

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF HULL

N°: 550-06-000024-068

SUPERIOR COURT  
(Class Action)  
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**DAVID BROWN**

Petitioner

vs.

**FRANCOIS ROY**

and

**MARC JEMUS**

and

**ROBERT PRIMEAU**

and

**B2B TRUST**

and

**WHITNEY CANADA INC.**

and

**WHITNEY INFORMATION NETWORK  
INC.**

and

**JEAN LAFRENIÈRE**

and

**LLOYD'S UNDERWRITERS**

and

**LLOYD'S CANADA INC.**

and

**DESJARDINS FINANCIAL SECURITY  
INVESTMENTS INC., doing also business  
as OPTIFUND INVESTMENTS INC. a duly  
incorporated legal person, at 500, Grande-  
Allée East, Quebec, Qc, G1R 5M4**

Respondents  
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**RE-RE-AMENDED MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS  
ACTION,  
AND TO OBTAIN THE STATUS OF REPRESENTATIVE  
(ARTICLE 1002 C.C.P.)**

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**IN SUPPORT OF HIS MOTION, THE PETITIONER, DAVID BROWN, RESPECTFULLY  
SUBMITS THE FOLLOWING:**

**1. The Group**

- 1.1. The Petitioner intends to institute a class action on behalf of the persons forming part of the group hereinafter described and of which the Petitioner is a member, namely:

*Description of the Group*

*All those natural persons, and legal persons with less than fifty (50) employees, who have made various investments proposed to them by Marc Jémus, François Roy and/or Robert Primeau, and/or through them, and/or in or through companies related to one of them, in the year 2001 to 2005 inclusively.*

**2. The Petitioner's Situation**

- 2.1. The Petitioner's personal claim against the Respondents is based on the following facts :

*Background and involvement of the Respondents Whitney Information Network inc. and Whitney Canada inc.*

- 2.2. In September 2002, the Petitioner, David Brown, and his wife, Darlene Sandra Brown, decided to take a training in real estate investing in a program developed by Russ Whitney;
- 2.3. The Petitioner paid to Respondent Whitney Canada inc. a large amount of money for such training, more precisely \$22,994.25, as it appears from his inscription to various boot camps trainings communicated in support hereof as **Exhibit R-12**;
- 2.4. Whitney Canada inc. is a company associated with Whitney Information Network Inc. which offers real state training following a method developed by

Russ Whitney [hereinafter together designated as Whitney Group], as it appears from an extract of Canada's Business Registry (Strategis), **Exhibit R-13** and from an extract of Whitney Information Network Inc. Website, **Exhibit R-14**;

- 2.5. Their initial training called «Millionaire U» was followed by a practical individual training of approximately four days given by a professional mentor from the Whitney Group;
- 2.6. In late 2003, the Petitioner started his mentorship training with Jean Lapointe, Head of Canadian mentorship training program;
- 2.7. At that time, Jean Lapointe introduced the Petitioner to the Respondent François Roy, a mentor under his authority who is also a real estate investor with and through whom investments in the area could be made;
- 2.8. In the following days, the Petitioner met the Respondents Marc Jémus and Robert Primeau in Gatineau, Quebec, both through the Respondent François Roy;
- 2.9. During the mentorship and other training sessions given by the Whitney Group, the Petitioner came to trust these Respondents;
- 2.10. Whitney Canada Inc. and Whitney Information Network Inc. negligently let the other Respondents take advantage of the confidence the Petitioner and his wife have put in their real estate investment training;
- 2.11. Also, Whitney Canada Inc. and Whitney Information Network Inc. are responsible for the damages caused to Petitioner by their employees and/or representatives, among others Jean Lapointe and François Roy;
- 2.12. Therefore, Whitney Canada Inc. and Whitney Information Network Inc. are jointly liable with the other Respondents of the damages sustained by Petitioner;

*Petitioner's investments*

- 2.13. Therefore, the Petitioner and his wife were not suspicious when they invested a total amount of \$65,246.00 at the inducement and through the Respondents Marc Jémus, François Roy and Robert Primeau;
- 2.14. Of this, \$7,737.86 were from Petitioner's RRSPs which were transferred to B2B Trust, at the request of Marc Jémus and François Roy;
- 2.15. Furthermore, on March 5, 2004, the Respondent B2B Trust approved a \$23,806.00 self-directed RRSP loan submitted by the Petitioner, the whole as appears from a letter from Gary Wilhelm, Assistant Vice-President of

Investment Lending & Credit Risk at B2B Trust, communicated in support hereof as **Exhibit R-1**;

- 2.16. On her part, the Petitioner's wife transferred to B2B Trust a total amount of \$12,452.58 of self-directed RRSPs;
- 2.17. Also, the Petitioner's wife borrowed from B2B Trust an amount of \$21,957.00 which was to be invested with or through the Respondents Marc Jémus, François Roy and Robert Primeau;
- 2.18. B2B Trust charged and continues to charge considerable fees for the management of those funds;
- 2.19. Again at the incitement and through the Respondents François Roy, Marc Jémus and Robert Primeau, the Petitioner and his wife made some equity investments in preferred stock in some of those Respondents' related companies;
- 2.20. The Petitioner purchased \$23,490.00 worth of "Class C" preferred stock in Les Entreprises de Gestion Robert Primeau Inc, the whole as appears from a random sampling of the Petitioner RRSP B2B Trust statements communicated *en liasse* in support hereof as **Exhibit R-2**;
- 2.21. Les Entreprises de Gestion Robert Primeau Inc. is a company residing in Gatineau, Quebec, managed mainly by the Respondent Robert Primeau, as it appears from an extract of the *Registre des entreprises* (CIDREC) communicated in support hereof as **Exhibit R-15**;
- 2.22. The wife of the Petitioner also purchased \$24,686.00 worth of "Class C" preferred stock in the 3877311 Canada Inc., the whole as appears from a random sampling of the Petitioner's wife's RRSP B2B Trust statements communicated *en liasse* in support hereof as **Exhibit R-3**;
- 2.23. 3877311 Canada Inc. is a company residing in Limoge, Ontario, managed mainly by the Respondent François Roy, as it appears from an extract of Canada's Business Registry (Strategis) communicated in support hereof as **Exhibit R-16**;
- 2.24. The Petitioner and his wife also appointed the Respondent Marc Jémus, a broker often acting through his company Pension Positive Inc., to be their attorney and to buy on their behalf various immovable properties located in Gatineau, province of Quebec, and to mortgage such immovable properties, the whole as appears from a Power of attorney communicated in support hereof as **Exhibit R-4**;
- 2.25. The Petitioner lent \$7,690.00 to Marcel Chartrand, a builder in Hawkesbury, with a third row mortgage even though he was led to believe his investment

was to be secured with a second row mortgage, the whole as appears from Exhibit R-2;

- 2.26. The Petitioner's wife also lent \$9,380.00 with a third row mortgage given by Marcel Chartrand, which she was told by the Respondent Marc Jémus was a second row mortgage the whole as appears from Exhibit R-3;
- 2.27. All the Petitioner and his wife's investments were made in self-directed RRSPs plans at the Respondent B2B Trust;
- 2.28. At all relevant times, the transactions the Petitioner and his wife made through B2B Trust were handled directly or indirectly by either Marc Jémus, François Roy or Robert Primeau who acted as middlemen between the Petitioner and B2B Trust;

