CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

S.C.M. No.: 500-06-000803-169
C.A. No.: 500-09-027725-183

COURT OF APPEAL

MOSHE SEGALOVICH, domiciled and residing at 6015 Krieghoff Street, Côte St-Luc, district of Montreal, Province of Quebec, H4W 3C5

APPELLANT – Applicant

v.

C.S.T. CONSULTANTS INC., legal person having its head office at 2235 Sheppard Avenue East, Suite 1600, Toronto, Ontario, M2J 5B8

and

CANADIAN SCHOLARSHIP TRUST FOUNDATION, legal person having its head office at 2235 Sheppard Avenue East, Suite 1600, Toronto, Ontario, M2J 5B8

and

HERITAGE EDUCATION FUNDS INC., legal person having its head office at 2005 Sheppard Avenue East, Suite 700, Toronto, Ontario, M2J 5B4

and

HERITAGE EDUCATIONAL FOUNDATION, legal person having its head office at 2005 Sheppard Avenue East, Suite 700, Toronto, Ontario, M2J 5B4

and

UNIVERSITAS MANAGEMENT INC., legal person having its head office at 1035 Wilfrid-Pelletier Avenue, Suite 500, Quebec City, district of Quebec, G1W 0C5

and

UNIVERSITAS FOUNDATION OF CANADA, legal person having its head office at 1035 Wilfrid-Pelletier Avenue, Suite 500, Quebec City, district of Quebec, G1W 0C5

and

CHILDREN'S EDUCATION FUNDS INC., legal person having its head office at 3221 North Service Road, Burlington, Ontario, L7N 3G2

and

CHILDREN'S EDUCATIONAL FOUNDATION OF CANADA, legal person having its head office at 3221 North Service Road, Burlington, Ontario, L7N 3G2

and

GLOBAL RESP CORPORATION, legal person having its head office at 100 Mural Street, Suite 201, Richmond Hill, Ontario, L4B 1J3

and

GLOBAL EDUCATIONAL TRUST FOUNDATION, legal person having its head office at 100 Mural Street, Suite 201, Richmond Hill, Ontario, L4B 1J3

and

KNOWLEDGE FIRST FINANCIAL INC., legal person having its head office at 50 Burnhamthorpe Road West, Suite 1000, Mississauga, Ontario, L5B 4A5

and

KNOWLEDGE FIRST FOUNDATION, legal person having its head office at 50 Burnhamthorpe Road West, Suite 1000, Mississauga, Ontario, L5B 4A5

RESPONDENTS – Defendants

NOTICE OF APPEAL
(Article 352 C.C.P.)
Appellant
Dated August 2, 2018

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1. The Appellant appeals from a judgment of the Superior Court, District of Montreal, rendered by the Honourable Brian Riordan (the "Judge *a Quo*") on June 14, 2018 (the "Judgment a *Quo*"), which is attached hereto as **Schedule 1**, together with the *Avis de Jugement* dated July 5, 2018;

2. The Judge *a Quo* dismissed the Appellant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* (the "Application"), finding that article 575(4) C.C.P. was not satisfied because "… *on the face of the record, the obligation to pay the Charges ceased to be exigible in the fall of 2011. This is outside of the prescriptive period and confirms the prescription of Applicant's claim, resulting in his lack of personal interest in the Proposed Action*"[1];

3. The Judge *a Quo* concluded that the 3 other criteria of article 575 C.C.P. were met[2];

4. Neither the Appellant or any of the Respondents' representatives were examined. His Application was supported by 27 exhibits filed in first instance. For the most part, the facts giving rise to his cause of action are not contested. The hearing in first instance lasted two days (May 16-17, 2018);

5. The Appellant respectfully submits that his personal claims are not prescribed and that he therefore satisfied his burden under article 575 (4) C.C.P. (as interpreted by the jurisprudence of the higher Courts), and that the Judge *a Quo* made errors in law and in fact in his analysis of prescription;

