

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

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| <b>BETWEEN:</b>               | ) |                                                   |
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|                               | ) |                                                   |
| ONTARIO SECURITIES COMMISSION | ) | <i>Jim Cruess, and Sean McCormack, for the</i>    |
|                               | ) | Ontario Securities Commission                     |
|                               | ) |                                                   |
| <b>– and –</b>                | ) |                                                   |
|                               | ) |                                                   |
|                               | ) |                                                   |
| STEPHAN KATMARIAN             | ) | <i>Brian Greenspan and Michelle Biddulph, for</i> |
|                               | ) | Stephan Katmarian                                 |
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|                               | ) | <b>HEARD:</b> December 12, 2025                   |

**R.F. GOLDSTEIN J.**

**1. Overview**

[1] Stephan Katmarian was charged with four counts of violating Ontario securities law contrary to the *Securities Act*, R.S.O. 1990, c. s.5. He was acquitted of all four counts by Justice Beverly Brown of the Ontario Court of Justice: *Ontario Securities Commission v. Katmarian*, 2024 ONCJ 151. The OSC appealed three of the acquittals. I dismissed the appeal on two counts and allowed the Commission’s appeal on one count: *Ontario Securities Commission v. Katmarian*, 2025 ONSC 4356. I found that the trial judge erred in respect of Count 1, which charged Mr. Katmarian with:

Contravening Ontario securities law by engaging in a course of conduct related to securities that he knew or ought to have known perpetrated a fraud on Ontario investors, contrary to s. 126.1 of the *Securities Act*, thus committing an offence contrary to s. 122(1)(c) of the *Securities Act*.

[2] I found that the trial judge had made findings of fact sufficient to ground a conviction for fraud but erred in law by acquitting. I substituted a conviction. I then proceeded to sentencing: *Provincial Offences Act*, R.S.O. 1990, c. P.33, s. 121(b)(ii).

[3] What follows are my reasons for sentence.

## 2. Facts

[4] Stephan Katmarian is an experienced mining promoter. In 2016 he approached Norman Brewster with an idea to redevelop a copper mine in Northern Ontario. Mr. Brewster was President and CEO of Cadillac Ventures Inc. (“Cadillac”). Cadillac owned Thierry Mine, a copper mine in Northern Ontario. Thierry Mine had not operated since 1981. Mr. Katmarian believed that the demand for lithium-ion batteries – which require copper – would stimulate higher prices and thus make re-development of the mine feasible.

[5] Mr. Brewster agreed. Mr. Katmarian’s company, Northern Fox Resources Inc. (“Northern Fox”) and Cadillac signed an Earn-In Agreement on July 19, 2016. An Earn-In Agreement is a type of contract that is often used to develop mining properties. The Earn-In Agreement required Northern Fox to raise US\$13.9 million and complete various tasks within a certain time period. Once Northern Fox had completed the tasks set out in the Earn-In Agreement and raised the required US\$13.9 million, it would acquire a 70% interest in the Thierry Mine. These tasks included undertaking various studies, including a 43-101 Report. A 43-101 Report is a report prepared under National Instrument 43-101 issued by the Canadian Securities Administrators (and adopted by the Ontario Securities Commission pursuant to its rule-making power under s. 143 of the *Securities Act*). It governs the disclosure of technical, geological, and other standard information about a mining project. Mr. Katmarian paid for the completion of a 43-101 Report.

[6] Mr. Katmarian was unable to raise the funds. An IPO, or initial public offering, proved not to be feasible. He turned to using a crypto-currency token to raise funds. Peblik Inc. (“Peblik”), which was incorporated in 2015, was developing token technology. Mr. Katmarian became a director of Peblik in 2016.

[7] The best description of Peblik’s purpose and strategy comes from the Peblik marketing material itself. The following excerpt is taken from the Peblik White Paper v.9.8:

### Overview

Today there are numerous cryptocurrencies on the market. The most well-known is Bitcoin, but there are many others...

Bitcoin, and other cryptocurrencies, have a payment network and are based on a scarcity and a perceived value. They act in a similar fashion to fiat currencies, with no underlying assets to support them. They bring the value of the blockchain and the trust in their brands to be used to buy goods and services in some form of micro-economy.

### Peblik is Asset Backed

Peblik, on the other hand, is asset backed. It is the world's only digital token that is supported by natural resources that have an intrinsic value. Peblik currently has direct control via earn in option of an advanced-stage USD\$4.8 billion mineral deposit in Canada. The Peblik token is asset-backed with the real asset value of the proven in-ground reserves of this resource.

### What is the Opportunity for Peblik Token Holders?

Peblik currently has direct control via earn in option of the Thierry Mine property in Northern Ontario, an advanced-stage USD\$4.8 billion mineral deposit in Canada. This value was established according to the conservative Canadian National Instrument NI 43-101 standard, as governed by the Canadian Institute of Mining Metallurgy and Petroleum.

[8] Thus, investors in Peblik tokens were, according to the White Paper (and all of the Peblik marketing material, including the website), buying an asset-backed cryptocurrency. The asset was Thierry Mine.

[9] The same Peblik White Paper noted that Mr. Katmarian was one of the executive directors of Peblik. The White Paper described his career:

Stephan Katmarian  
Executive Director

- Senior level experience in finance, technology, and mining
- Founder and/or financier of numerous mineral resources companies
- Experience funding and leading successful technology ventures from the early 1990's

For over a decade, Stephan held senior positions in the financial and securities sectors at Desjardins Securities, C.M. Oliver and Co., and Hodgson Robertson Laing, where he provided investment counselling services to pension funds.

Stephan was also the founder and President of Walfon Capital Inc., a merchant banking firm, that provides advisory services for private and public companies.

With a focus on the mining and energy sectors, Stephan went on to found and/or provide initial funding for numerous companies including Richview Resources, Renforth Resources, Arena Entertainment, Iberian Minerals, Medcomsoft, Hudson Bay Oil and Gas, and numerous others. He has also provided capital, investment banking services and consulting to a wide variety of resource and technology private and public companies applying creative structuring to increase and unlock value.

[10] The trial judge described Mr. Katmarian's role in relation to the Thierry Mine this way:

... he made it his business to make sure the description of the Thierry Mine and the company's relationship to that mine be accurately reflected in the marketing materials. He also admitted that he was involved in the original white paper, and as a co-author in the ongoing development of that White Paper. He agreed that Gary Sugar had sent an email regarding a version of the White Paper, inviting Peblik Inc. to make sure the representations in the white paper conformed to the 43-101 report, although the focus seemed to be in relation to the value of the in-ground mineral deposit... He maintained... that the disclosure on the mine, (the 43-101 report) by Northern Fox, the relationship between Northern Fox and Peblik Inc., and between Northern Fox and Cadillac was exhaustively explained in the material.

