

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

NO: 500-06-001222-237

(Class Action)  
SUPERIOR COURT

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GILBERT [REDACTED]

Applicant

v.

**B2B BANQUE**, legal person having an elected domicile at 600-1360 René-Lévesque Boulevard West, City and District of Montreal, Province of Quebec, H3G 0E5

Defendant

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**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

**I. INTRODUCTION**

1. The Applicant wishes to institute a class action on behalf of the following class, of which he is a member, namely:

All persons in Canada who have or had a B2B Bank investment loan and whose monthly payment was unilaterally increased by B2B Bank to more than the “monthly payment due” stipulated in the loan agreement;

or any other class to be determined by the Court.

(hereinafter referred to as the “**Class**”)

**II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (S. 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

2. The Applicant is a consumer and adherent within the meaning of the Civil Code

and the *Consumer Protection Act* (“CPA”) who signed a contract of adhesion with the Defendant B2B Banque (hereinafter “**B2B**”), a copy of which is communicated as **Exhibit P-1**;

3. B2B is registered as a chartered bank owned by the Laurentian Bank of Canada, as it appears from an extract of the enterprise’s information statement from the Quebec enterprise register for B2B communicated as **Exhibit P-2**;
4. B2B does business in Canada, including in the province of Quebec. Its activities are governed by the Civil Code and the CPA, among other legislation;
5. On November 28, 2016, the Applicant and B2B’s authorized representative signed the B2B application form and loan agreement (Exhibit P-1);
6. The purpose of this B2B agreement, and the reason why the Applicant entered into this loan agreement, is to apply for a loan that will be invested in what B2B describes as its “*highly-regarded Distribution Alliance Programs*” (i.e. one of the mutual fund companies such as Fidelity, for example), as it appears from extracts of B2B’s website<sup>1</sup> communicated *en liasse* as **Exhibit P-3**;
7. The Applicant applied for and received a \$200,000 loan from B2B to be invested in their Distribution Alliance Programs;
8. The program is designed for the Applicant to be able to use the \$200,000 loan issued by B2B for the purpose of investing it in a vehicle offered by one of the Distribution Alliance Programs approved by B2B (B2B selects the mutual fund companies they approve for this program, Exhibit P-3);
9. In December of 2016, B2B issued the Applicant’s loan of \$200,000;
10. On December 22, 2016, the \$200,000 loaned to the Applicant was invested in the Fidelity mutual fund (100% of these loaned funds were invested in Fund code: **FID 480**), in order to generate monthly distributions, as it appears from a copy of the Mutual Fund Trade Ticket communicated as **Exhibit P-4**;
11. Fund code FID 480 is T-class mutual fund and its purpose is to distribute capital to the investor (monthly) while keeping the profits in the investment. The annual distribution for this fund is generally 8% (based on the market value of the T-class funds in the client’s account in the fund as of December 31 of each year). The return of 8% could also vary as it depends on the market value of the fund itself;
12. On its website<sup>2</sup>, Fidelity describes the benefits of the T-class mutual fund, including that “*Investors can receive tax-efficient monthly cash flow without having to sell*

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<sup>1</sup> <https://b2bbank.com/en/loans/distribution-alliance-programs>; <https://b2bbank.com/en/loans/distribution-alliance-mutual-fund-loans>

<sup>2</sup> <https://www.fidelity.ca/en/products/taxsmartsolutions/>

*investments, meanwhile deferring capital gains*”, as it appears from **Exhibit P-5**;

13. These monthly distributions can then be used by the clients to help pay the monthly loan payments stipulated in the contract (Exhibit P-1 at clause 1, on page 3 of 12), which was the case for the Applicant;
14. Clause 9 of the Applicant’s agreement provides the following clause that is in dispute (Exhibit P-1 at page 5-PDF):

**9. Repayment options**

Upon advancement of the Loan proceeds, although the Loan is repayable on demand, I/we shall, in the manner set out herein, subject to any revised payment schedule and until such time as the Loan is repaid or a demand for repayment is made by the Bank, make monthly payments (the "Installments") of the lesser of (i) the monthly payment due, and (ii) any and all amounts outstanding pursuant to this Agreement (the "Indebtedness").

The monthly payment due is:

Interest Only Payments Note: The interest will accrue monthly on the Indebtedness. This interest payment is the amount as of the date of the Loan.

**OR**

Principal and Interest Payments \$1,154.79

Each Installment shall be due on the 5th day of each calendar month starting on 01/05/2017 (the monthly "Payment Date"). Each Installment shall be applied first against the monthly payment of interest due on the Loan as of that Payment Date (the "Interest Payment") and the balance, if any, shall be applied against the Principal (the "Principal Payment").

If the Prime Rate increases after the date hereof and the amount of each installment to be paid hereunder is insufficient to satisfy the Interest Payment due as of such Payment Date, the amount of the shortfall shall be added to the outstanding Principal and such additional amounts shall bear interest at the Variable Interest Rate and shall form part of the Indebtedness.