*The involvement of IForum*

- 2.29. In fact, the Petitioner's designated advisor when he first applied to open an account at B2B Trust was Optifund Investment inc., represented by Marc Jémus, as it appears from the Account Opening Form dated January 29, 2003, **Exhibit R-38**;
- 2.30. Optifund Investment inc. was also the mutual fund dealer who managed the transfer of the Petitioner's RRSPs to B2B Trust, as it appears from the Transfer Authorization for Registered Investment Form dated January 29, 2003, **Exhibit R-39**;
- 2.31. The same mutual fund dealer guaranteed the Petitioner's signature on his Self-Directed RSP Loan Application Form, as it appears from a copy of this Form dated January 28, 2004, **Exhibit R-40**;
- 2.32. On or about October 6, 2004, Petitioner's dealer identity changed to IForum Securities Inc. represented by Mr. Enrico Bruni, as it appears from a Non Financial Account Changes Form of B2B Trust dated October 6, 2004, **Exhibit R-41**;
- 2.33. Mr. Bruni and IForum Securities inc. guaranteed Petitioner's signature on the Subscription Agreement for the purchase of 23 490 Class C preferred Shares of *Les Entreprises de Gestion Robert Primeau inc.*, as it appears from a copy of that Subscription Agreement dated June 10, 2004, **Exhibit R-42**;
- 2.34. On Petitioner's Letter of Direction to B2B Trust regarding that investment, Mr. Denis Hogan from IForum Securities inc. guaranteed Petitioner's signature, as it appears from that Letter of Direction dated October 6, 2004, **Exhibit R-43**;

- 2.35. However, the Petitioner never met nor spoke directly with neither Mr. Bruni nor Mr. Hogan from IForum Securities inc.;
- 2.36. Nonetheless, Mr. Bruni and Mr. Logan made some transactions on behalf of Petitioner and guaranteed his signature on several occasions;
- 2.37. Also, as far as the Petitioner knows, no valid prospectus was ever submitted to the *Autorités des marchés financiers* for *Les entreprises Robert Primeau inc.* nor did it receive any legislative or discretionary exemption to submit such prospectus;

*The involvement of the Respondent Jean Lafrenière*

- 2.38. On or about February 24, 2004, Respondents Marc Jemus and François Roy introduced Respondent Jean Lafrenière, notary, to the Petitioner and his wife;
- 2.39. That first meeting took place at Respondent Jean Lafrenière's office in Gatineau;
- 2.40. The Petitioner and his wife were then invited to sign an unlimited Power of Attorney in favour of both Respondents Marc Jemus and François Roy, which they refused to do;
- 2.41. Later on, they signed a more limited power of attorney;
- 2.42. On April 15 and 16, 2004, Petitioner and his wife returned to Respondent Lafrenière's office to sign the three deeds described below;
- 2.43. On April 15, 2004, Petitioner and his wife signed before Respondent Lafrenière a deed of loan, whereby they were borrowing \$127,449.00 from GMAC Residential Funding of Canada Limited / Financement résidentiel GMAC du Canada Limitée, as it appears from a copy of this deed communicated in support hereof as **Exhibit R-17**;
- 2.44. This loan was guaranteed by an hypothec on a property owned by Respondent François Roy situated at 320, 322, 324 and 326, St- André Street, in Gatineau, Quebec;
- 2.45. On April 16, 2004, Petitioner and his wife signed another deed before Respondent Lafrenière, whereby they were purchasing the same property on St-André Street in Gatineau from Respondent François Roy for the amount of \$ 147,000.00, as it appears from a copy of this deed communicated in support hereof as **Exhibit R-18**;
- 2.46. This deed also indicates that \$132,300.00 of the purchase price was paid in cash;

- 2.47. The same day, Petitioner and his wife have signed a third deed, whereby they were borrowing from 3877311 Canada inc., represented by Respondent François Roy, an amount of \$24,945.29, as it appears from a copy of this deed of loan communicated in support hereof as **Exhibit R-19**;
- 2.48. This loan was also guaranteed by an hypothec on the property situated on St-André Street in Gatineau;
- 2.49. Petitioner's wife has purchased \$24,686.00 worth of Class C) preferred stock from 3877311 Canada inc., out of the moneys she had transferred to her RRSP at B2B Trust and/or borrowed from this Trust, as alleged in paragraph 2.14 of the present;
- 2.50. Following these real estate investments, the Petitioner and his wife found themselves in a very uncomfortable financial situation as they were indebted towards three creditors, namely GMAC, 3877311 Canada inc. and B2B Trust, for more than the value of the property they owned;
- 2.51. The Petitioner and his wife were induced by Respondent Lafrenière to enter into the investments that lead to such a situation without adequate warning,
- 2.52. On November 4th, 2005, the Petitioner and his wife sold their property on St-André Street in Gatineau for the amount of \$ 160,000.00, as it appears from a copy of deed of sale signed before notary André Trépanier in Gatineau communicated in support hereof as **Exhibit R-20**;
- 2.53. The amount received by Petitioner and his wife from that sale was used to reimburse their debts to GMAC Residential Funding of Canada Limited / Financement residential GMAC du Canada Ltée and to 3877311 Canada inc., as it appears from a letter from Me André Trépanier, notary dated November 10, 2005 and an statement of account, *en liasse*, communicated in support herof as **Exhibit R-21**;
- 2.54. However, the proceeds of the sale were insufficient to reimburse Petitioner wife's loan to B2B Trust;
- 2.55. Respondent Lafrenière has acted in breach of his professional duties towards the Petitioner and his wife and should therefore be held jointly liable with all the other Respondents for the damages sustained by them;

#### *The involvement of Optifund*

- 2.56. As already alleged above at paragraphs 2.29, 2.30 and 2.31, and as appears from the Exhibits R-38, R-39 and R-40 referred to in these paragraphs, at the time Petitioner made his investments, his advisor was Respondent Jémus

who was then a representative of Optifund Investments inc (hereinafter called Optifund);

- 2.57. Petitioner never had any direct contact with somebody else at Optifund than Respondent Jémus and was informed that Optifund was his broker firm by the sole mention of the name of Optifund on the documents that were presented to him by Respondent Jémus;
- 2.58. Nobody from Optifund has ever inquired with Petitioner about his financial situation and about his knowledge and ability in the field of investments, except Respondent Jémus who took advantage of the information he had concerning Petitioner to defraud him;
- 2.59. As alleged above at paragraph 2.32, Optifund was replaced October 2004 as Petitioner's broker by IForum represented by Enrico Bruni; this again at the initiative of Respondent Jémus;