[11] Unfortunately, however, the Peblik token was not asset-backed at all. That was a misrepresentation. I described what happened in my appeal judgment at paras. 22-23:

On August 1, 2017, Northern Fox signed an Assignment Agreement with Peblik. Pursuant to the Assignment Agreement Peblik would obtain 51% of the Thierry Mine (recall that under the Earn-In Agreement that Northern Fox would obtain a 70% interest in Thierry Mine). Thus, the Assignment Agreement contemplated that Peblik would have a 51% interest in Thierry Mine, Northern Fox would have a 19% interest, and Cadillac would retain its 30% interest. Peblik was required to fund and complete the work program set out in the Earn-In Agreement that Northern Fox was supposed to take on. In exchange, Peblik was to issue 120 million Peblik tokens to Northern Fox. Michael Paul signed for Northern Fox. Mr. Katmarian signed for Peblik.

Cadillac was not a party to the Assignment Agreement. Mr. Brewster testified that he did not consent to the assignment of the Earn-In Agreement by Northern Fox to Peblik. As mentioned, under the terms of the Earn-In Agreement, Cadillac's consent was required to any assignment by Northern Fox.

[12] A written agreement was required for Cadillac's consent. Mr. Brewster, the CEO of Cadillac, testified that there was no written agreement. The trial judge found as a fact that there was no written agreement. The trial judge found as a fact that the agreement between Peblik and Northern Fox did not give Peblik a valid ownership interest in the Thierry mine. That finding was unassailable. It meant that investors in the Peblik token were not purchasing what they thought they were purchasing.

[13] The trial judge found that 32 investors invested \$448,515.50 in notes converted to Peblik tokens. The misrepresentations placed the investors at risk of deprivation. That constituted the offence of fraud.

### 3. Circumstances Of The Offender

[14] Mr. Katmarian immigrated to this country when he was two years old and is a Canadian citizen. He has lived in Canada his entire life. He obtained a Bachelor of Arts degree from the University of Toronto in 1988. In the 1990's he began working in the financial industry. He concentrated on the mining industry. He has held several executive positions in various ventures.

[15] Mr. Katmarian has been subject to one previous regulatory sanction. In 2006 the Investment Dealers Association ("IDA")<sup>1</sup> found that he failed to use due diligence to learn essential facts about his clients; and did not use good business practices in purchasing shares on behalf of clients: *Re Shanahan*, 2005 CarswellNat 7214 (IDA) at paras. 155-162. The IDA banned him from registration for 15 years and ordered fines, disgorgement, and costs of approximately \$430,000.00. The IDA panel found that "the conduct involved in the RRSP strip scheme was negligent and not manipulative, fraudulent or deceptive": *Re Shanahan*, 2006 CarswellNat 6698 (IDA) at para. 13.

### 4. Impact on The Victims

[16] The OSC filed several victim impact statements. Chris Balsingh invested \$22,000.00 in Pebluk. The funds were earmarked for RRSP contributions, RESP's, retirement, and other purposes. He also described the debilitating emotional impact.

[17] Regrettably, I can only give so much weight to Mr. Balsingh's victim impact statement. Although a sophisticated businessperson, Mr. Balsingh did not read any of the documents. He invested relying on the oral representations of Wadim Osa of the Firm Group. The trial judge found that many of those representations were false. The trial judge stated at para. 316 of her decision:

Mr. Balsingh did not read the subscription agreement, nor the Pebluk Inc. White Paper... Notwithstanding his extensive business and post-secondary education, and knowledge and experience in business as noted above, Mr. Balsingh chose to rely solely on the oral representations of Wasim Osa. It is apparent, in considering the hearsay testimony of Mr. Balsingh related to Mr. Osa's oral representations to him, that many of the statements of Mr. Osa were misleading or contrary to the actual contents of the subscription agreement and White Paper for Pebluk Inc.

[18] Whether or not Mr. Balsingh relied on Mr. Osa was irrelevant to Mr. Katmarian's criminal liability. The fact that someone else made the representations is also irrelevant if Mr. Katmarian committed fraud and Mr. Osa was his agent. It matters not that Mr. Katmarian and Mr. Balsingh

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<sup>1</sup> Subsequently the Investment Industry Regulatory Organization of Canada (IIROC); as of 2023 the Canadian Investment Regulatory Organization (CIRO).

may have never met. But Mr. Balsingh was a man of business experience and sophistication. I have no doubt that Mr. Balsingh felt the loss very keenly, but it is clear that he engaged in this investment without a full consideration of the business risk.

[19] Michael Massa invested \$5000.00 in Peblik. He described how he trusted the representations made by the “individual behind it”. The amount was significant for him and the loss has caused significant financial hardship. Mr. Massa feels emotionally betrayed and taken advantage of.

[20] Akillan Shanmugarajah’s parents invested \$15,000.00 in Peblik. They are retired and rely on income from the Canada Pension Plan. The funds were saved over many years and designed to assist them in retirement. The loss has had an emotional effect on them as well. They have lost trust, especially in financial professionals.

[21] Erin Taylor also filed a victim impact statement. She described the process of going to the OSC as very traumatic. She lost her investment of \$56,000.00. She was unable to close on a house because of the financial loss. She has been forced to relocate to another country.

[22] Ms. Taylor’s victim impact statement is also problematic. She worked for Peblik and was a member of management. At para. 104 of her judgment the trial judge found that Ms. Taylor had “questionable credibility” and was “not reliable.” At para. 121 the trial judge stated that “it was apparent that Erin Taylor felt that there was a misrepresentation in terms of Peblik Inc. owning the Thierry Mine.” Ms. Taylor did receive \$11,500.00 from Peblik. According to para. 135 of the trial judge’s decision:

Ms. Erin Taylor’s association with Peblik Inc. clearly ended when, through the whistleblowing portal, she went to the Ontario Securities Commission. This followed numerous unsuccessful efforts she made to get a return of the funds she invested in Peblik Inc. on behalf of herself and her friends and family members... It is obvious to this court that a number of aspects of the charges before this court relate to compliance issues. She was the compliance advisor at Peblik Inc. She went to the Ontario Securities Commission after she was unable to get a return of her investment, that she sought from Stephan Katmarian and Gary Sugar, counsel for Peblik Inc.

[23] In other words, the trial judge drew the inference that Ms. Taylor was aware of the misrepresentation, responsible for at least some compliance failures, tried to get her money back, and when that failed went to the OSC. It is difficult to consider her a true victim. I note that she obtained more of a benefit from Peblik than Mr. Katmarian did.

[24] It is clear that the investors suffered losses. They obviously took a financial risk and the Peblik documents indicated that the investment was risky. The investors obviously did not take the risk that someone would commit fraud. As I will explain below, however, I find that the

evidence falls short of establishing that the fraud was the proximate cause of or a significant contributing factor to the losses to the investors.