The Facts and Proceedings:

6. The Appellant's causes of action are straight forward: he alleges that the Sales Charges (also referred to as "enrollment fees" or "frais d'adhésion") charged by all of the Respondents are:

a) objectively abusive under article 1437 C.C.Q.;

b) illegal because they contravene subsection 1.1(7) of *Regulation no. 15 Respecting Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses*, CQLR, c. V-1.1, r. 44, s. 331.1 ("*Regulation 15*"), which all of the Respondents undertook to comply with in their respective prospectuses[3];

[1] **Schedule 1**, at paras 43-44.
[2] *Ibid* at paras 7, 23 and 24.
[3] *Ibid* at para 22.

c) abusive in proportion to the total contributions made up until the effective cancellation date of his plans.

7. The facts giving rise to the Appellant's cause of action are detailed at paragraphs 42 to 91 of his Application and are summarized in the following paragraphs;

8. The Appellant subscribed to four (4) Registered Education Savings Plan ("RESP") agreements with Respondents C.S.T. Consunltants Inc. ("CSTI") and Canadian Scholarship Trust Foundation ("CSTF") from June 1, 2006 through November 4, 2013;

9. Each time that he opened a new RESP, the Appellant (and all class members) received a prospectus, which the Respondents are legally obligated to provide. Each of these prospectuses provide for the voluntary application of and compliance with *Regulation 15*, which has equivalent content throughout Canada. Subsection 1.1(7) of *Regulation 15* provides that the fees charged, including the commissions of the distributor and its salesmen, must not exceed $200 per plan;

10. All four (4) RESP agreements and prospectuses provide for and impose Sales Charges that exceed $200 per plan[4] and are therefore contrary to *Regulation 15*, which Respondents undertook to comply with;

11. The prospectuses and agreements provide that the Sales Charges are allocated to the first 100% of each dollar contributed until one-half of the total Sales Chagres have been deducted. Thereafter, the Sales Charges are allocated to 50% of each remaining dollar contributed until the Sales Charges are deducted in full[5]. It generally takes 32 months for this allocation to complete[6];

12. The Appellant began making monthly contributions to CSTF and CSTI for his children's RESPs beginning from June 2006 and continued doing so – without interruption – until February 3, 2014[7];

13. Exhibit P-27 shows that the preauthorized amount of $535.70 was last debited by CSTF from the Appellant's CIBC chequing account on February 3, 2014. This amount was debited on account of the Appellant's following RESP contributions:

[4] **Exhibits P-3**, **P-4**, **P-5** and **P-6**.
[5] *Ibid.*
[6] **Schedule 1** at paras 41-42.
[7] **Exhibit P-27**.

Exhibit	Plan #	Monthly payment	Effective date	Last payment	Date of full/partial reimbursement by CSTF	Total Contributed	Appellant's Claim	%[8]
P-3	13041088 (Yaël)	$117.70	June 2006	Feb. 3, 2014	April 15, 2015[9] (partial)	$10,946.10	$2000	20%
P-4	13090933 (Avraham)	$114.00	July 2006	Feb. 3, 2014	April 15, 2015 (partial)	$10,403.80	$2200	23%
P-5	15145956 (Idan)	$152.00	Feb. 2009	Feb. 3, 2014	April 15, 2015 (partial)	$9,272.00	$3000	34.5%
P-6	21333262 (Etay)	$152.00	Nov. 2013	Feb. 3, 2014	March 4, 2014[10] (full)	N/A	N/A	N/A
	Total:	**$535.70**				**$30,621.90**	**$7,200.00**	

14. As can be seen from the above chart, the Fourth RESP of Etay was reimbursed fully including Sales Charges. However, CSTF and CSTI refused to reimburse Appellant the Sales Charges exceeding $200 per plan for his three other RESP agreements[11];