*Respondents' Jémus, Roy and Primeau fraud*

- 2.60. The Respondents' related companies such as Les Entreprises de Gestion Robert Primeau Inc., Pension Positive Inc. and 3877311 Canada Inc. were supposed to invest the funds in real estate ventures, while maintaining the RRSP qualification for income tax purposes;
- 2.61. The equity investment under the Petitioner's wife's name was supposed to go in parts towards the down payment on condominiums;
- 2.62. The Petitioner and his wife could never get an answer as to the status of that project after the Respondents Marc Jémus and François Roy got the stock money;
- 2.63. The Petitioner and his wife found out later on that the Respondents Marc Jémus and François Roy's companies never purchased the land to build the condominiums (Chemin du Golf projet);
- 2.64. Another part of the equity investment made under the Petitioner's wife's name was supposed to be used for the down payments on three properties in Gatineau (Chemin Des Grives property);
- 2.65. The Petitioner and his wife were later informed by a third party, namely Doyle Seloyski that the above-mentioned properties had been sold to another buyer;
- 2.66. However, the Petitioner and his wife were never reimbursed the money they gave 3877311 Canada Inc. for that investment and, to their knowledge, it has never been redirected to any other property;

- 2.67. The Petitioner and his wife also lost their third row mortgages investment;
- 2.68. On April 4, 2005, the Honourable Justice Pierre Isabelle of Superior Court of Quebec, District of Hull, made an order appointing Ginsberg, Gingras et Associés Inc. as receiver of Pension Positive Inc. and 3877311 Canada Inc. pursuant to section 241 of the *Canadian Business Corporation Act*, R.C.S., 1985, c. C-44, the whole as appears from his judgment communicated in support hereof as **Exhibit R-5**;
- 2.69. On May 27, 2005, the Honourable Justice Kealy of Ontario Superior Court of Justice in Bankruptcy and Insolvency made an order appointing Ginsberg, Gingras et Associés Inc. as Interim Receiver of Pension Positive Inc. and 387311 Canada Inc. pursuant to section 47.1 of the *Bankruptcy and Insolvency Act*, R.C.S. 1985, c. B-3, the whole as appears from his judgment communicated in support hereof as **Exhibit R-6**;
- 2.70. Ginsberg Gingras & Associés made four reports concerning the Respondents Marc Jémus and François Roy and some of their companies;
- 2.71. Those reports also point out the participation of Robert Primeau and his companies;
- 2.72. More particularly, on July 18, 2005, Ginsberg Gingras & Associés made a first report concerning the financial situation of Pension Positive Inc., a company controlled by Marc Jémus, a copy of which is communicated in support hereof as **Exhibit R-7**;
- 2.73. A book of investment information was prepared by Ginsberg Gingras & Associés with that report, a copy of which is communicated in support hereof as **Exhibit R-22**;
- 2.74. On January 4<sup>th</sup>, 2006, Ginsberg Gingras & Associés made a second report concerning that company, a copy of which is communicated in support hereof as **Exhibit R-8**;
- 2.75. On July 22, 2005, Ginsberg Gingras & Associés also made a report concerning the financial situation of 3877311 Canada Inc, a copy of which is communicated as **Exhibit R-23**;
- 2.76. On January 4<sup>th</sup>, 2006, Ginsberg Gingras & Associés made another report concerning the financial situation of 3877311 Canada Inc, a copy of which is communicated in support hereof as **Exhibit R-9**;
- 2.77. Those reports concluded that both companies are insolvent;

- 2.78. According to the reports of Ginsberg Gingras et Associés, the accounting books of the companies controlled by the Respondents were full of irregularities and of false entries;
- 2.79. It makes it particularly difficult to retrace the details of every investment that went through those companies;
- 2.80. More particularly, it makes it impossible to follow the investments made by the Petitioner or his wife;
- 2.81. However, it makes it clear that no measures were taken to protect the investments made by the Petitioner and his wife or any other member of the Group;
- 2.82. Furthermore, Ginsberg Gingras's reports indicate that certain amounts paid to those companies by members of the Group were put to other use than investment;
- 2.83. More particularly, large sums of money were used to the personal benefit of the Respondents or their relatives;
- 2.84. The Respondents Marc Jémus, François Roy and Robert Primeau and their companies deliberately and fraudulently misused the money given to them by Petitioner and other members of the Group;
- 2.85. Their actions and omissions in relation to the management of the amounts entrusted to them or their companies by the Petitioner and other members of the Group were grossly negligent and fraudulent;
- 2.86. On October 28, 2005, Les Entreprises de Gestion Robert Primeau Inc. went bankrupt, as appears from the Insolvency Name Search database of the Office of the Superintendent of Bankruptcy Canada, extract of which are communicated in support hereof as **Exhibit R-10**;
- 2.87. On April 6, 2006, Pension Positive Inc and 3877311 Canada inc. both went bankrupt, the whole as appears from the Insolvency Name Search database of the Office of the Superintendent of Bankruptcy Canada, extracts of which are communicated *en liasse* in support hereof as **Exhibit R-11**;

#### *B2B Trust's Liability*

- 2.88. Despite the suspiciousness of the transactions made on behalf of the Petitioner and his wife through B2B Trust, the later negligently omitted to make any verification concerning its legality;
- 2.89. On the contrary, it continued to issue statements indicating a high book and market value on those investments;

- 2.90. Even after the bankruptcy of 3877311 Canada Inc., B2B Trust issued a Statement report for the period of January 1st, 2006 to March 31st, 2006, indicating a market value and a book value of \$24,686.00 for category «C» preferred shares detained by Darlene Brown, Petitioner's wife, as it appears from a copy of that statement report in Exhibit R-3;
- 2.91. In the same way, even after Les Enterprise de Gestion Robert Primeau Inc. went bankrupt, B2B Trust issued a Statement report for the period of January 1st, 2006 to March 31st, 2006, indicating a market value and a book value of \$23,490.00 for category «C» preferred shares detained by the Petitioner, as it appears from a copy of that statement report, Exhibit R-2;
- 2.92. B2B Trust negligently omitted to act in a diligent way and is therefore jointly liable with the other Respondents for the damages sustained by the Petitioner;
- 2.93. Furthermore, B2B Trust continues to charge the Petitioner and his wife administration and annual fees in regard to these investments, as it appears from Statement Reports and Self-directed Fee Summary dated September 30, 2006 for the Petitioner and his wife, *en liasse*, communicated in support thereof as **Exhibit R-24**;

#### *Petitioner's Claim*

- 2.94. The Petitioner is entitled to claim from the Respondents jointly the total amount of lost capital on his investments made through them or at their inducement, more precisely the amount of \$31,324.67;
- 2.95. The Petitioner is also entitled to claim from the Respondents jointly all the interest he has paid on his loan, more precisely the amount of \$5,723.24;
- 2.96. The Petitioner is also entitled to claim from the Respondents jointly all the administration fees paid to B2B Trust in the amount of \$2,914.45;
- 2.97. Furthermore, the Petitioner is entitled to claim from the Respondents jointly an amount of \$50,000.00 for his troubles and inconvenience and loss of opportunity;

### **3. The Situation of each Group Member**

- 3.1. All the Group Members lost their investments following the same fraudulent pattern whether it be by purchasing shares from one of the Respondent's companies or by lending money to them or their companies or at their inducement;

- 3.2. Most of them were recruited while or after having taken real estate investment courses with the Whitney Group;
- 3.3. Each of them transferred their RRSPs to B2B Trust or contracted a loan with that institution for the purpose of investing in real estate at the inducement of or through one of the Respondents;
- 3.4. Most of them were represented, at one point or another, by a representative of IForum Financial Services inc., IForum Securities inc. or IForum Financial Network inc. or Optifund;
- 3.5. The same *modus operandi* was used to convince each member of the Group to invest in real estate;