## 5. Aggravating and Mitigating Factors

[25] Mr. Katmarian filed three letters of support as mitigating factors. Norman Brewster, the president of Cadillac at the relevant time, filed a letter attesting to Mr. Katmarian's caution and regret for the situation. He has known Mr. Katmarian a long time and stated that he is not a reckless or irresponsible person. He believes that this offence was out of character for him.

[26] Michael Anthony Paul is another business associate who filed a letter of support for Mr. Katmarian. He too attested to Mr. Katmarian's sense of responsibility. He stated that Mr. Katmarian tries to do things properly and was not the sort to take advantage of a person. He too implied that the offences are out of character.

[27] Christopher Graham Pay is another business associate. He described Mr. Katmarian as "steady, ethical, and conscientious." Mr. Katmarian also expressed regret and remorse to him. He too believes that this offence was out of character for him.

[28] Letters of support go only so far in a fraud sentencing. As the Court of Appeal pointed out in *R. v. Drabinsky*, 2011 ONCA 5782, a fraudster's reputation in the community may well play a role in the crime. A fraudster usually needs to gain the trust of the victim. His reputation is usually a part of gaining that trust. Moreover, it is problematic to give the letters weight in this case. Mr. Paul and Mr. Pay both served on the board of Peblik. Mr. Brewster was obviously heavily involved in the transaction as president of Cadillac. He believed (according to the trial judge's reasons) that Peblik was a vehicle for raising funds so that Northern Fox could fulfill its obligations to Cadillac. Mr. Brewster's evidence was crucial in establishing that Northern Fox had assigned the Earn-In Agreement to Peblik without Cadillac's consent. That evidence established that Peblik's marketing materials contained the key misrepresentation. As Mr. Greenspan points out, Mr. Brewster was never asked whether Cadillac would have consented to a transfer. He was not a victim. At the same time, the trial judge found (as Mr. Brewster admitted) he did not really understand the concept of the cryptocurrency token. At the end of the day I can only give these letters of support limited weight.

[29] There are also aggravating factors. It is aggravating that Mr. Katmarian was subject to a previous disciplinary finding, but I give that factor very limited weight. There was no fraud or deceit involved in the previous finding. The behaviour occurred over 25 years ago. No criminal proceedings arose out of Mr. Katmarian's behaviour. Nonetheless, it does show that statements indicating that the offence was out of character for him are not entirely accurate.

[30] The OSC points to the magnitude, complexity, and seriousness of the fraud. I will have more to say about that later in these proceedings, but I think that the most aggravating factor is the nature of the offending. Mr. Katmarian is a highly experienced financial professional. He has significant knowledge of the financial aspects of the mining industry in particular. He was used

to operating in the highly regulated securities industry. He pointed to that experience in the Peblik promotional materials. It is reasonable to assume that investors relied, at least to some extent, on the skills and experience of the senior management. He knew, or ought to have known, that the Peblik materials contained a major misrepresentation about the true state of Peblik's relationship to Thierry Mine. He also knew, or ought to have known, that investors would likely not have invested had they known the true state of that relationship.

## 6. Position of the Prosecution And Cases In Support

[31] Commission counsel argues that the court should sentence Mr. Katmarian to two years in jail, probation for two years, and restitution in the amount of \$729, 318.10. The Commission's position is summarized in its sentencing memorandum:

This was a serious, large-scale securities fraud perpetrated in circumstances which call for a concomitantly serious sentence. Mr. Katmarian was the "driving force" behind the token issuance and its fraudulent value proposition, a fraud which strikes at the purposes of the *Securities Act*. Mr. Katmarian veiled his dishonesty in legalities and layered on enough truth to make it hard to detect. He employed his expertise in the field of mining finance to facilitate the fraud and breached his legal responsibilities as a director of Peblik. His fraud caused 30+ investors to lose \$729,864.65 of their and their families' savings, causing lasting financial and emotional harm.

[32] The Commission relies on cases under the *Securities Act*.

[33] *OSC v. Marc and Helene Brunet*, an unreported decision of the Ontario Court of Justice dated December 1, 2021: Marc Brunet was convicted of trading while not registered, failing to file a prospectus, and fraud. His wife, Helene, was convicted of failing to file a prospectus. Marc Brunet promoted shares of one of his companies on the basis that they would soon go public and the investors could sell them. In fact, the company was never taken public. A different Brunet company briefly went public but was quickly delisted. The investor funds were commingled with Brunet's personal funds and mostly used to fund personal expenses. The total loss was \$1,058,844.00. Loignon J. sentenced Brunet to 30 months jail. Helene received a suspended sentence and probation. They were jointly ordered to pay just over \$750,000 in restitution.

[34] In *R. v. Grossman*, [2011] O.J. No. 6608 (C.J.) the offender ran a boiler room operation. The boiler room promoted shares of a supposed oil and gas company that had no assets or operations. It was a purely fraudulent scheme. The fraud operated for 39 days. The offender gained about \$205,000.00. It was caught at an early stage by OSC investigators. The offender was already serving a 21-month sentence for securities fraud. Kenkel J. sentenced him to 3 years consecutive.

[35] In *R. v. Dunk*, an unreported decision of the Ontario Court of Justice dated October 17, 2018, the offender was convicted of fraud, trading in securities without being registered, illegal

distribution of securities, and trading in securities while prohibited. The complainants lost about \$87,000 in Canadian funds and \$70,000 in U.S. funds. The investors recovered nothing, except for one investor who recovered CDN\$1000.00. She made a number of false statements and representations. She misrepresented to investors what had happened to her funds. She represented to one complainant that he was investing in a real company that did not, in fact, exist. She represented that the funds were 100% secure. She misappropriated some of the funds. She fabricated explanations to the investors. Sopinka J. sentenced the offender to two years less a day.

[36] In *OSC v. Ki and DaSilva*, an unreported decision of the Ontario Court of Justice dated March 30, 2022. McLeod J. succinctly described the fraud:

Mr. Ki and Mr. Da Silva successfully persuaded five individuals to invest a total of \$120,000 in the scheme by selling them “shares” in the company. Of the total sum, \$40,000 was secured before the tentative agreement with Cytophage officially terminated – but for the present purposes, that was a distinction without a difference. All the funds were secured on false and fraudulent premises. The company in which the individuals were investing was not authorized to solicit investment funds. The investors were given phony share certificates. Neither Mr. Ki nor Mr. Da Silva were allowed to deal in securities. The whole thing was a sham.

