the office database reveals that 1,382 of the 4,700 people in the database were contacted by Ambra between January 1 and April 20, 1995. It is impossible to determine how many of these people actually purchased Ambra shares, but the steady increase in trading from January 1995, peaking at 6,718,408 shares in May, indicates that the Ambra operation was a very successful one.

Unregistered Advising

Section 20 of the prior Act provided that a person must not act as an adviser without being registered. An "adviser" was defined in section 1(1) of the prior Act as a person engaging in, or holding himself out as engaging in, the business of advising another with respect to investment in or the purchase or sale of securities.

Section 14 of the *Securities Regulation*, B.C. Reg. 270/86 (the "prior Regulation"), which was in force during 1995, (now section 8 of the *Securities Rules*, R.B.C. Reg. 194/97) set out three categories of adviser registration, one of which was a "securities adviser". A securities adviser was defined as a person who engages in or holds himself out as engaging in the business of advising others through direct advice or through publications as to the investing in or buying or selling of specific securities, not purporting to be tailored to the needs of specific clients.

In *In the Matter of Robert Anthony Donas* [1995] 14 B.C.S.C. Weekly Summary 39, the Commission considered the definition of adviser and concluded as follows:

As indicated by the [dictionary] definition of "advice", the nature of the information given or offered by a person is the key factor in determining whether that person is advising with respect to investment in or the purchase or sale of securities. A person who does nothing more than provide factual information about an issuer and its business activities is not advising in securities. A person who recommends an investment in an issuer or the purchase or sale of an issuer's securities, or who distributes or offers an opinion on the investment merits of an issuer's securities, is advising in securities. If a person advising in securities is distributing or offering the advice in a manner that reflects a business purpose, the person is required to be registered under the Act.

Several documents in evidence support the allegation that Chappell was advising with respect to the investment in or purchase of Ambra shares. Chappell had the "Questions for Qualifying" document typed up and circulated in the office as a script for talking to potential investors. A question in the later versions of that document clearly constitutes a recommendation to purchase Ambra shares, namely "If you can afford 10,000 shares

at 15¢, why are you not buying now?” Chappell’s comments on the client contact sheets also support the allegation: on the Baker sheet, “...Gave pitch on stock and projections...”; and on the Britton sheet, “High interest in stock, gave pitch and projections...”. As well, Anhorn testified that Chappell had encouraged him to buy Ambra shares, as it would be a good deal for him.

There is a significant body of evidence supporting the allegation that Letendre was advising with respect to the investment in or purchase of Ambra shares. Anhorn, Dean, Timoffee, Taylor and Evans all testified that Letendre encouraged them to buy Ambra shares. In particular, Dean testified that “[Letendre] was doing his job to basically get a commitment from me that I would buy some stock.”

There are two significant pieces of evidence in support of the allegation that Gill was advising with respect to the investment in or purchase of Ambra shares. The first is Gill’s comment on the client contact sheet for Chase that Gill “[t]old him to buy 10,000 more”, a comment that Gill was unable to explain. The second is Evans’ testimony of his telephone conversation with Gill of April 10, 1995, in which Evans posed as Todd Sinclair. Evans testified that in that call Gill said that “he thought the stock was an excellent buy, words to that effect, that I could hardly go wrong at six and seven cents, there was a limited downside” and that Gill referred to Ambra shares as a “helluva buy”. We determined above that we accept Evans’ testimony with respect to this call.

We are satisfied that Chappell, Letendre and Gill went beyond providing factual information about Ambra; each clearly recommended the purchase of Ambra shares. We are also satisfied that they were making these recommendations in a manner that reflects a business purpose. Each clearly understood that the business purpose of the Ambra office was “to move stock” and that his telephone conversations with investors and potential investors were directed towards that end.

On this basis, we find that Chappell, Letendre and Gill were acting as advisers without being registered, contrary to section 20 of the prior Act. We also find that their activities fall within the securities adviser category of adviser registration, which was set out in section 14 of the prior Regulation. By recommending purchases of Ambra shares in the context of the Ambra operation, each was engaging in the business of advising others through direct advice as to the investing in or buying of specific securities, not purporting to be tailored to the needs of specific clients.

Calls to Residences

Section 34 of the prior Act provided that no person shall telephone from within British Columbia to any residence within or outside British Columbia for the purpose of trading in a security. An exemption is provided to a person calling the residence of a close personal friend, a business associate or a client with whom or on whose behalf the person has been in the habit of trading in securities. That exemption is not available to Chappell or Letendre because neither was registered under the Act to trade in securities.