#### **4. Respondents Responsibility**

- 4.1. The participation of each of the Respondents was necessary for the scam to work and each of them contributed in causing damages to the Members of the Group;
- 4.2. Furthermore, the reports of Ginsberg Gingras et Associés Exhibits R-7, R-8, R-9, R-21 and R-22 indicate that the Respondents François Roy, Marc Jémus and Robert Primeau managed their companies as if it was the same;
- 4.3. The *modus operandi* could be summarized as follows, as it appears from Pension Positive Inc. Report of January 4<sup>th</sup>, 2006, Ginsberg Gingras & Associés, Exhibit R-8 and from 3877311 Canada Inc. Report of January 4<sup>th</sup>, 2006, Ginsberg Gingras & Associés, Exhibit R-9 :

#### *Whitney Group*

- 4.4. The majority of Group Members initially followed real estate investing training with Whitney Group;
- 4.5. Others were induced to invest by the reputation of the Whitney Group and the apparent success of the other investors;
- 4.6. Whitney Group offers real estate investment trainings based on a program called «The Russ Whitney's Building Wealth System», as it appears from Whitney Canada Website, an extract of which is communicated in support hereof as **Exhibit R-25**;
- 4.7. Whitney Canada represents to future students that they will learn «secret techniques to generate wealth quickly», as it appears from the Russ Whitney Building Wealth Website, an extract of which is communicated in support hereof as **Exhibit R-26**;

- 4.8. For example, in Whitney Canada publicity, it is mentioned that Russ Whitney himself became a millionaire using those investment methods, as it appears from Whitney Canada Website, R-24 and from a Newsletter from Whitney Canada, communicated in support hereof as **Exhibit R-27**;
- 4.9. Whitney Group offers different trainings and courses in real estate investment, as it appears from a list of prices for Preferred Mastery Levels communicated in support hereof as **Exhibit R-28**;
- 4.10. Before beginning their training with Whitney Group, new students had to fill out an Evaluation sheet in which they provided information concerning their financial situation, as it appears from a copy of an Evaluation Sheet communicated in support hereof as **Exhibit R-29**;
- 4.11. Most Group Members met the Respondents, François Roy, Marc Jémus and/or Robert Primeau during or just following a training with the Whitney Group, which often took place in Gatineau or the surrounding area, as it appears from a note given to a Group Member during a seminar, communicated in support hereof as **Exhibit R-30**;
- 4.12. Respondent François Roy was a mentor working for Whitney Group, as it appears from a copy of a business card communicated in support hereof as **Exhibit R-31**;
- 4.13. At the knowledge of Whitney Group's representatives, François Roy used his position as a mentor to recruit new investors, as it appears from email correspondence from and to Jean Lapointe, Head of Canadian mentorship training program for Whitney Group, communicated in support hereof as **Exhibit R-32**;
- 4.14. As mentor for Whitney Group he could have access to the detailed financial situation of several students as presented in Evaluation Sheets, an example of which was communicated as Exhibit R-29;
- 4.15. Also, Marc Jémus worked for Whitney Group during a short period of time;
- 4.16. However, Marc Jémus was usually introduced to Group members by Whitney mentors as a broker or an accountant, as it appears from Exhibit R-30;
- 4.17. During Whitney Group's sessions or trainings, Marc Jémus was introduced as an expert for developing programs for the investment of self-directed RRSPs in real estate, as such it was said that he had been involved in the development of that kind of program with Revenue Canada;

- 4.18. Furthermore, Whitney Group's representative suggested that he was the only person in Canada that could propose to Group Members some particular kind of RRSPs investments in real estate through B2B Trust;
- 4.19. Through their training with Whitney Group, Group Members became to trust the Respondents François Roy, Marc Jémus and/or Robert Primeau;
- 4.20. Therefore, most Group Members first decided to invest their money with or through the Respondents François Roy, Marc Jémus and Robert Primeau and/or their companies during or just following a training with Whitney Group;
- 4.21. Furthermore, several Whitney Group students were directly encouraged by Whitney's mentors to enter into deals with or through the Respondents and/or their companies;
- 4.22. Whitney Group representatives have maintained close relationships with the Respondents François Roy, Marc Jémus and Robert Primeau during the period in which Group Members invested with or through those Respondents and/or their companies, as it appears from email correspondence between Jean Lapointe, Head of Canadian mentorship training program for Whitney Group, and those three Respondents, Exhibit R-32;
- 4.23. Jean Lapointe has even received a financial compensation from Primforce Real Estate Investment Inc., a company link to the Respondent Robert Primeau, for the referral of a Whitney Group Student as an investor, as it appears from copy of a check of Primforce to the order of Jean Lapointe for the amount of \$5,000.00 \$ and an analysis of the bank account of Primforce Real Estate Investment Inc. at the Bank of Montreal, *en liasse*, communicated in support thereof as **Exhibit R-33**;
- 4.24. Furthermore, Whitney Group, through Jean Lapointe among others, has continued to encourage its students or former students to invest with or through them despite several complaints it received from Group Members regarding their investments made with or through those Respondents and/or their companies, as it appears from email correspondence, R-32;
- 4.25. Other Whitney mentors had also known for a long time of complaints by Group Members concerning their investments with Primforce, as it appears from an email correspondence from Shelley Hagen, communicated in support thereof as **Exhibit R-34**;
- 4.26. In Exhibits R-32 and R-34, Whitney Group recognized its responsibility towards Group Members in relation with the investments they made with or through the other Respondents and/or their companies;
- 4.27. Even after high rank representatives of Whitney Group at the international level were informed of suspicious irregularities and probable fraud concerning

the investments made with or through the Respondents François Roy, Marc Jémus and/or Robert Primeau and/or their companies, as it appears from the email correspondence, R-32, nothing was done to inform current or former Whitney's Students of the situation;

- 4.28. Actually, Respondents Whitney Canada inc. and Whitney Information Network Inc. have committed a gross negligence, have shown a blatant lack of prudence and have taken advantage of the confidence of the Group Members in being closely associated with the promoters of this real estate investment scheme and in inducing them to invest in this real estate adventure;
- 4.29. Respondents Whitney Canada inc. and Whitney Information Network Inc. are responsible for the damages caused to Group Members by the acts or omissions of its employees and/or management;
- 4.30. Respondents Whitney Canada inc. and Whitney Information Network Inc. should be held jointly liable with the other Respondents for the damages sustained by Group members;

*François Roy*

- 4.31. The initial role played by François Roy was to recruit potential investors;
- 4.32. As a mentor for the Whitney Group he was in a good position to meet potential investors;
- 4.33. When he thought that a person had sufficient financial resources, he would have them sign a credit application;
- 4.34. His role was then to convince his recruit to invest in real estate in the area;
- 4.35. Afterwards, he would introduce the new potential real estate investors to Marc Jémus and Robert Primeau;