[37] Da Silva absconded. McLeod J. convicted and sentenced him *in absentia*. Ki defended himself. Both were convicted of *Securities Act* offences, including fraud. Da Silva had a previous conviction and 90-day sentence for *Securities Act* offences. He also had a history of regulatory violations and administrative and financial penalties. He was banned for trading for life. Ki had been convicted of wire and mail fraud in the United States. McLeod J. distinguished between Ki and Da Silva. He stated that Mr. Ki’s “criminality may have been driven initially by an unfounded belief that things would work out and laterally by desperation, in the vain hope that the situation would change for the better.” In contrast, Da Silva’s “criminality appears to have been simply that – a willingness to cheat people out of substantial sums of money if given the chance.” He sentenced Ki to a sentence of 90 days intermittent. He sentenced Da Silva to 18 months. He imposed a joint restitution order of \$120,000.00.

[38] The OSC also relies on several cases under the *Criminal Code*.

[39] In *R. v. Davatgar-Jafarpour*, 2019 ONCA 353, 146 OR (3d) 206, the offender ran a government-funded organization that assisted new immigrants. He engaged in a fraudulent scheme. He (and employees he coerced) submitted false expense claims for reimbursement from the federal government. He defrauded the government of between \$2 and \$2.5 million. The trial judge called it a “big, complex long-lasting, fraud”. He imposed a sentence of 2 years. The Court of Appeal found that for a large-scale sophisticated fraud, the established range of 3 to 5 years applied. The Court found that the sentence of 2 years was manifestly unfit and imposed a sentence of four years.

[40] In *R. v. Schoer*, 2019 ONCA 105, the offender engaged in what was, essentially a Ponzi scheme. The offender lied to victims to get them to invest in shares of companies. He used the funds for his own personal purposes or to pay off earlier investors. The trial judge imposed a four-year sentence (as well as restitution). The four-year sentence was not appealed.

[41] The OSC relied on other cases where sentences of 3-4 years were imposed for what were, in essence, scams for the benefit of the fraudster, with no actual investment in any kind of real or proposed business: *R. v. Khatchatourov*, 2014 ONCA 464; *R. v. Scholz*, 2021 ONCA 506; *R. v. Klimitz*, 2018 ONCA 553.

## 7. Position of the Defence and Cases In Support

[42] The defence position is that I should impose a suspended sentence and probation. In the alternative, the defence submits that I should impose an intermittent sentence. The defence position, like the Commission's position, is summarized in a sentencing memorandum:

Mr. Katmarian's conviction rests on the fact that he co-authored a White Paper and was aware of a misstatement made in marketing materials prepared by other employees of Peblik; a misstatement that no investor relied upon in making their investment into what each fully acknowledged was a risky investment *regardless* of whether the earn-in option agreement was or was not validly assigned to Peblik.

It is important to note that there is no evidence that Mr. Katmarian derived any personal benefit from any of the investments; no evidence that he misappropriated any funds; no evidence that he personally made any deceitful statement with knowledge that it would cause economic loss to another; no evidence of any breach of trust; and evidence that he believed that Cadillac Ventures – via Norm Brewster – had assigned its earn-in option agreement to Peblik. While none of these facts may have affected the issue of liability under s. 126.1(b) of the *Securities Act*, they are of vital importance in assessing both the gravity of this offence and the degree of responsibility of Mr. Katmarian for the purpose of imposing a fit sentence for this offence.

[43] The defence points out that the Commission chose to prosecute Mr. Katmarian for a regulatory offence with a maximum penalty of 5 years rather than the *Criminal Code* offence of fraud with a maximum penalty of 14 years. The defence points to *R. v. Singh*, 2022 ONCJ 654. Greene J. convicted Singh of *Securities Act* offences including fraud. Greene J. described the fraud this way:

... Singh committed fraud by inducing investors to purchase shares in his company on the understanding that his companies were obtaining mortgages and that income would be generated from the interest on these mortgages. Mr. Singh's corporations, however, did not hold any mortgage and Mr. Singh was well aware of this fact. I also found that Mr. Singh had no intention of seeking out mortgages. Ultimately,

I found that Mr. Singh held out his companies as mortgage investment corporations, took money from investors on the pre-text of investing in mortgages but then intentionally failed to do so. I also found that Mr. Singh made material misrepresentations in his company's offering memorandum that were intentionally made in order to bolster the reputation of his companies and lure in investors.

[44] Greene J. found that Singh obtained \$2 million from investors for personal use. The OSC sought a sentence of four to five years and a significant restitution order. Greene J. ultimately sentenced Singh, who was almost 70, to 3 ½ years and a restitution order of about \$4.89 million. The defence in particular relies on this statement at para. 26 of Her Honour's judgment:

I must be careful to not put too much weight on the ranges imposed by the appellate court for frauds under the *Criminal Code*. This is because, the sentences permissible under the OSA are very different than the permissible sentences under the *Criminal Code*. The maximum penalty for fraud over \$5000.000 in the *Criminal Code* is 14 years. The maximum penalty for fraud under the OSA is only five years less one day. This difference in maximum penalty suggests that the range of sentences under the OSA, even for large scale, sophisticated frauds, is necessarily lower than the range of sentence imposed for similar offences under the *Criminal Code*.

[45] The defence also relies on *OSC v. Tiffin*, 2020 ONCA 2017 (CanLII), 150 O.R. (3d) 714. Tiffin borrowed about \$700,000 and gave the lenders promissory notes. He was charged with trading in securities without registration; distributing securities without filing a prospectus; and trading in securities while prohibited. The main question on appeal was whether the promissory notes were securities. The trial judge held that they were not. He acquitted Tiffin. The summary conviction appeal judge held that they were. He convicted Tiffin. He also imposed a sentence of six months imprisonment, probation for 24 months, and restitution. The Court of Appeal agreed with the summary conviction appeal judge that the promissory notes were securities but found that the sentence was demonstrably unfit. There was no deceit by the offender. The case turned on a question of statutory interpretation. He had continued to repay the victims. Five of the six victims filed letters in support of the offender. The Court of Appeal upheld the restitution order but vacated the custodial term, upholding the probation.

## **8. Restitution Order**

[46] The OSC argues in its sentencing memorandum that "Mr. Katmarian's fraud caused \$729,864.65 in losses for more than 30 victims."

[47] The OSC is required to demonstrate that Mr. Katmarian's actions caused the losses to the victims, or that it was at least a significant contributing factor. The evidence falls short. I cannot agree that Mr. Katmarian's fraud caused the losses to the investors or that it was a significant contributing factor. Unlike a conviction for fraud – which does not require any showing of deprivation, only a risk of deprivation – restitution requires something more. I am required to give

specific reasons for making a restitution order: *R. v. Eizenga*, 2011 ONCA 113 at para. 93. I cannot do that here because I cannot point to evidence showing that the Peblik misrepresentations caused or significantly contributed to the losses.

[48] I do not doubt the evidence of Mr. Ciorma in his affidavit and his supplemental affidavit. I accept that those were the losses to the investors. But the question here is not quantum. The question is causation, or at least contribution.