Of the 41 people whose names were taken from the Ambra database and contacted by Commission staff, 32 had received telephone calls at their residences. Most of them were unable to remember the name of the person from Ambra who called them. However, three of the 32 told Commission staff that the call had come from Chappell. Chappell testified that he did not recognize any of their names. However, Anhorn testified that Chappell had called him at his residence and Chappell did not challenge Anhorn's testimony in this regard.

None of the 32 people identified Letendre as the person who called them at their residence. As well, none of the four investors who testified stated that Letendre called them at their residence.

On the basis of this evidence, we find that Chappell telephoned from British Columbia to residences for the purpose of trading in Ambra shares, contrary to section 34 of the prior Act.

4. DECISION

Gill orchestrated and closely supervised a boiler room of great scope and sophistication. In the first six months of 1995, there were 4,900 calls to Ambra's 1-800 telephone number, of which 2,600 calls completed. During the same period, Ambra employees and, on occasion, Gill himself placed over 15,000 long distance calls to people throughout North America in an effort to promote purchases of Ambra shares; more than 2,600 of these calls were over two minutes in length. It is impossible to determine how many local calls were made. Also during the first six months of 1995, Gill organized a number of promotional efforts respecting Ambra, including the issuance of enthusiastic press releases, mailouts of Stockdeck cards, a radio show appearance, and the insertion of advertisements in a financial publication.

These efforts appear to have been to some effect. Trading in Ambra shares almost doubled from 597,000 shares in January to 1,066,800 shares in February 1995 and continued to increase over the following months, peaking at 6,718,408 shares in May. During this period, ten brokerage accounts over which Gill had trading authority were net sellers of over 2,000,000 Ambra shares. Over 1,000,000 of these shares were sold during May, the month in which Ambra's trading volume and share price was its highest. Of the \$205,029.25 withdrawn from these accounts during this period, \$124,689.01 was given to Ambra; the remaining \$80,340.24 was retained by Gill.

In the process of making our findings, we have come to the conclusion that much of Gill's testimony with respect to the Ambra operation can be given little, if any, credibility. We have rejected the following parts of Gill's testimony: that the updating of the database was independent of Ambra's investor relations activities; that Chappell and Letendre, in their calls, would simply confirm that the person had received information and answer questions; that Gill did not pay commissions to Chappell and Letendre; that

Gill's note on the Ball sheet did not refer to Noble's having persuaded Ball to purchase Ambra shares; and that Gill did not solicit Evans' purchase of Ambra shares in the Todd Sinclair call of April 10, 1995. We are also unable to accept Gill's inability to explain his comment - "Told him to buy 10,000 more" - on the Chase sheet. Gill reviewed every client contact sheet in the Ambra operation; it is inconceivable that he would not know the meaning of such comments, and equally inconceivable that he could deny that these comments related to an operation that was soliciting purchases of Ambra shares. We note that his denials and inability to recall are in line with his "deny, deny, deny strategy" described by Chappell in his testimony.

We have found that Gill traded in securities and acted as an adviser without registration, contrary to section 20 of the prior Act. Both the courts and the Commission have recognized in several decisions that the Act is aimed at regulating the capital markets and protecting the public. A cornerstone of the regulatory structure established by the Act is the requirement that people advising and trading in securities on behalf of others be registered. This is intended to ensure that the investing public receives expert advice from competent and ethical people, whose activities are governed by a comprehensive set of rules and subject to regulatory scrutiny. See: *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301; *Gregory & Co. v. Quebec Securities Commission*, [1961] S.C.R. 584; *In the Matter of The Atlantic Trust Management Group* [1995] 14 BCSC Weekly Summary 54; *In the Matter of Robert Anthony Donas* [1995] 14 BCSC Weekly Summary 39; and *In the Matter of John Philip MacKenzie Williams and Aristedes Mellios* [1996] 12 BCSC Weekly Summary 9.

It is clear that the Ambra boiler room was orchestrated by Gill and that it operated in blatant disregard of the registration requirements of the Act. It is also clear that, during the period the boiler room was in operation, Gill was a net seller of over 2,000,000 Ambra shares through accounts over which he had trading authority, and he retained over \$80,000 of the money generated by this trading. Accordingly, we consider it to be in the public interest to remove Gill from participation in the market and from any involvement with issuers for a substantial period, and to impose on him a significant administrative penalty. Therefore, we order

1. under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 do not apply to Gill for a period of 25 years from the date of this decision;
2. under section 161(1)(d) of the Act that Gill resign any position he holds as a director or officer of any issuer and is prohibited from becoming or acting as a director or officer of any issuer until
 - (a) he has successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers, and
 - (b) a period of 25 years has elapsed from the date of this decision;
3. under section 161(1)(d) of the Act that Gill is prohibited from engaging in investor relations activities for a period of 25 years from the date of this decision;

4. under section 162 of the Act that Gill pay the Commission an administrative penalty of \$50,000; and

5. under section 174 of the Act that Gill pay the costs of or related to the hearing in an amount to be determined following submissions from the parties.