*Marc Jémus*

- 4.36. Marc Jémus acted as the broker for those new potential clients concerning the investment of their RRSPs (REIT- Real Estate Investment Trust – self-managed RRSPs);
- 4.37. Following that *modus operandi*, several members of the Group had transferred their RRSPs to B2B Trust to buy shares in 3877311 Canada Inc or Pension Positive inc. or other companies controlled by the Respondents or their companies;
- 4.38. Some other members of the Group also contracted loans at B2B Trust to invest more money in real estate at the inducement or through the

Respondents in the form of shares of different companies controlled by the Respondents;

- 4.39. Once they were convinced to buy shares, the new investors would usually sign a «Power of Attorney» in order to give Respondent François Roy and/or Marc Jémus full authority to carry out transactions on their behalf;
- 4.40. Afterwards, each investment was to be matched to a particular property for investment purposes;

*Robert Primeau*

- 4.41. Robert Primeau was in charge of finding real estate properties for the new investors;
- 4.42. Most of the transactions were for the construction of new buildings;

*The investments*

- 4.43. According to Robert Primeau himself, as cited in the Pension Positive Report of January 4<sup>th</sup>, 2006, Exhibit R-8, approximately 700 to 800 such transactions were completed;
- 4.44. The total amount in capital is difficult to determine but is estimated at this point at \$10,000,000.00;
- 4.45. The members of the Group were told that they would make a minimum annual interest of 8%;
- 4.46. The Respondents Marc Jémus, François Roy and Robert Primeau or other persons related to them or their companies, took care of all aspects of the investments made allegedly on behalf of the members of the Group;
- 4.47. However, those investments were not made for the benefit of the members of the Group;
- 4.48. On the contrary, the money was fraudulently diverted for the personal benefit of the Respondents and their relatives and/or managed in a grossly negligent manner;
- 4.49. As a result, each member of the Group lost their real estate investments;
- 4.50. Therefore, the Respondents Marc Jémus, François Roy and Robert Primeau are personally and jointly liable for the investments lost by each member of the Group;

*Notices from Canada Revenue Agency*

- 4.51. Furthermore, several members of the group received a notice from Canada Revenue Agency informing them that their investments in Pension Positive Inc. or in other companies controlled by the Respondents were considered as withdrawals from their RRSPs;
- 4.52. As a result, the amount of those investments that were completely lost by the members of the Group are being added to their revenue for income tax purposes;
- 4.53. The Respondents Marc Jémus, François Roy and Robert Primeau are responsible for that loss of qualification;
- 4.54. Therefore, the Respondents are personally and jointly liable for the amount of income tax that each Member of the Group paid and/or will have to pay following the disqualification of their RRSPs, including interest and/or penalties related to it;

*The liability of IForum, IForum representatives and their insurance company*

- 4.55. For the purpose of purchasing preferred shares from Pension positive inc., 387731 Canada inc. and *Les entreprises Robert Primeau inc.*, representatives or employees of IForum Financial Services inc., IForum Securities inc. or IForum Financial Network inc. acted as mutual fund dealers or investment dealers on behalf of members of the group;
- 4.56. More precisely, IForum Financial Services inc., IForum Securities inc. and IForum Financial Network inc. [hereinafter collectively IForum] are three affiliated companies acting as mutual fund brokers and investment dealers, as it appears from the relevant extracts of *Le registre des entreprises* (CIDREC) for those companies, *en liasse*, **Exhibit R-44**;
- 4.57. Also, the services offered by IForum Securities inc. are described on its web site, as it appears from a copy of this web site, **Exhibit R-45**;
- 4.58. At all relevant times, IForum representatives or employees promoted and supported the sale of Class C preferred shares from the companies Pension Positive inc., 3877311 Canada inc. and *Les entreprises Robert Primeau inc.* to Members of the group;
- 4.59. In addition to the two IForum representatives personally involved in the Petitioner's file, namely Mr. Enrico Bruni and Mr. Denis Hogan, at least two other IForum representatives were involved in the sale of these Class C preferred shares to Members of the group, namely the Respondent Marc Jémus and Mr. Yves Mechaka, as it appears from the Petitioner's wife

B2B Trust statement, Exhibit R-3 and from another B2B Trust statements for another Group Member, **Exhibit R-46**;

- 4.60. At least 75 Members of the group were at one point or another represented by someone from IForum when purchasing Class C preferred shares from the companies Pension Positive inc. or 3877311 Canada inc., evidence in support of this allegation could be filed if the court finds it necessary;
- 4.61. Those transactions amount to more than 3,3 millions dollars in investments;
- 4.62. As in Petitioner's case, other Members of the group were also represented by someone from IForum when purchasing Class C preferred shares from *Les entreprises Robert Primeau inc.*;
- 4.63. Furthermore, the Report on 3877311 Canada inc. from Ginsberg Gingras & Associés dated January 4<sup>th</sup>, 2006, Exhibit R-9 on page 6, confirms that large amounts of money of Class C preferred shareholders were dealt with through IForum;
- 4.64. IForum received one percent of each transaction in commission, which were directly deducted from the investment, as it appears from The Report on 3877311 Canada inc. from Ginsberg Gingras & Associés dated January 4<sup>th</sup>, 2006, Exhibit R-9 on page 6;
- 4.65. Several group members received a letter in the beginning of 2005 informing them that IForum was «no longer a representative firm for 3877311 Canada inc.», as it appears from a copy of one of these letters, **Exhibit R-47**;
- 4.66. However, several Members of the group did not know in the first place that IForum represented them and never met with any of its representative(s) or employee(s);
- 4.67. Nonetheless, IForum guaranteed the signature of several of them on different documents;
- 4.68. In fact, IForum representatives or employees did not know their clients, Members of the group, and never inquired nor obtained directly from them their relevant personal and financial informations;
- 4.69. Also, as far as the Petitioner knows, no valid prospectus were ever submitted to the *Autorité des marchés financiers* for any of the three companies involved, namely Pension Positive inc., 3877311 Canada inc. and *Les entreprises Robert Primeau*, nor did they receive any legislative or discretionary exemption to submit such prospectus;

- 4.70. Therefore, the Members of the group were not properly informed by their investments dealers of the level of risk involved in relation to their investments in these three companies;
- 4.71. Also, some representatives of IForum illegally sold securities other than mutual fund securities without having the proper authorization to do so;
- 4.72. In some cases, IForum representatives agreed to act in accordance with powers of attorney given by Members of the group when they knew or should have known that these Members of the group had signed the said powers of attorney without knowing their mandate and without understanding the implications of the said powers of attorney;
- 4.73. IForum is responsible for the acts and omissions of its representatives and/or employees;
- 4.74. Furthermore, the above allegations demonstrate a serious lack of supervision of its representative and/or employees by IForum;
- 4.75. Also, IForum failed to take the appropriate measures to make sure that none of its representative sold securities without the proper authorization;
- 4.76. On the whole, IForum has acted with the utmost negligence and has failed to fulfill its basic obligations towards the Members of the group, which has caused the Petitioner and other Members of the Group to be illegally and fraudulently deprived of considerable amounts of money;
- 4.77. On November 9, 2005, pursuant to the *Securities Act*, R.S.Q., c. V-1.1, and the *Act respecting the Autorité des marchés financiers*, R.S.Q., c. A-33.2, the *Bureau de décision et de révision en valeurs mobilières* made a recommendation to the Quebec Finance Minister to name an administrator, on a provisional basis, to manage both IForum Financial Services inc. and IForum Securities inc., as it appears from a copy of this decision of the *Bureau de décision et de révision en valeurs mobilières* dated November 9, 2005, **Exhibit R-48**;
- 4.78. On the same day, the *Bureau de décision et de révision en valeurs mobilières* rendered another decision to prohibit IForum Financial Services inc. and IForum Securities inc. to entered into any transaction on securities, as it appears from a copy of that decision and a copy of another decision in rectification dated November 10, 2005, *en liasse*, **Exhibit R-49**;
- 4.79. Following the nomination of an external administrator pursuant to the *Bureau de décision et de révision en valeurs mobilières* recommendation, a series of orders were rendered to facilitate the administration of IForum Financial Services inc. and IForum Securities inc., as it appears from a copy of those

decisions dated November 21, 2005, November 25, 2005, November 30, 2005, December 6, 2005 and February 2, 2006, *en liasse*, **Exhibit R-50**;