[49] The principles of restitution generally and the sentencing objectives of the *Securities Act* fortify me in this view. Section 122.1 of the *Securities Act* states:

122.1 (1) If a person or company is convicted of an offence under this Act, the court may, in addition to any penalty, order the convicted person or company to make restitution or pay compensation in relation to the offence to an aggrieved person or company.

[50] In contrast, the restitution provisions found in s. 738(1)(a) of the *Criminal Code* state:

738 (1) Where an offender is convicted or discharged under section 730 of an offence, the court imposing sentence on or discharging the offender may, on application of the Attorney General or on its own motion, in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows:

(a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable...

[51] There is obviously a difference between the *Criminal Code* and the *Securities Act*. The *Securities Act* authorizes a court to “make restitution or pay compensation” to “an aggrieved person.” The *Criminal Code* authorizes a court to make restitution for the loss or destruction of property. The biggest difference is that the loss or destruction of property must be “as a result of the commission of the offence”. There is no equivalent requirement in the *Securities Act*.

[52] The use of the term “aggrieved person” appears to cast a wider net than replacing the value of lost property. A person who has lost property as the result of a fraud will almost certainly be aggrieved, but an aggrieved person has not necessarily lost any property. It seems to me, however, that it should not be the policy of the law to compensate an aggrieved person unless the source of grievance is tethered solidly in a pecuniary loss that the offender had a hand in creating. Otherwise, the punishment would not fit the crime.

[53] The making of a compensation order is discretionary: *R. v. Devgan* (1999), 44 O.R. (3d) 161, 1999 CanLII 2412 (C.A.). In that case, Labrosse J.A. summarized the principles that should guide a court:

In Zelensky, Laskin C.J.C. identified certain objectives and factors that relate to the application of s. 725(1). These considerations have been expanded upon in subsequent cases. Below, I have consolidated these objectives and factors, all of which are relevant to the issue of what constitutes a proper exercise of discretion for the purpose of s. 725(1):

1. An order for compensation should be made with restraint and caution.
2. The concept of compensation is essential to the sentencing process:
  - (i) it emphasizes the sanction imposed upon the offender;
  - (ii) it makes the accused responsible for making restitution to the victim;
  - (iii) it prevents the accused from profiting from crime; and
  - (iv) it provides a convenient, rapid and inexpensive means of recovery for the victim.
3. A sentencing judge should consider:
  - (i) the purpose of the aggrieved person in invoking s. 725(1);
  - (ii) whether civil proceedings have been initiated and are being pursued; and
  - (iii) the means of the offender.
4. A compensation order should not be used as a substitute for civil proceedings. Parliament did not intend that compensation orders would displace the civil remedies necessary to ensure full compensation to victims.
5. A compensation order is not the appropriate mechanism to unravel involved commercial transactions.
6. A compensation order should not be granted when it would require the criminal court to interpret written documents to determine the amount of money sought through the order. The loss should be capable of ready calculation.
7. A compensation order should not be granted if the effect of provincial legislation would have to be considered in order to determine what order should be made.
8. Any serious contest on legal or factual issues should signal a denial of recourse to an order.
9. Double recovery can be prevented by the jurisdiction of the civil courts to require proper accounting of all sums recovered.
10. A compensation order may be appropriate where a related civil judgment has been rendered unenforceable as a result of bankruptcy.

[54] Subsequent legislation has overtaken factor 3(iii). The means of the offender to pay is not a relevant consideration: *Criminal Code*, s. 739.1. Nonetheless, the principles remain valid.

[55] A court should also consider where the money has gone. Restraint and caution refers to the broader purpose of an order. A breach of trust is an aggravating factor. An order should not

be made to enforce a civil debt. Rather it is part of the sentence: *R. v. Castro*, 2010 ONCA 718 at paras. 34-35, 43.

[56] In most cases of fraud, establishing a connection, even a causal connection, is not difficult because the loss is usually connected directly to the fraud. In a mortgage fraud case, for example, the investment is quantified and the false documents lead directly to the loss. That is not always the case, however. In *R. v. Drabinsky*, the fraud involved false financial statements for an initial public offering. The Crown did not seek a compensation order because losses to individual investors could not be quantified. As well, the bankruptcy of Livent could not be traced directly to the fraud. The Court of Appeal noted that the inability of the Crown to quantify the loss did not mean that it was not a large-scale fraud. There was, however, evidence of economic harm to investors and creditors. The Court of Appeal went on to say at paras. 182 and 185:

We do agree with the appellants, however, that in the absence of evidence from the Crown, it was wrong to attribute the ultimate failure of Livent to the fraud. The causes of Livent's demise were admittedly numerous and complex. This matter was not explored in the course of the criminal trial and the state of the record does not permit allocation of responsibility for the bankruptcy to the fraud. The bankruptcy no doubt caused significant losses to creditors, employees and investors. Those losses cannot, in our view, be laid entirely at the feet of Drabinsky and Gottlieb.

On this record, while it can safely be said that the fraud was a factor in the bankruptcy, it cannot be said that the fraud caused the bankruptcy and the subsequent financial losses. Where the actual economic harm caused by a fraud is uncertain, the sentencing judge must give the benefit of that uncertainty to the accused.

[57] In my view, this passage is applicable to Mr. Katmarian. The trial judge, at para. 136 of her decision, noted that the terms of the original Earn-In Agreement were not met. She did not find that the terms were not met (or the terms of the subsequent agreement between Northern Fox and Cadillac) because of the fraudulent misrepresentations. The trial judge also did not conclude that Peblik failed because of the misrepresentation. The evidence strongly suggests that Peblik failed simply because it could not get enough investors. Peblik simply could not raise enough funds, even with significant marketing and sales activities. I infer that the proposed investment was, quite simply, not attractive enough to investors to be viable.

[58] At para. 94 the trial judge quoted Kevin Wright that:

The company was running out of operating funds.

[59] At para. 418 the trial judge stated:

Although the court is aware that Peblik Inc. ran out of money before developing its full project, the allocation of Peblik Inc. funds for Northern Fox investments, as noted above, did not cause Peblik Inc. to run out of money. The allocation was

available from what was likely the first allocation of Peblik tokens, at the inception of the project by Peblik Inc.

[60] In submissions, Mr. Greenspan argued that Peblik had a reasonable possibility of success but the OSC's investigation put a stop to the project. Respectfully, I do not agree that the evidence does not support that submission.

[61] As found by the trial judge, prior to 2016 Cadillac had been unable to finance exploration projects. It was looking to sell Thierry Mine. The original Earn-In Agreement between Northern Fox and Cadillac was signed on July 19, 2016. Northern Fox was required to raise US\$13.9 million. The trial judge stated at para. 46 of her judgment:

However, Northern Fox did not have a lot of money from its newly formed company, even with the subsequent investments, to develop the Thierry Mine relative to its need to comply with the investment requirements of USD \$13.9 Million pursuant to the earn-in option interest assignment agreement with Cadillac Ventures.