Tuijthof was Gill's trusted second in command in the running of the Ambra boiler room. She was also responsible for reorganizing and maintaining the computer database which was the core of the operation. Gill would not have been able to run a boiler room of this magnitude without her support and assistance. We have found that Tuijthof traded in securities without registration, contrary to section 20 of the prior Act. During the period under review, she was also a net seller of 478,500 Ambra shares through five accounts in her name. Withdrawals from these accounts over the period totalled \$32,944.24. We consider it to be in the public interest to remove Tuijthof from participation in the market and from any involvement with issuers for a significant period and to impose on her an administrative penalty. Therefore, we order

1. under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 do not apply to Tuijthof for a period of 15 years from the date of this decision;

2. under section 161(1)(d) of the Act that Tuijthof resign any position she holds as a director or officer of any issuer and is prohibited from becoming or acting as a director or officer of any issuer until

(a) she has successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers, and

(b) a period of 15 years has elapsed from the date of this decision;

3. under section 161(1)(d) of the Act that Tuijthof is prohibited from engaging in investor relations activities for a period of 15 years from the date of this decision;

4. under section 162 of the Act that Tuijthof pay the Commission an administrative penalty of \$30,000; and

5. under section 174 of the Act that Tuijthof pay the costs of or related to the hearing in an amount to be determined following submissions from the parties.

Chappell was ostensibly head of investor relations in the Ambra office. He clearly recognized that the key purpose of the Ambra operation, as orchestrated by Gill, was "to move" Ambra stock, a purpose with which he was somewhat uncomfortable. However, despite his discomfort, he continued to call people soliciting their purchases of Ambra shares. We have found that Chappell traded in securities and acted as an adviser without registration, contrary to section 20 of the prior Act. We have also found that Chappell telephoned to residences for the purpose of trading in Ambra shares, contrary to section 34 of the prior Act. We consider it to be in the public interest to remove Chappell from participation in the market and from any involvement with issuers for a long period and to impose on him an administrative penalty. Therefore we order

1. under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 do not apply to Chappell for a period of 12 years from the date of this decision;
2. under section 161(1)(d) of the Act that Chappell resign any position he holds as a director or officer of any issuer and is prohibited from becoming or acting as a director or officer of any issuer until
 - (a) he has successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers, and
 - (b) a period of 12 years has elapsed from the date of this decision;
3. under section 161(1)(d) of the Act that Chappell is prohibited from engaging in investor relations activities for a period of 12 years from the date of this decision;
4. under section 162 of the Act that Chappell pay the Commission an administrative penalty of \$25,000; and
5. under section 174 of the Act that Chappell pay the costs of or related to the hearing in an amount to be determined following submissions from the parties.

Letendre was the most successful and enthusiastic “telemarketer” of Ambra shares. Members of the public whom he called testified that Letendre was a very good salesperson and a little bit aggressive in his efforts to encourage them to buy Ambra shares. We have found that Letendre traded in securities and acted as an adviser without registration, contrary to section 20 of the prior Act. We consider it to be in the public interest to remove Letendre from participation in the market and from any involvement with issuers for a significant period and to impose on him an administrative penalty. Therefore we order

1. under section 161(1)(c) of the Act that the exemptions described in sections 44 to 47, 74, 75, 98 and 99 do not apply to Letendre for a period of 15 years from the date of this decision;
2. under section 161(1)(d) of the Act that Letendre resign any position he holds as a director or officer of any issuer and is prohibited from becoming or acting as a director or officer of any issuer until
 - (a) he has successfully completed a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers, and
 - (b) a period of 15 years has elapsed from the date of this decision;
3. under section 161(1)(d) of the Act that Letendre is prohibited from engaging in investor relations activities for a period of 15 years from the date of this decision;
4. under section 162 of the Act that Letendre pay the Commission an administrative penalty of \$30,000; and

5. under section 174 of the Act that Letendre pay the costs of or related to the hearing in an amount to be determined following submissions from the parties.

DATED at Vancouver, British Columbia, on October 22, 1997. ble. Rather,