In the case of Principal and Interest Payment Loans: At this rate of payment, it is expected that the Indebtedness will be repaid in approximately \_\_\_\_\_ years in approximately equal monthly payments.

15. This clause clearly stipulates that his “**monthly payment due**” is **\$1,154.79** and that his payment will always be “**the lesser**” of this amount and the Indebtedness;
16. The contract also stipulates that if the Prime Rate increases, the amount of the shortfall will be added to the outstanding balance;
17. The effect of the previous two paragraphs can only mean one thing: the Applicant’s “monthly payment due” will always remain \$1,154.79 and that if the prime rate increases, the excess interest will be added to the balance of his loan, meaning that the **term** of the loan will increase, but not the monthly payments;
18. In the Applicant’s case, he borrowed \$200,000, which he then immediately invested in one of the B2B approved mutual funds. Ideally, the distribution amount was supposed to cover his monthly payments of \$1,154.79 and his investment would essentially be paying itself. For example, \$200,000 x 8% annually = \$1,333.33 monthly distributions. This amount could vary year to year;
19. The perk of B2B’s *Distribution Alliance Programs* is that the Applicant and Class members have the opportunity to pay back the loan using the monthly distributions, and not out of pocket. That said, the Applicant was aware that should the distributions decrease, he would still be responsible for the shortfall up to the agreed upon “monthly payment” of \$1,154.79 – and not more;
20. In short, the agreement with B2B was interesting for the Applicant because the monthly payments were never supposed to change (i.e. always remain at \$1,154.79), only the term of the loan could increase;

- 20.1 The Applicant never received a welcome package or any document containing a Statement of Disclosure related to his loan in December 2016 or at any time. Applicant verified with his wife and she too never received such documents;
21. From the time his loan was issued by the B2B in December of 2016, up until November 2022, everything went smoothly and according to the plan as described above;
22. However, in November 2022, B2B unilaterally increased his monthly payments from \$1,154.79 to **\$1,427.37**. B2B further unilaterally increased his monthly payments again in January 2023 to **\$1,528.59**, the whole as appears from the letter sent by B2B dated September 29, 2022 and the B2B “*Investment Loan Statement*” dated January 1, 2023, communicated *en liasse* as **Exhibit P-6**;
23. The Applicant never accepted that his “monthly payment due” would increase and his contract clearly states that it cannot increase (Exhibit P-1, clause 9);
24. Upon learning of the first payment increase, the Applicant immediately contacted his mutual fund sales representative to contest the increase. His representative reported this contestation to B2B and shortly thereafter informed the Applicant that B2B took the position that it can unilaterally increase the monthly payments despite the wording of clause 9 of the agreement, which the Applicant contests;
25. Since November 2022, the Applicant has therefore had no choice but to pay **\$1,292.76** more than the amount provided for in clause 9 of his B2B contract, as it appears from the table below (data taken from Exhibit P-6). This increase is significant and taking a toll on his ability to maintain the payments on his loan and, consequently, maintain his investment:

Date	Amount Withdrawn	Difference between Amount Withdrawn and \$1,154.79 pursuant to clause 9
November 5, 2022	\$1,427.37	\$272.58
December 5, 2022	\$1,427.37	\$272.58
January 5, 2023	\$1,528.59	\$373.80
February 5, 2023	\$1,528.59	\$373.80
	<b>Total Difference:</b>	<b>\$1,292.76</b>

26. If the Applicant stops making the higher payments, the consequence is that the Applicant will have to terminate his loan and sustain significant losses. He will also have to pay the difference between the investment balance and the loan balance. In the Applicant’s case this loss would be approximately \$15,000 as of this date;
27. The Applicant brings this action against B2B, on his behalf and on behalf of all Class members, in order to:
- a) Obtain a Court order prohibiting B2B from continuing to demand monthly payments greater than the amount provided for at clause 9 of the contract;

- b) Obtain a reimbursement of the amounts collectively overpaid by him (\$1,292.76 to date) and the other Class members (conservatively estimated at \$5 million to date) since the changes were implemented by B2B (the change was implemented systemically towards all Class members around the same time in November 2022); and
  - c) Obtain compensatory and punitive damages as a result of B2B's bad faith, breach of contract and breach of section 16 CPA.
28. The punitive damages claimed pursuant to section 272 CPA is in the aggregate amount \$250.00 per month per Class member, which the Applicant is prepared to waive if B2B immediately reverts to collecting the monthly payment due as provided in clause 9 of the contract;
29. If it does not, B2B's conduct warrants such a condemnation because it intentionally refuses to honour its own contract and obligations to act in good faith in the performance of its contract;
30. The Applicant's damages are a direct and proximate result of B2B's misconduct and bad faith and, in these circumstances, the Applicant's claims for an injunction, as well as both compensatory and punitive damages are justified;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

31. The questions of fact and law raised and the recourses sought by this Application are identical with respect to each member of the Class, namely:
- a) Does clause 9 of the agreement prohibit BNB from increasing the amount of the monthly payment due by Class members indicated in that clause?
  - b) Did B2B violate section 16 CPA?
  - c) If either of these questions are answered in the affirmative, are Class members entitled to compensatory or punitive damages and in what amounts?
  - d) Should an injunctive remedy be ordered to prohibit B2B from increasing the monthly payment due and to only collect the amount provided for in clause 9 of the B2B agreement?