15. On April 15, 2015, CSTF issued three (3) checks to CIBC Securities (where Appellant opened his new RESP account) totaling $36,639.39[12], date upon which the Appellant's loss of $7,200 on account of Sales Charges was determined and created[13];

16. On July 19, 2016, the Appellant filed his Application against the Respondents;

17. On June 14, 2018, the Judge *a Quo* dismissed the Appellant's Application and on the following day Mr. Qing Wang (represented by the same counsel as the Appellant) filed an Application to Authorize a Class Action against the same Respondents in S.C.M. file no. 500-06-000932-182, which does not have a prescription issue. Mr. Wang's case was stayed by Justice Chantal Chatelain, J.C.S., on July 16, 2018, until final judgment is rendered herein;

I. Errors of law

A. The Judge *a Quo* erred in dividing the Appellant's obligations

18. The principle issue in appeal is whether, for the purposes of prescription, the Respondents can segregate Sales Charges and savings;

[8] Percentage of fees charged to the total contributions made per plan. Note that the Appellant's claim is $200 less than the Sales Charges he paid per plan since *Regulation 15* provides for $200/plan.
[9] **Exhibit P-10** shows partial reimbursement for Yaël, Avraham and Idan.
[10] **Exhibit P-9.**
[11] **Exhibits P-8** and **P-9**;
[12] **Schedule 1**, at paras 70 and 75; **Exhibit P-10**.
[13] Exhibit P-9 at page 3 (point #3) explains that Appellant was also charged a transfer fee of $50 per plan for 3 plans; these "transfer fees" are not an issue at this stage.

19. It is respectfully submitted that the Judge *a Quo* erred in dividing the Appellant's obligation in two parts for prescription: "non-Charge portions"[14] (i.e. investments or savings towards the RESPs) and "Charge" portions (i.e. the Sales Charges), as if his obligation to contribute a fixed amount monthly towards his RESPs is divisible and could thus be considered as two separate obligations in isolation from one another, on the basis that the amount destined to the Sales Charges had been terminated in 2011[15]. Accordingly, prescription would have started at that time and not in February 2014, when the Appellant ceased all payments, or in April 2015, when CSTF partially reimbursed him;

20. In illustrate of this argument, we use the Appellant's obligation under his First RESP for Yaël (Exhibit P-3), which was to make 192 monthly contributions[16] in the amount of $117.70 each. From the effective date of June 2006 until his last payment on February 3, 2014, the Appellant continuously paid $117.70 towards his First RESP, which is an investment governed by the *Securities Act*, chapter V-1.1;

21. The Appellant's position is that this obligation to contribute $117.70 monthly is indivisible and since his last contribution was made on February 3, 2014[17], prescription can only start running as of this date, at the earliest (contrary to paragraph 33 of the Judgment *a Quo*, the Appellant's preferred option is April 15, 2015[18], date upon which his loss was crystalized);

22. In other words, the contractual allocation of part of the $117.70 payment for the savings into the RESP or for the Sales Charges of $2,200 is an accounting exercise that does not warrant separate treatment – nor can the obligation arising from the payment of $117.70 be separated – for prescription purposes;

23. However, if we take for granted that the Judge *a Quo* was correct in separating the Appellant's contributions, so that for the first 32 months the Appellant's obligations were divided in two: (i) an obligation to pay the "Charge portions" (which is essentially CSTI's commission and not invested anywhere); and (ii) a second obligation to pay the "non-Charge portions" (which are invested in securities, namely RESPs), it follows that the obligation concerning the "Charge portions" is not governed by the *Securities Act*;

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[14] **Schedule 1**, at paras 28-32 and 40-43.
[15] *Ibid* at para 42.
[16] **Exhibit P-23**: See chart at p.72-PDF (third column, second row, showing 192 *equal* monthly payments required for a "1M"). The price of a unit is set by C.S.T. at $10.70 and Applicant had 11 units for a total of $117.70.
[17] **Exhibit P-27**.
[18] *Application* at para 75; **Schedule 1** at para 46 (point #6 *in fine*).