[62] There was no market for taking Northern Fox public. As a result, Mr. Katmarian began working on the token project. In April 2017, Northern Fox had still had not raised sufficient funds to comply with the Earn-In Agreement. Northern Fox and Peblik signed the assignment agreement – the agreement that Cadillac did not consent to “as of” August 2017. In 2017 and 2018, Peblik began to try and raise money to support the development and marketing of the token. At para. 93 of her judgment, the trial judge recounted that Mr. Katmarian testified that “approximately \$380,000” was raised by Peblik. In July 2018 Erin Taylor gave a presentation at the Toronto Cryptocurrency Conference. It did not result in any substantial influx of funds to Peblik.

[63] On March 19, 2018, the OSC sent its first letter regarding Peblik. The trial judge stated the following at para. 101 of her judgment:

On July 7, 2018, Kevin Wright testified that he sent out an email to various parties including Stephan Katmarian, Isaias Medina and Christopher Pay, regarding Peblik State of the Union, set out in Exhibit. 20, Tab 2. It was an internal document. Things were not going well for Peblik Inc. The information in this memo was gathered from many people to share with the team, regarding next steps and what needed to be done. Under financing and administration they were still seeking funds from friends and family of people at Peblik Inc. It was the summer, which is when summer work programs happen in northern Ontario. Stephan Katmarian did not know if they were starting to de-water the mine or if there was technical work being done on the development of the mine. He was looking out for monies that needed to be put towards technical work on the Thierry Mine. In terms of compliance, they had come to realize that if they were going to mint the tokens, the company doing that had to be the owner of the mine. Tab 4 of Exhibit. 20 set out the action steps they required to take for compliance. They were considering going to the United

States to list on the Exchange and marry the token to a common share as a secure token offering. They were trying to get the token minted as quickly as possible.

[64] There is no suggestion in this email that the OSC's inquiries had anything to do with Peblik's problems. There was further evidence that the principals of Peblik and Northern Fox were falling out. There were cash flow problems. There were also sweetheart deals for certain investors, such as a potential "2 for 1" deal for Walter Heidary. The trial judge stated at para. 112 of her judgment:

Mr. Wright testified that around the end of 2018, Peblik Inc. ran out of financing. During the project, Peblik Inc. had 24 to 30 consultants, employees or stakeholders working on various teams, including a mining committee team, a marketing team, a technical paper team. Prior to the end of 2018, the budgets for compliance and governance to mint the token were poorly projected, they had used a number of outside consultants and the legal bills became quite high. Mr. Wright testified that Peblik Inc. did not receive any of the investment funds raised by Stephan Katmarian into Northern Fox. The court does note however the evidence that Northern Fox made direct payments to Cadillac Ventures and to others to comply somewhat with the earn-in option agreement (1st and 2nd) between Cadillac Ventures and Northern Fox.

By early 2019, Mr. Wright described working at Peblik Inc. as difficult, and he felt agitated, he felt that the progress of Peblik Inc. was stalled.

[65] None of these observations suggest that Peblik was just a scam or that the fraud caused or significantly contributed to the investor losses. But at the same time, none of these observations suggest that the OSC had anything to do with the project failing.

[66] On December 5, 2019, Cadillac and Northern Fox signed a second Earn-In Agreement. On September 28, 2020, Cadillac and Northern Fox wound up the agreement. On September 30, 2020, Cadillac issued a press release announcing the termination of the agreement.

[67] On November 27, 2020, after the press release, the OSC sent a letter requesting information, documentation, and documents regarding a quasi-criminal investigation into Peblik, Mr. Katmarian, and Christopher Pay. The OSC did not send the letter until well after the Earn-In Agreement was terminated.

[68] There is no evidence that any action by the OSC made any contribution to Peblik's failure. I reject the defence submission in that regard. The same evidence makes it necessary to reject the OSC's submission that Mr. Katmarian's fraud caused or significantly contributed to the investor losses.

[69] The OSC has argued that Mr. Katmarian was the driving force behind the fraud and therefore the driving force behind the loss to the investors. The term "driving force" is mine and is taken from my judgment allowing the OSC's appeal from acquittal on the fraud count. I used

the term to denote that Mr. Katmarian was the driving force behind the attempt to develop Thierry Mine. At paragraph 5 I stated:

Mr. Katmarian appeared to be the driving force behind the issuance of the tokens secured to the purported interest in the mine. The Commission charged him with four offences contrary to the *Securities Act*

[70] At the 3<sup>rd</sup> bulleted point of paragraph 9 I stated:

The trial judge held that under the business purpose test Peblik – of which Mr. Katmarian was a or the driving force – was not primarily engaged in the business of trading or selling securities.

[71] And in paragraph 12 I stated:

Mr. Katmarian was the driving force behind Northern Fox and the plan to re-open the Thierry Mine. Mr. Katmarian approached Mr. Brewster in 2016 about becoming involved in the Thierry Mine.

[72] In other words, I found that Mr. Katmarian was the driving force behind the plan to develop Thierry Mine and to raise the required funds. Mr. Katmarian was also responsible for the fraudulent misrepresentation in the Peblik promotional materials. He was not the driving force behind a fraudulent scheme that was a scam from the beginning.

[73] In most fraud cases – and certainly in most cases involving scams – the victims lose money and the offender becomes correspondingly enriched or receives the funds and uses them for his personal benefit. In this case, it is much harder to show causation. There is evidence that other principals, such as Kevin Wright and Erin Taylor, received at least some compensation. Mr. Katmarian only received reimbursements.

[74] But more importantly, I cannot say whether the misrepresentation caused or was a significant contributing factor to the losses. It is certainly linked temporally. But the proximate cause of the losses to the investors appears to have been simply that Northern Fox could not raise the funds required to develop Thierry Mine through the Peblik token. That leaves me to conclude that the OSC has not proven that any aggrieved person lost money as a result of the misrepresentations.

[75] I decline to grant the restitution order.

## **9. Characterization Of This Offence, Range of Sentence, and Principles of Sentencing**

[76] The OSC characterizes this fraud as a serious, large-scale complex fraud involving a significant degree of planning over time and impacting many investors. The OSC's cases in support of its sentencing submissions suggest that this case falls into what I will call the "scam"

category. With respect, I do not agree with the Crown's characterization of this offence and I do not think the "scam" cases fully apply.