**C) THE COMPOSITION OF THE CLASS**

32. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
33. The Applicant presumes that B2B has a very important number of customers across Quebec and Canada. While he is unaware of the total number of people

who are included in the Class, he already knows of several them (including of one who sent a formal demand to B2B and who received a response from B2B refusing to revert back to the “monthly payment due” amount stipulated at clause 9 and stating that they would continue charging the increased amounts). He estimates that the total class size is likely 5000 people in the province of Quebec alone;

34. The names and addresses of all the other consumers included in the Class are not known to the Applicant, however, are all in the possession of B2B;
35. Class members are numerous and are dispersed across the province and country;
36. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
37. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS**

38. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
  - a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
  - b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) His interests are not antagonistic to those of other Class members;
39. The Applicant participated in the drafting of the present application and has reviewed the exhibits;
40. He is taking this action so that he and all Class members have their monthly payments reinstated to the amount agreed upon in clause 9 of the agreement and so that they can be compensated for the difference of the amounts paid in excess, as well as to hold B2B accountable for breaching the agreement;

**III. DAMAGES**

41. B2B has breached its own agreement, as well as several obligations imposed on it by legislation in Quebec, notably:
  - a) Section 16 CPA, thereby rendering section 272 applicable;
  - b) Articles 6, 7 and 1375 CCQ.

42. In light of the foregoing, the following damages may be claimed against B2B, subject to adjustments:
- a) compensatory damages in the aggregate of the overcharges (= [amount charged – amount provided for in clause 9] x # of months x # of Class members); and
  - b) punitive damages of \$250 per month per Class member for the breach of obligations imposed on B2B pursuant to s. 272 C.P.A.
43. The Applicant estimates that there are roughly 5000 Class members impacted by B2B's unilateral increase in violation of clause 9 of the agreement. Assuming that the average increase is \$250/month per Class member (so \$1000 to date), then the aggregate amount claimed is at approximately \$5 million. This amount increases with every passing month that B2B does not remedy its breach;

#### IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

44. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;
45. The conclusions that the Applicant wishes to introduce by way of an originating application are:
1. **GRANT** the Plaintiff's action against B2B Bank;
  2. **ORDER** B2B to comply with clause 9 of its agreement with Class members and collect no more than the amount stipulated as "monthly payment due" in that section;
  3. **CONDEMN** B2B Bank to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;
  4. **CONDEMN** B2B Bank to pay to the members of the Class an amount to be determined in punitive damages, and **ORDER** collective recovery of these sums;
  5. **CONDEMN** B2B Bank to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;
  6. **ORDER** B2B Bank to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

8. **CONDEMN** B2B Bank to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

## V. JURISDICTION

46. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal, notably because he is a consumer and resides in this district.

### FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present Application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages and injunctive relief;
3. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

All persons in Canada who have or had a B2B Bank investment loan and whose monthly payment was unilaterally increased by B2B Bank to more than the “monthly payment due” stipulated in the loan agreement;

or any other class to be determined by the Court.

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
  - a) Does clause 9 of the agreement prohibit BNB from increasing the amount of the monthly payment due by Class members indicated in that section?
  - b) Did B2B violate section 16 CPA?
  - c) If either of these questions are answered in the affirmative, are Class members entitled to compensatory or punitive damages and in what amounts?
  - d) Should an injunctive remedy be ordered to prohibit B2B from increasing the monthly payment due and to only collect the amount provided for in clause 9 of the B2B agreement?
5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:



1. **GRANT** the Plaintiff's action against B2B Bank;
2. **ORDER** B2B to comply with clause 9 of its agreement with Class members and collect no more than the amount stipulated as "monthly payment due" in that section;
3. **CONDEMN** B2B Bank to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;
4. **CONDEMN** B2B Bank to pay to the members of the Class an amount to be determined in punitive damages, and **ORDER** collective recovery of these sums;
5. **CONDEMN** B2B Bank to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;
6. **ORDER** B2B Bank to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
8. **CONDEMN** B2B Bank to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
6. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;
7. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notices to Class members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;
8. **ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein by e-mail to each Class member, to their last known e-mail address and mailing addressing, with the subject line "Notice of a Class Action";
9. **THE WHOLE** with costs including publication fees.

Montreal, September 12, 2023

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Me Joey Zukran

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(Class Action)  
**SUPERIOR COURT  
DISTRICT OF MONTREAL**

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**GILBERT CREMISI**

Applicant

v.

**B2B BANQUE**

Defendant

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**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A  
CLASS ACTION**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

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**ORIGINAL**

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