24. This is relevant because the Appellant initially assumed – until the *Judgment a Quo* was rendered – that he was unable to invoke section 13 of the *Consumer Protection Act*, chapter P-40.1 ("C.P.A."), because transactions governed by the *Securities Act* are excluded from the C.P.A.[19];

25. If the C.P.A. applies, then the "Charge portions" paid by Appellant appear to be illegal because section 13 C.PA. provides that a stipulation requiring the consumer, upon the non-performance of his obligation, to pay a stipulated fixed amount ($200 per unit in this case), penalties or damages, other than the interest accrued, is prohibited. The Appellant could even raise section 272 C.P.A. to request punitive damages;

26. Conversely, if the "Charge" and "non-Charge" portions are governed by a single law (i.e. the *Securities Act*), then the prescription should not run at different times depending on the allocation of the payments within the fixed global amounts;

B. <u>The Judge *a Quo* erred in not giving precedence to the undertakings contained in the prospectuses</u>

27. The principle of *nemo auditur propriam turpitudinem allegans* dictates that the Respondents are not entitled to claim the benefit of prescription because they lied to class members about complying with *Regulation 15;*

28. In their annual statements[20] sent to the Appellant and to class members each year, the Respondents refer to their prospectuses and in their prospectuses they undertake to comply with *Regulation 15*. These undertakings appear from the following Exhibits:

Defendant	Exhibit	Description	PDF Page(s)
C.S.T.	P-23	2005 Prospectus	p. 38
C.S.T.	P-15	2008 Prospectus	p. 53 & 76
C.S.T.	P-14	2015 Prospectus	p. 13 & 22
Universitas	P-17	2015 Prospectus	p. 15 & 56
Heritage	P-16	2015 Prospectus	p. 6 & 21
Children's	P-18	2015 Prospectus	p. 5 & 14
Global	P-19	2015 Prospectus	p. 21 & 39
Knowledge First	P-20	2015 Prospectus	p. 8

29. The undertakings in the abovementioned prospectuses were misleading because the Respondents did not intend to comply with *Regulation 15*. The Judge *a Quo* agreed

[19] S. 6(a) C.P.A.
[20] **Exhibits CST 2-A** to **2-H**.

that this position created an arguable case[21].

30. It is respectfully submitted that the Judge *a Quo* erred by giving more value to portions of annual statements, than to the prospectuses[22];

31. It would also be unjust to allow the Respondents to benefit from a prescription defence where the Judge *a Quo* found that the Appellant satisfied article 575(2) due to repeated false statements by Respondents – which appear to be prejudicial – that are contained in their respective prospectuses throughout the entire class period[23];

C. The Judge *a Quo* erred in failing to consider Appellant's knowledge for the starting point of prescription

32. In *Oznaga*[24], the Supreme Court held that a Plaintiff is actually in an impossibility to act within the meaning of article 2904 C.C.Q., when he was misled by the Defendant, so long as the Plaintiff acted reasonably;

33. The Appellant acted with celerity and filed his Application on July 19, 2016, which is less than 3 years after learning that the Respondents do not in fact comply with *Regulation 15* and that the representations made to him at the time of signing his plans and repeated each year in the annual statements and prospectus were false. He could not have been reasonably expected to know this before, especially since the Respondents' counsel continued to argue that *Regulation 15* was "swept away"[25];

34. In a civil action for damages, prescription does not begin to run until the plaintiff is aware of the three elements of civil responsibility: fault, damages and causation. It is only with this knowledge, does the plaintiff have the ability to exercise legal rights[26];

35. The Appellant's knowledge of the *fault* is of importance in the case at bar because the Judge *a Quo* decided that he displayed ignorance of the law (i.e. *Regulation 15*) from day one[27] (the Appellant presumably read his contracts on the dates they were signed). However, this case cannot be analyzed as a standard issue of the Appellant's reading of a contract and being aware of the fault, precisely because up until the authorization hearing even the Respondents argued that *Regulation 15* has been "*balayé*";