[77] Whether regulatory or criminal, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: *R. v. Tiffin* at para. 54. This was a regulatory offence. It was not a *Criminal Code* fraud. I agree with Justice Loignon's observation in *OSC v. Brunet* that it would be inappropriate to simply transpose *Criminal Code* fraud sentences to the regulatory context, given the much lower maximum penalty. Principles from sentences imposed for *Criminal Code* fraud obviously overlap with principles with sentences imposed for regulatory offences. Overlap, however, does not make them identical. Different principles come into play in different contexts. The regulatory system and the criminal justice system overlap but serve different purposes. The criminal justice system punishes inherently wrongful conduct; the regulatory system provides penalties to enforce standards of conduct and care in regulated industries and environments: *La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers*, 2013 SCC 63, [2013] 3 SCR 756 at para. 90. General deterrence plays an important role in sentencing *Criminal Code* offences. General deterrence is paramount when sentencing offenders in the regulatory context: *R. v. Tiffin* at para. 52. As Harvison-Young J.A. stated at para. 56 of that case, however: "the principles of proportionality and restraint still apply. The differences flow from the distinct purpose underlying regulatory offences, which requires a greater emphasis on deterrence and generally involves lower moral blameworthiness than in the criminal context."

[78] Was the fraud in this case nothing more than a scam or was it the type of case where an offender commits a fraud in the sanguine belief that it will save the business and all will somehow come out all right in the end?

[79] I would characterize a scam case as one where the offender's only purpose is to part the victims from their money for the offender's own personal use. In a scam case the victims are induced to invest in non-existent or worthless businesses or assets and where the offender has no intention of making money for the investors legitimately. Any money that is returned to investors is usually done in a Ponzi-like fashion. Documents are generated to hide what is really happening from the investors. A typical case would be a boiler room case like *R. v. Grossman*, or *R. v. Khatchatourov*, or a scheme to defraud the government using false invoices like *R. v. Davatgar-Jafarpour*. The moral blameworthiness of the offender in a scam case is almost always very high. Indeed, a high level of moral blameworthiness is usually so obvious it can be presumed.

[80] Scam cases can be distinguished from cases where there is an operating business or a real asset, but the promoters or principals engage in misrepresentations to hide business failures or losses (or the improper diversion of business funds for personal expenses). Sometimes offenders genuinely believe that they just need time to turn around a failing business and that fiddling the balance sheet in the short run will save everyone's investment or job in the long run. In *R. v. Drabinsky* the promoters ran an actual business but hid losses and diverted expenses. The Court of Appeal drew a distinction between "scam" cases and other frauds at paras. 172-173:

The trial judge acknowledged that the appellants were not driven by "pure greed". She said, at para. 39:

The defence stress that this was not a case of "pure greed" as described in the jurisprudence and which has been considered an aggravating factor. Indeed, this was not a case of funds misappropriated for the acquisition of material goods. That said, the absence of this pure greed factor is not mitigating. Unlike some fraud cases, this was not a company set up for the purpose of a scam. It operated a legitimate business during the course of which fraudulent misrepresentations were made.

We agree that cases properly characterized as "scams" will normally call for significantly longer sentences than frauds committed in the course of the operation of a legitimate business. Whether the absence of "pure greed" is viewed as a mitigating factor or simply as the absence of an aggravating factor would seem to make little difference in the ultimate calculation.

[81] In *R. v. Tiffin*, the Court of Appeal rejected a bright line between a "careless offender" or the "designedly evasive delinquent" that some courts had imposed in the past in cases of regulatory offences: *R. v. Bowman*, [1949] 1 D.L.R. 671, 1948 CanLII 251 (Mag. Ct.). Harvison-Young J.A. noted that it is unclear how this distinction assists in coming to a fit sentence. Such a distinction is too rigid. Instead, courts should look at the context of the offence. The better formulation is that "intention may be a relevant consideration in determining whether a custodial sentence is necessary to achieve the goals of sentencing." *R. v. Tiffin*, of course, is a *Securities Act* case. *Drabinsky* was a *Criminal Code* fraud case.

[82] Thus, even in a regulatory context, it matters whether the fraud can be characterized as a scam.

[83] The evidence does not support the conclusion in this case that Peblik was simply a vehicle to part investors from their money with no real asset or investment, like a boiler room or mortgage scam. The evidence strongly suggests that Mr. Katmarian's real intent was to raise US\$13.9 million to develop Thierry Mine – a legitimate business purpose – but that he took a shortcut to try to get there. That shortcut was the true fraudulent behaviour. Unlike the scam cases, the creation of a cryptocurrency token was a real attempt to create a real financial instrument. There is no evidence that it was Mr. Katmarian's intention to simply divert the money for his personal enrichment with the intention of depriving the victims of a return on their investment. Certainly, the trial judge did not infer that that was Mr. Katmarian's intention. The trial judge said this about Mr. Brewster's view:

When asked about that, Mr. Brewster understood they were doing that, but he testified that "they did not have an agreement". The court understood his evidence to relate to the absence of an agreement between Cadillac Ventures and Northern

Fox, nor between Cadillac Ventures and Peblik Inc. to assign the Northern Fox earn-in option with Cadillac Ventures, to Peblik Inc. When asked in cross-examination about the Investor's Deck for Peblik Inc., as far as the token offering, he indicated that the concept was brilliant, and that if it was going to advance the possibilities of Northern Resources to fulfil its commitment to Cadillac, that was fine with him.

[84] The obvious inference is that Mr. Brewster perceived that Mr. Katmarian was legitimately trying to use Peblik to raise money for the development of Thierry Mine. The trial judge accepted Mr. Brewster's evidence and clearly agreed with it.

[85] There is also no evidence that Mr. Katmarian enriched himself through Peblik. Mr. Katmarian testified that he received just over \$79,000 from Peblik. He testified that those amounts were for the reimbursement of expenses. The trial judge found that Mr. Katmarian was credible in that regard. The OSC does not challenge that aspect of her findings. The funds raised by Peblik were not diverted to Mr. Katmarian's personal use. The first thing the scammer does is take the money, because he can never be sure when the scam will end. That is not what Mr. Katmarian did. There was no Ponzi element to the fraud. There is no evidence that Mr. Katmarian used money from later investors to pay off earlier investors, thus keeping the fraud going while skimming off money for personal use.

[86] I must also respectfully disagree that this was a complex fraud involving a significant degree of planning. There was planning, and there was complexity, but the planning and complexity had more to do with creating Peblik and raising funds than with trying to illegally part money from investors. I cannot agree with the notion that the entire machinery of Peblik was an elaborate ruse to hide the fact that it did not have an interest in Thierry Mine. That would assume that Mr. Katmarian's actions from the signing of the Earn-In Agreement were intended to do something other than develop the mine, and that something was ripping people off. The fraudulent act was to promote Peblik as an asset-backed cryptocurrency token. It is unclear what, exactly, Mr. Katmarian was thinking or trying to do. It is unclear why he did not obtain Cadillac's consent to properly transfer the Earn-In Agreement or at least try to re-negotiate. Mr. Brewster was aware that Peblik was a vehicle for raising money for the Thierry Mine venture. As we routinely tell juries, however, not every question in a criminal case has an answer. This question does not. I do not need to resolve the question of why Mr. Katmarian did not take steps to re-negotiate the Earn-In Agreement or obtain Cadillac's consent to assign it. I also do not need to resolve the question of why Mr. Katmarian simply didn't arrange to have Peblik take a stake in Northern Fox. It does not automatically follow that because Mr. Katmarian did not do these things that Peblik was set up as a scam. The evidence falls well short of that.