- 4.80. On or about December 13, 2005, IForum Securities inc. went bankrupt, as it appears from an extract of the Office of the superintendent of Bankruptcy Canada database, **Exhibit R-51**;
- 4.81. Consequently, IForum Securities inc.'s membership in the Investment Dealers Association of Canada was suspended in December 2005 and terminated in May 2006, as it appears from News Release from the Investment Dealers Association of Canada respectively dated December 1, 2005 and May 10, 2006 and an order from this association dated May 5, 2006, *en liasse*, **Exhibit R-52**;
- 4.82. As for IForum Financial Services inc., it was admitted as member of the Mutual Fund Dealers Association of Canada on February 27, 2004, as it appears from the MFDA Bulletin no. 0062-M dated February 27, 2004, **Exhibit R-53**;
- 4.83. On or about December 13, 2005, IForum Financial Services inc. went bankrupt, as it appears from an extract of the Office of the superintendent of Bankruptcy Canada database, **Exhibit R-54**;
- 4.84. On June 13, 2006, IForum Financial Services inc. rights and privileges of membership in the Mutual Fund Dealers Association of Canada were suspended, as it appears from the MFDA Order of June 13, 2006, File no. 200603, **Exhibit R-55**;
- 4.85. On September 26, 2006, IForum Financial Services inc. rights and privileges of membership in the Mutual Fund Dealers Association of Canada were terminated, as it appears from the MFDA Order of September 26, 2006, File no. 200603, **Exhibit R-56**;
- 4.86. As for IForum Financial Network inc., on or about April 12, 2006, it requested the protection of the *Bankruptcy and Insolvency Act*, R.S., 1985, c. B-3, as it appears from an extract of the Office of the superintendent of Bankruptcy Canada database, **Exhibit R-57**;
- 4.87. The Respondents Lloyd's Underwriters and Lloyd's Canada inc. [hereinafter Lloyd's] are two affiliated companies, as it appears from the relevant extracts of *Le registre des entreprises (CIDREC)* for those companies, *en liasse*, **Exhibit R-58**;
- 4.88. The Respondents Lloyd's were the professional liability insurer of IForum at all relevant times to these proceedings, a copy of the Professional Liability Insurance policy for IForum Financial Services inc. covering the period from February 14, 2005 to February 14, 2006 is submitted as **Exhibit R-59**,

Respondent Lloyd's Underwriters being asked to file all other relevant Professional Liability Insurance Policies covering the liability of IForum Financial Services inc., IForum Securities inc., IForum Financial Network and their representatives or employees;

- 4.89. The Petitioner and all other Members of the group whose money has been transmitted through IForum have the right to recover the damages they sustained against Lloyd's, being the insurer of IForum, their representatives and employees;

*The liability of Optifund*

- 4.90. Optifund has acted as a broker in collective subscriptions and investment contracts at all time during the years the members of the group have been induced to invest their money in the financial scam set up by the Respondents Jémus, Roy and Primeau;
- 4.91. Optifund is presently a subsidiary of Desjardins Financial Security Investments inc. as appears from the relevant extracts of *Le Registre des Entreprises (CIDREQ)*, deposited as **Exhibit R-82**;
- 4.92. Beside Petitioner, at least twenty-eight (28) other members of the group, and probably more unknown to Petitioner, have also made their investments from 2001 to 2005, in the same circumstances than Petitioner, learning from the documents received from B2B that their adviser was a representative of Optifund and, in some instances, an adviser they had never met before; Petitioner is depositing, en liasse, as **Exhibit R-83**, some examples of documents showing the involvement of Optifund with other members of the group, through Respondent Jémus but also through other representatives namely Richard Martel and Marc McDermid;
- 4.93. Optifund has totally failed to fulfill its obligation as a broker in collective subscriptions and investments contracts, thus causing Petitioner and other members of the group to loose their money in adventurous and fraudulent investments and is therefore jointly liable toward Petitioner and other members of the group for the damages they have suffered;
- 4.94. Generally, Optifund has never made any effort to know its clients, their financial capacity, their understanding of the investments they were about to make and, consequently, has totally failed to provide them with adequate advises as would have been his duty as a serious and professional broker;
- 4.95. Furthermore, and without restricting the generality of the terms used above, Optifund, its managers and employees;

- have exercised no control over the activities and representations of their representatives in their dealings with the members of the group;
- have let their representatives to sell to the members of the group investments for which these representatives were not legally qualified to sold;
- have let their representatives to sell securities while these representatives were in conflicts of interests;
- have let the members of the group to be reassured that Optifund was acting as a reliable and serious broker firm while Optifund, its managers, representatives and employees have totally neglected to ascertain the validity of the investments made by the members of the group through them;
- have let the members of the group believed that their investments were admissible as deductions for the purpose of income taxes, which was not the case in most instances;
- have totally ignore the information received from B2B concerning the investments they were proposing to the members of the group; as examples are three letters from B2B to Placements Optifond inc., two dated February 17, 2003 and one March 3, 2003, being part of the documents deposited en liasse as **Exhibit R-84**;

*The involvement of Respondent Jean Lafrenière*

- 4.96. Respondent Jean Lafrenière has been admitted as a notary at the *Chambre des notaires du Québec*, in 1978, and has been practicing as a notary since then;
- 4.97. At all material time concerning this case, Respondent Lafrenière has exercised his professional activities at 245, Belhumeur Street, in Gatineau;
- 4.98. At all materiel time concerning this case, Respondent Lafrenière has been closely related to Respondents Marc Jemus, François Roy and Robert Primeau, for business and professional purposes;
- 4.99. On many occasions and on a regular basis, Respondents Marc Jemus, François Roy and Robert Primeau have requested the professional services of Respondent Lafrenière for various transactions related to the *modus operandi* referred to above at paragraphe 4.2;
- 4.100. More specifically, Respondent Lafrenière has executed many legal deeds on behalf of many Group Members, who have whether personally appeared

before him or have been represented by Respondents Marc Jemus, François Roy and/or Robert Primeau in virtue of Powers of Attorney, the whole as appears from the Book of investments information for Primforce dated July 18, 2005, Exhibit-22 and from a random sampling of deeds communicated *en liasse* in support hereof as **Exhibit R-35**;

