

CANADA
PROVINCE OF QUÉBEC
District of Montréal

SUPERIOR COURT

(Class Action)

File No.: 500-06-000774-154

DANNY LAMOUREUX

Plaintiff

v.

**INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA (IIROC)**

Defendant

DEFENCE
(Art. 102, 170 and 171 C.C.P.)

**IN DEFENCE TO PLAINTIFF'S JUDICIAL DEMAND TO INSTITUTE PROCEEDINGS,
DEFENDANT RESPECTFULLY SUBMITS THE FOLLOWING:**

1. With respect to paragraph 1, the judgment speaks for itself;
2. It has no knowledge of paragraph 3;
3. It admits the allegations in paragraphs 2, 4, 5, 6, 7, 8, 9 and 11;
4. It denies as drafted paragraphs 10, 12, 13, 14, 15, 21, 23, 24, 26, 27, 32 to 39, 50 to 56 and 60 to 68;
5. It denies paragraphs 16, 17, 18, 29, 30, 31, 33, 58, 71, 72, 73;
6. With respect to paragraphs 19, 20, 22, 25, 28, 40 to 49, 57, 59, 69, 70, Exhibits P3, P4, P-5, P-6, P-7, P-8, P-9, P-10, P-11, P-12, P-13, P-14, P-15 P-16, P-17, P-18, P-19, P-20 speak for themselves, Defendant IIROC denying any allegation contained in said paragraphs which are not in conformity therewith;

THE LOSS OF THE PORTABLE COMPUTER

7. Although the portable computer at issue was effectively forgotten on a train and ultimately lost, there is no evidence that it fell into wrong hands and that the information contained therein was released or, made available to third parties and

even less used or misused by malfeasants. Access to the contents of the computer required a password;

THE INFORMATION CONTAINED ON THE COMPUTER

8. The personal information of investors contained in the computer was provided by various brokers and only included for most investors their name, address, date of birth, broker's name and account number. For the remaining investors, additional information was provided, which is why IIROC forwarded 2 different versions of the initial notice of April 12, 2013;
9. The letters were sent out as soon as IIROC had sufficient information as to who the investors were and as to their information contained on the lost computer. At the same time, IIROC provided investors with the information on how to protect their personal information;
10. IIROC sent the notices on April 12, 2013, in order to ensure that the investors could be made aware and protect themselves in the unlikely eventuality that their personal information could be accessed and used;

MR. LAMOUREUX PERSONAL INFORMATION

11. The only information provided to IIROC by Mr. Lamoureux' broker, as part of a list of all clients of Valeurs Mobilières Banque Laurentienne ("VMBL"), were his name, address, date of birth, broker's name and account number(s);
12. Although IIROC would request and receive from time to time from the brokers, including VMBL, the files of certain customers as part of a sample verification process, it never requested nor received the files pertaining to Mr. Lamoureux during the course of its audits of VMBL;
13. As a consequence IIROC never had access to Mr. Lamoureux' driver's licence or driver's licence information which, according to Mr. Lamoureux would have been part of his file;
14. Yet, Mr. Lamoureux alleges that his driver's licence was fraudulently used in April 2015 to obtain a credit card and financing plans (paragraph 38);
15. As appears from the allegations of the Application, all attempts to defraud Mr. Lamoureux that are substantiated in any way by any documentary evidence occurred in April 2015;
16. Mr. Lamoureux does not have first hand knowledge of the fraud attempts allegedly reported to him by Equifax and TransUnion as having occurred between November 2013 and April 2015, which are contradicted by or irreconcilable with some of the other information he alleges having received from them;

17. Although Mr. Lamoureux was offered by IIROC credit and monitoring services free of charge in the notices he received in April and May, he chose not to subscribe to them;
18. Had he done so, he may have avoided the various fraud attempts he alleges having been the victim of;
19. The allegations of Mr. Lamoureux contained in the Application describing the various fraud attempts against him are but a reiteration of an affidavit he executed on August 28, 2015, which was filed with the Court of Appeal in the Sofio case, and with respect to which the Court commented as follows:

« Même en tenant pour avéré que le vol d'identité, dont l'auteur de la déclaration sous serment a été victime, est en lien avec la perte de l'ordinateur de l'Organisme, ce qui n'appert pas clairement de la lecture de la déclaration, cette preuve n'est pas susceptible d'entraîner un jugement différent. »

said affidavit is hereby communicated as **Exhibit D-1**;

20. While Mr. Lamoureux alleges that he was a victim of attempted fraud on numerous occasions, these attempts occurred in 2015, more than two (2) years after the loss of the computer. The attempts did not result from the information contained in the lost computer falling into the wrong hands. They manifestly occurred as a result of fraudsters accessing his personal information by other means and in the context where Mr. Lamoureux failed to subscribe to the monitoring services offered by IIROC;
21. Moreover, Mr. Lamoureux has no claim against IIROC for allegedly deficient services rendered or not rendered by Equifax;

THE CLAIMS OF THE CLASS

22. Notwithstanding the publicity in 2013 surrounding the loss of the computer and in 2015 surrounding the Class Action Motion for Authorization filed by Mr. Sofio, Mr. Lamoureux' lawyer who also acted for Mr. Sofio, has admitted in the court record that he is only aware of one other individual who claims to have been the subject of fraud or attempted fraud, as a result of the loss of the computer, that being Jean-François Gosselin;
23. IIROC itself has only been made aware of two such instances of alleged fraud or attempted fraud, they being Mr. Lamoureux and Mr. Gosselin;
24. It is not surprising that two individual out of a group of 52,000 would be the victims of attempted fraud when one considers all of the personal data breaches that have

occurred in the last fifteen years either by loss or theft of computers and computer data or hacking, more particularly in the fields of retail and financial institutions;

25. The monthly activity monitoring reports of the credit files of the 52,000 class members for the months extending from April 2013 to December 2016, which have been communicated to Plaintiff and which IIROC intends to file as **Exhibit D-2** show no signs of any unusual activity, as a whole;
26. Other than Messrs. Lamoureux and Gosselin all the other class members who would have received the notices from IIROC and proceeded to follow the recommendations of Equifax with respect to monitoring their affairs suffered minor inconvenience at best, which the Court of Appeal in *Sofio* has held not to be compensable;

PUNITIVE DAMAGES

27. The *Charter of Human Rights and Freedom* and the *Act respecting Access to documents held by public bodies and the Protection of personal information* provide for the possibility of punitive damage only if there is respectively an "unlawful interference" or "unlawful infringement" with a person's right to privacy;
28. As their personal information was never accessed by third parties as a result of the loss of the computer, the class members' rights have not been infringed or interfered with and they have suffered no injury from the loss of the computer;

THE INDIVIDUAL VS COLLECTIVE RECOVERY

29. Without prejudice to all of the defence of IIROC enumerated above, collective recovery of the claim of the class is not possible in this case;
30. Each and every class members must establish individually on balance of probabilities that his/her right to privacy was violated as a result of third party accessing their personal information as a result of the loss of the computer;
31. Moreover, each and every class member who alleges having incurred trouble and inconvenience as a result of the loss of the computer at a level that is compensable must establish that claim individually on a balance of probabilities;
32. Every class members must therefore also establish his/her individual right to punitive damages resulting from the loss of the computer. There can be no presumption of collective damages or recovery in the circumstances of the present case;


THE CLAIM OF MORAL PERSONS

33. Without prejudice to all of IIROC's defences above, moral persons cannot form part of the class as they do not have "personal information" as contemplated by law and do not benefit from the privilege and protection afforded to physical persons under the legislation relied upon by Plaintiff.

FOR THESE REASONS, DEFENDANT PRAYS THAT THIS HONOURABLE COURT:

- A. **DISMISS** Plaintiff's Judicial Demand to Institute Proceedings;
- B. **THE WHOLE** with costs.

Montréal, April 10, 2017


Borden Ladner Gervais LLP
Lawyers for Defendant

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ORIGINAL

BLG
Borden Ladner Gervais
B.M. 2545
Me Robert Charbonneau

1000, rue De La Gauchetière Ouest
Bureau 900
Montréal, QC, Canada H3B 5H4
Tél. 514.879.1212
Télec. 514.954.1905
rcharbonneau@blg.com

Dossier : 022700-000033