[87] As the Court of Appeal recognized in *Drabinsky* there can be a difference in the moral blameworthiness of an offender who starts off with no other intention than to conduct a scam, and an offender who genuinely wishes to run a business but engages in dishonesty to try and salvage the investment. The difference is also something to take into account when determining whether a jail sentence is required, as the Court of Appeal stated in *R. v. Tiffin*. The fact that an offender is

running a real business and engages in fraudulent behaviour because he thinks it is going to save the investment or the jobs of his employee is not mitigating. It is not, however, as morally blameworthy as a typical scam case where the offender's purpose is personal enrichment at the expense – literally – of the victims.

[88] I find that Mr. Katmarian's case is best characterized as fraud in the course of a genuine investment. It is not a case where it is a fraudulent scheme masquerading as a genuine investment to recruit unsuspecting investors. That, however, does not let him off the hook. Mr. Katmarian's moral blameworthiness for this offence falls somewhere in the middle of the spectrum. This was not a minor mistake. It was an important misrepresentation. Obviously, if investors had known that Peblik did not have an interest in Thierry Mine they would not have invested.

[89] Participants in the highly regulated securities industry must understand that fraudulent behaviour, even fraudulent behaviour with a supposedly benign purpose, will be severely dealt with. Mr. Katmarian, as an experienced mining promoter, should have understood that he was placing the economic interests of his victims at risk by promoting Peblik as backed by the Thierry Mine when that was not the case. He engaged in behaviour that violated an important aspect of securities law. It is important that investors likely would not have invested had they known that Peblik did not have ownership of Thierry Mine. A suspended sentence would simply be insufficient to send the proper deterrent message. To the extent that denunciation is an important aspect of sentencing under the *Securities Act*, a suspended sentence would not sufficiently denounce Mr. Katmarian's conduct.

[90] That said, the heavy penalties sought by the Commission are not necessary. A two-year sentence would not be proportionate in these circumstances. It is not necessary to achieve the goal of general deterrence. It would not accord with the principle of restraint. It is not the type of large-scale fraud that calls for a heavier sentence. Mr. Katmarian's previous discipline finding requires only a very small measure of specific deterrence. The significant jail sentence sought by the Commission would also not be proportionate, because Mr. Katmarian's moral blameworthiness is not as high as in what I have called the scam cases. It is also not necessarily as high as in the non-scam cases. This case has similarities to *Drabinsky* in some respects: like Drabinsky and Gottlieb, Mr. Katmarian operated a real business (or at least a contemplated real business). Unlike Drabinsky and Gottlieb Mr. Katmarian appears not to have engaged in fraud to cover up booking personal expenses to fund his lifestyle: *R. v. Drabinsky* at para. 174. This case is also not like *R. v. Tiffin*, where the moral blameworthiness of the offender was low and the offence did not involve deceit.

[91] The quantum of the losses – less than \$1 million at its highest – would not, if this were a *Criminal Code* fraud, engage the mandatory minimum of two years: *Criminal Code*, s. 380(1.1).

[92] I find that the nature and context of the fraud in this case requires a jail sentence, however, in order to achieve the paramount sentencing goal of general deterrence.

[93] When I consider where on the spectrum this case lands – from the non-deceit in *Tiffin* to the pure deceit in a scam case like *Grossman* – I find that a sentence of six months satisfies the principles of sentencing applicable in a regulatory prosecution. A six-month sentence recognizes that this was a fraud, and therefore involved deceit, falsehood, or other fraudulent means. It takes into account the quantum of the offence. It also recognizes that a fraud in the securities industry has the potential effect of disrupting the market and eroding trust and confidence. It recognizes that the investors would likely not have invested had they known that Peblik did not have an ownership interest in Thierry Mine. At the same time, a six-month sentence does not over-reach, disproportionately punishing the offender.

[94] Accordingly, Mr. Katmarian will serve six months in custody. He will be placed on probation for 18 months. The OSC has asked for terms that effectively prevent him from engaging in any business or profession associated with the securities industry. I reject the notion that he cannot participate in a profession that he has been a member of for many years, but at the same time he must be monitored.

[95] In addition to the statutory terms set out in s. 72(2) of the *Provincial Offences Act*, the terms of probation will be as follows:

- Mr. Katmarian will have no contact, directly or indirectly, with any of the investors in Peblik who seek a no-contact term. The OSC will provide the names and addresses of those investors.
- Attend at a probation office within three business days of release from custody and thereafter as required.
- Do not engage in any conduct, directly or indirectly, that involves discussing, soliciting, engaging in or advising others about buying, selling, or trading in securities, derivatives, or cryptocurrencies;
- Refrain from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person;
- Do not engage in any conduct that requires registration or an exemption from registration under the *Securities Act*;
- Do not sell or promote any securities, derivatives, or cryptocurrencies as defined under the *Securities Act*, except in a Registered Retirement Savings Plan, Registered Retirement Income Fund or Tax-Free Savings Account, as defined by the *Income Tax Act*, R.S.C. 1985, c.1, as amended, in which you are the sole legal and beneficial owner and solely through a registered dealer in Ontario to whom a copy of this Probation Order has been provided.

- Mr. Katmarian will advise his probation officer if he is acting as a director or officer of any corporation.
- Mr. Katmarian will advise the Director, Enforcement Branch, of the Ontario Securities Commission if he is acting as a director or officer of any corporation.
- If Mr. Katmarian becomes the director of any corporation, he will disclose the fact of his conviction to any other directors (if there are other directors) in writing and copy the Director, Enforcement Branch, of the Ontario Securities Commission and his probation officer.
- If Mr. Katmarian becomes an officer of a publicly traded corporation, he will disclose the fact of his conviction to the board of directors in writing and copy the Director, Enforcement Branch, of the Ontario Securities Commission and his probation officer.

[96] I reject the term requested by the OSC that Mr. Katmarian simply be prohibited from serving as a director or officer of any corporation. Mr. Katmarian has the right to make a living. That may include acting as an officer or director of his own company or a company he is involved with. The OSC will be made aware if that happens and has enforcement mechanisms available to it if required. The purpose of probation is not punitive. To go further than I have gone in the probation order would make it punitive.

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R.F. Goldstein J.

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**DATE:** 20260511

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ONTARIO SECURITIES COMMISSION

**– and –**

STEPHAN KATMARIAN

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**REASONS FOR SENTENCE**

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R.F. Goldstein J.