- 4.101. In many instances, the Powers of Attorney signed by Group Members in favour of Respondents Marc Jemus, François Roy and Robert Primeau, were executed before Respondent Lafrenière himself;
- 4.102. The members of the group were involved in real estate investments and transactions similar to those of the Petitioner and his wife as described in paragraphs 2.19.1 and followings;
- 4.103. Group Members lost considerable amounts of money in relation to these investment and transactions;
- 4.104. In several cases, these transactions have been executed before Respondent Lafrenière in the same expeditious manner as in the case of the Petitioner and his wife;
- 4.105. In a testimony before Mr. Justice Auclair from the Superior Court, Respondent Lafrenière admitted that he was for many years in very close professional relationship with Respondents Marc Jemus, François Roy and Robert Primeau, as it appears from extracts of the transcription of that testimony communicated in support hereof as **Exhibit R-36**;
- 4.106. Mr. Justice Auclair underlined these admissions in his judgment of June 9, 2005, a copy of which is communicated in support hereof as **Exhibit R-37**;
- 4.107. Given this close relationship between Respondent Lafrenière and Respondents Marc Jemus, François Roy and Robert Primeau, the duration of that relationship and the important number of transactions he made with them on behalf of many Group Members, Respondent Lafrenière could not ignore the unusual and fraudulent character of these transactions;
- 4.108. Respondent Lafrenière clearly acted in breach of his professional duties towards Group Members for whom he executed real estate transactions;
- 4.109. Respondent Lafrenière was also grossly negligent in accepting to act as a notary in these transactions, in ignoring their real nature and in failing to inform properly his clients about the legal and financial risks they were induced to take;
- 4.110. More specifically and without reducing the generality of the above statement, Respondent Lafrenière:

- a) never informed the Group Members of the fact that in many cases the value of the properties that they were purchasing could not support the total debt they were incurring to buy or finance them;
  - b) never informed the Group Members on behalf of whom he was acting, of the conflicts of interest of Respondents Marc Jemus, François Roy and Robert Primeau in many of these transactions;
  - c) has failed to register on some of these properties the hypothecary deeds signed by Group Members before him;
- 4.111. Consequently, Respondent Lafrenière should be held jointly liable with all the other Respondents for the damages sustained by the members of the group;

*The involvement of the Respondent B2B Trust*

- 4.112. During the period of 2001 to 2003, approximately 150 investors from across Canada and the United States invested savings, RRSPs and other amounts at the inducement of or through the Respondents;
- 4.113. Most of the capital went through B2B Trust either as RRSP transfers from other institutions or as loans contracted directly from B2B Trust;
- 4.114. To the knowledge of B2B Trust, most of the transactions made with or through it by or on behalf of a member of the Group, were made through or at the inducement of either Marc Jémus, François Roy or Robert Primeau or one of their companies or representative;
- 4.115. Furthermore, to the knowledge of B2B Trust, most of the capital of the members of the Group was invested in or through one of the companies controlled by either Marc Jémus, François Roy or Robert Primeau or one of their companies;
- 4.116. B2B Trust got all its instructions concerning those investments through the other Respondents or their representatives;
- 4.117. Also, all the capital was to be invested through the other Respondents' companies or to their benefit;
- 4.118. The Respondent B2B Trust negligently never made any verification concerning the other Respondents or their companies and was satisfied with the information supplied by the other Respondents themselves;
- 4.119. Several Group Members have communicated directly with the Respondent B2B Trust in order to express their concerns and frustrations regarding the lack of clear and reliable information in relation to their investments;

- 4.120. Despite those important concerns expressed by Group Members, the Respondent B2B Trust simply invited the members of the Group to direct all their questions concerning their investments to their advisors, generally the other Respondents or their representatives;
- 4.121. Some Group Members were nevertheless reassured by B2B Trust employees in regard to their investments;
- 4.122. In doing so, the Respondent B2B Trust has failed to reasonably and adequately inform Group Members in relation to their personal savings invested through Respondent B2B Trust;
- 4.123. Also, Respondent B2B Trust did not comply with its general obligation of counsel towards Group Members;
- 4.124. Furthermore, Respondent B2B Trust negligently agreed to convert several RRSPs into shares in the other Respondents' companies, without really verifying as to whether such transfers would qualify as RRSPs for income tax purposes;
- 4.125. Also, the Respondent B2B Trust issued RRSPs Statements to the members of the Group indicating the market value of their investments;
- 4.126. However, the value indicated was in several cases obviously incorrect;
- 4.127. None of the investors ever got any interest on their investments, even though they had been promised over 8% annually;
- 4.128. On the other hand, the Respondent B2B Trust charged and still continues to charge important fees to the members of the Group for handling their investment money;
- 4.129. Despite the irregularity of several transactions, the important number of transactions made through a limited number of individuals and the companies they controlled, the numerous questions and complaints of several Group Members the absence of any interest paid on these investments, the total amount of these investments and the obvious suspiciousness of the pattern of these investments, B2B Trust never made any verification even though when considering those facts, it was reasonable for B2B Trust to expect illicit transactions;
- 4.130. In the circumstances, any other reasonable trust company would have noticed signs of a potentially fraudulent *modus operandi* and would have made some more verifications;

- 4.131. Acting as a trustee, guardian of the funds, the Respondent B2B Trust committed a gross negligence in its passiveness and blindness towards the frauds, abuses and faults of the Respondents François Roy, Marc Jemus and Robert Primeau and/or their companies;
- 4.132. The Respondent B2B Trust had an obligation to act with prudence and reasonable diligence as a trustee, guardian of the funds, who is charged with the administration of property of others;
- 4.133. The Respondent B2B Trust had an obligation to act honestly and faithfully in the best interest of Group Members;
- 4.134. By its passiveness, the Respondent B2B Trust, administrator of the property of others did not comply with its legal obligations;
- 4.135. Also, acting in the capacity of trustee and of the administrator of the Retirements Savings Plan of some Group Members, the Respondent B2B Trust did not comply with its obligations to act diligently and to ascertain that all investments were complying at all time with its own policy as Trustee;
- 4.136. Furthermore, even though B2B Trust is aware that fraud has been committed, it is actively pursuing many Members of the group in order to obtain RRSP loan principal re-payments, interest and penalties;
- 4.137. B2B Trust was negligent, did not act in a prudent and diligent manner, contrevned to its legal obligations and is therefore jointly liable with the other Respondent for the damages sustained by the members of the Group;

**5. The Composition of the Group makes the application of articles 59 and 67 difficult or impractical**

- 5.1. The group consists of approximately 150 persons geographically dispersed throughout Canada;
- 5.2. Thus, it is impossible for the Petitioner to identify all such potential group members and/or obtain a mandate from each of them;

**6. Identical, similar or related questions**

- 6.1. The identical, similar, or related questions of fact and law between each Group Member and the Respondent which the Petitioner wishes to have settled by the class action are as follow :
- 6.2. Did the Respondents François Roy, Marc Jémus and/or Robert Primeau act fraudulently in regard to the investments made at their inducement or through them and/or through one of their companies ?