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[21] **Schedule 1**, at paras 19 to 24.
[22] *Ibid*, at paras 45 to 54.
[23] *Ibid*, at paras 19-24 and 50.
[24] *Oznaga v. Société d'exploitation des loteries*, [1981] 2 SCR 113, p. 126-127.
[25] **Schedule 1**, at para 22.
[26] Céline Gervais, *La prescription*, Cowansville, Yvon Blais, 2009, p. 106.
[27] **Schedule 1**, at paras 37-38.

36. As such, it was an error in fact and in law to impute knowledge of fault on the Appellant from the day he signed his RESP agreements, when up until May 17, 2018, the Respondents' attorneys contested: (i) the existence of an overcharge; (ii) the applicability of *Regulation 15* (in spite of the obvious references in the prospectuses); and (iii) the meaning of the relevant passages of *Regulation 15*;

D. The Judge *a Quo* erred in ignoring that the harm and a cause of action can be determined when the plan is cancelled

37. Paragraph 45 of the Appellant's Argument Plan, submitted to the Judge *a Quo* for the authorization hearing, contained a chart demonstrating that the amounts of the Sales Charges are abusive in relation to the total contributions. The table reproduced below represents the percentages of the penalty/forfeiture that a consumer who cancels their plan – for whatever reason – would incur at given times:

# of Months or Years to Cancellation	Forfeiture Amount
0 to 11 months	100%
24 months	73%
32 months	66%
6 years[28]	34.7%
9 years[29]	23%
9 years[30]	20.3 %

38. We submit that Sales Charges ranging from 100% to 20.3% (and perhaps less depending on the Respondents' costs) are abusive within the meaning of article 1437 C.C.Q. Moreover, these amounts can only be determined on the date that the plan is cancelled, which then becomes both the cause of action and the starting point of prescription;

39. The last three entries in the above chart concern the Appellant's proportionate losses (34.7%, 23% and 20.3%) at the time of cancellation his plans (after 6 and 9 years). Since these percentages can only be computed on the day[31] that the Appellant cancelled his RESPs, it follows that prescription can only start running as of that date (i.e. when the loss is created as a percentage in relation to total contributions);

40. In the case at bar, the harm to class members is a moving situation which cannot be

[28] Appellant's RESP #15145956; See Exhibit P-9 and *Application* at para 74.
[29] Appellant's RESP #13090933; See Exhibit P-9 and *Application* at para 74.
[30] Appellant's RESP #13041088; See Exhibit P-9 and *Application* at para 74.
[31] His personal claim is not prescribed whether we consider the date of his last contribution (February 3, 2014) or the date when he was partially reimbursed (April 10, 2015).

assessed prior to the date of cancellation, given that one depends on the other. The abusive nature of the proportionate loss changes each month and therefore prescription can only start on the day of cancellation;

E. <u>The Judge *a Quo* erred in finding that the Appellant's claim was prescribed "*on its face*"</u>

41. The general principle concerning prescription of a proposed Representative Plaintiff's claim at the authorization stage is not contested and is set out at paragraph 27 of the Judgment *a Quo*:

> [27] Although the prescription of a representative's personal claim is perhaps not always an insurmountable obstacle to authorization, as mentioned in the *Whirlpool* case[32], it is of pre-eminent relevance in our view. Moreover, the case law supports the position that the authorization judge has a broad discretion in the matter and has the power to refuse authorization where the personal claim of the proposed class representative is prescribed on its face[33].