- 6.3. In the affirmative, did François Roy, Marc Jémus and/or Robert Primeau engage in a common course of action to commit such a fraud ?
- 6.4. Did Respondent Jean Lafrenière act in breach of his professional duties towards Group Members?
- 6.5. Did the Respondents act negligently in regard to the investments made at their inducement or through them, one of them and/or through one of their companies by Group Members ?
- 6.6. In the affirmative, did the Respondents engage in a common course of action in relation to those investments ?
- 6.7. Are the Respondents jointly liable for the losses sustained by the Group members ?
- 6.8. Are the Group members entitled to be compensated for the loss of their investments made at the inducement or through one of the Respondents or their companies?
- 6.9. Are the Group members entitled to the restitution of all interests and administration fees paid in relation to loans contracted for the purpose of investing at the inducement or through one of the Respondents or their companies?
- 6.10. Are the Group members entitled to the reimbursement of the amount paid to Revenu Canada following the disqualification of their RRSPs, including penalties and interest?
- 6.11. Are the Group members entitled to moral damages caused by the Respondents' actions and/or omissions?

## **7. Individual question**

- 7.1. The only question of fact and law which is specific to each Group member is the quantum of the damages;

## **8. The nature of the recourse**

- 8.1. The nature of the recourse which the Petitioner wishes to exercise on behalf of the members of the Group is an action in civil liability damages;

## **9. The conclusions**

- 9.1. The conclusions sought by the Petitioner are :

**GRANT** the Petitioner's action against the Respondents;

**CONDEMN** the Respondents jointly to pay the Petitioner the sum of \$39,962.36, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

**CONDEMN** the Respondents jointly to pay each Group Member an amount corresponding to their lost investments and the interest paid in relation to any loans they contracted pursuant to those investments, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

**CONDEMN** the Respondents jointly to reimburse each Group Member the amounts paid to Revenu Canada following the disqualification of their investments as RRSP, including penalties and interest;

**CONDEMN** the Respondents jointly to pay the Petitioner and each Group Member an amount of \$50,000.00, under reserve to be completed according to the evidence as general damages for troubles and inconveniences and loss of opportunities, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

**ORDER** the collective recovery of the damage claims;

**CONDEMN** the Respondents jointly to pay such other amounts and grant the Group members such further relief payment as this Honourable Court may determine as being just and proper;

**THE WHOLE** with cost, including the costs of all exhibits, experts, expertise and publication notices.

**10. Representative status**

- 10.1. The Petitioner requests that he be ascribed the status of representative for the following reasons :
- 10.2. He is a Group member;
- 10.3. He is well informed of the facts alleged in this motion;
- 10.4. He has the required time, determination and energy to bring this matter to a conclusion and adequately represent the Group members;

- 10.5. He cooperates with his attorneys and responds diligently and articulately to any requests they made and he fully comprehends the nature of the class proceedings;
- 10.6. He is in contact with several other Group members;
- 10.7. He is not aware of any conflict of interest with other Group members;
- 10.8. He has chosen one of the most important plaintiffs firm in Canada in the area of class actions for twenty five years;
- 11. The Petitioner proposes that the class action be brought before the Superior Court of the District of Hull for the following reasons :**
- 11.1. Two Respondents reside in the district of Hull;
- 11.2. The main part of the fraud happened in the district of Hull;
- 11.3. Most of the investments of the Group members were related to real estates in the district of Hull and the surrounding area;

**WHEREUPON THE PETITIONER PRAYS :**

**THAT** the present motion be granted;

**THAT** the bringing of a class action be authorized as follows :

A civil liability action for damages

**THAT** the status of representative be granted to David Brown for bringing the said class action for the benefit of the Group described as follows, namely :

*Description of the Group*

All those natural persons, and legal persons with less than fifty (50) employees, who have made various investments proposed to them by Marc Jémus, François Roy and/or Robert Primeau, and/or through them, in and/or through companies related to one of them, in the year 2001 to 2005 inclusively.

**THAT** the principal questions of fact and law be dealt with collectively and be identified as follows :

- Did the Respondents François Roy, Marc Jémus and/or Robert Primeau act fraudulently in regard to the investments made at their inducement or through them and/or through one of their companies ?
- In the affirmative, did François Roy, Marc Jémus and/or Robert Primeau engage in a common course of action to commit such a fraud ?
- Did Respondent Jean Lafrenière act in breach of his professional duties towards Group Members?
- Did the Respondents act negligently in regard to the investments made at their inducement or through them, one of them and/or through one of their companies by Group Members ?
- In the affirmative, did the Respondents engage in a common course of action in relation to those investments ?
- Are the Respondents jointly liable for the losses sustained by the Group members ?
- Are the Group members entitled to be compensated for the loss of their investments made at the inducement or through one of the Respondents or their companies?
- Are the Group members entitled to the restitution of all interests and administration fees paid in relation to loans contracted for the purpose of investing at the inducement or through one of the Respondents or their companies?
- Are the Group members entitled to the reimbursement of the amount paid to Revenu Canada following the disqualification of their RRSPs, including penalties and interest?
- Are the Group members entitled to moral damages caused by the Respondents' actions and/or omissions?

**THAT** the conclusions sought with respect to such questions be identified as follows :

**GRANT** the Petitioner's action against the Respondents;

**CONDEMN** the Respondents jointly to pay the Petitioner the sum of \$ 39,962.36, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

**CONDEMN** the Respondents jointly to pay each Group Member an amount corresponding to their lost investments and the interest paid in relation to any loans

they contracted pursuant to those investments, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

**CONDEMN** the Respondents jointly to reimburse each Group Member the amounts paid to Revenu Canada following the disqualification of their investments as RRSP, including penalties and interest;

**CONDEMN** the Respondents jointly to pay the Petitioner and each Group Member an amount of \$50,000.00, under reserve to be completed according to the evidence as general damages for troubles and inconveniences and loss of opportunities, the whole with interest and additional indemnity pursuant to Article 1619 of the *Civil Code of Quebec*, reckoned from the date of service of the present motion;

**ORDER** the collective recovery of the damage claims;

**CONDEMN** the Respondents jointly to pay such other amounts and grant the Group members such further relief payment as this Honourable Court may determine as being just and proper;

**THE WHOLE** with cost, including the costs of all exhibits, experts, expertise and publication notices.

**THAT** it be declared that any Group member who has not requested exclusion from the Group be bound by any judgement to be rendered on the class action in accordance with the *Code of Civil Procedure*;

**THAT** the delay for exclusion be set at thirty (30) days from the notice to the Group members and that at the expiration of such delay, any Group member who has not requested exclusion be bound by any such judgment;

**THAT** it be ordered that a notice to the members be published in the *Globe and Mail* and *Le Droit*;

**THAT** the Respondents be ordered to assume the publication costs of the Notice to Members;

**THAT** the record be referred to the Chief Justice so that he may determine the district wherein the class action is to be brought and the judge before whom it will be heard;

**THAT** the clerk of this Court be ordered, upon receiving the decision of the Chief Justice, in the event that the class action is brought to another district, to transmit the present record to the clerk of the designated district;

The whole with cost, including the cost of notices.

Montréal, May 7, 2009

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**SYLVESTRE, FAFARD, PAINCHAUD**  
Attorneys for the Petitioner