42. The Judge *a Quo* based himself on the jurisprudence cited at para. 27 reproduced above. However, all of these decisions were rendered in different contexts and therefore cannot justify dismissing authorization here;

43. In Whirlpool, for instance, one of the main distinctions is that the trial Judge in that case found that article 575(2) was not satisfied[34];

44. *Fortier c. Meubles Léon Ltée*[35] was rendered prior to *Asselin*[36] and dealt with a different set of factual and legal issues. The question as to whether the salesmen's representations were false and thus in violation of the C.P.A. is one of law. Faced with it, this Court erred on the side of caution and overturned the first instance decision, and authorized the class action in part, rather than prematurely ending it;

45. In order for an application to be dismissed solely on the grounds of prescription at the authorization stage, it must be obvious or, in the terms of one of the judgments cited

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[32] *Lambert c. Whirlpool Canada, l.p.*, 2015 QCCA 433, para 19.
[33] See: *Marineau c. Bell Canada*, 2015 QCCA 1519, para. 6, citing the following cases: *Fortier c. Meubles Léon ltée*, [2014] J.Q. no 661, 2014 QCCA 195, para. 137; *Godin c. Société canadienne de la Croix-Rouge*, [1993] J.Q. no 855, para. 8-9; *Rousselet c. Corporation de l'école Polytechnique*, 2013 QCCA 130, para. 12; *Option consommateurs c. Fédération des caisses populaires du Québec*, [2010] J.Q. no 7504, para. 32; 2010 QCCA 1416, *Gordon c. Maillot*, [2011] J.Q. no 6167, 2011 QCCA 992, para. 14-16; *Tremaine c. A.H. Robins Canada inc.*, [1990] J.Q. no 1905 (C.A.).
[34] *Lambert c. Whirlpool Canada, l.p.*, 2013 QCCS 5688, paras 52 and 60.
[35] 2014 QCCA 195, at para 124.
[36] *Asselin c. Desjardins Cabinet de services financiers inc.*, 2017 QCCA 1673.

at paragraph 27 of the Judgment *a Quo* "*…clair que la réclamation est prescrite*"[37];

46. The question of prescription was complicated because of several factors, including:

a) the date of acquisition of the RESPs and the date of the Appellant's last contribution thereto[38];

b) whether the Sales Charges paid by Appellant were abusive in proportion to his contributions up until the date he cancelled;

c) the method used by Respondents to collect the Sales Charges from class members[39];

d) whether Respondents are entitled to claim the benefit of prescription, even after the Judge *a Quo* found that the Appellant established an arguable case[40];

e) when the Appellant acquired knowledge of the conditions to sue;

47. It is also worth emphasizing that as of February 3, 2014, CSTI never demanded (or "*exigé*" within the meaning of article 2932 C.C.Q.) a payment from the Appellant. In fact, Exhibit P-9 (page 3, point #3) confirms that it was only on March 31, 2015, when CSTI advised the Appellant that the sales charges in the amount of $7800.00 will be forfeited *if* he decides to transfer to another financial institution. Exhibit P-10 confirms that the Appellant's loss of $7,200.00 was crystalized on April 15, 2015 (as alleged at paragraph 75 of the Application);

48. It is respectfully submitted that the Judge *a Quo* committed a palpable and overriding error in concluding – at this stage – that the Appellant's claim is prescribed *on its face*, especially when the Appellant presents a tenable interpretation of the starting point for prescription in this case;

49. Finally, despite citing this Court's decision in *Fortier c. Meubles Léon ltéé*[41], the Judge *a Quo* erred in not applying this Court's teachings when allegations of false representations appear on the face of the record. Indeed, in his Formal Notice to CSTI and CSTF dated February 26, 2015[42], the Appellant specifically alleges "*false representations made*" by one of their representatives;

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[37] *Godin c. Société canadienne de la Croix-Rouge*, [1993] J.Q. no 855, para 9.
[38] **Schedule 1**, at paras 30-33.
[39] *Ibid* at paras 40-42.
[40] *Ibid* at paras 46-47.
[41] *Fortier c. Meubles Léon ltéé*, 2014 QCCA 195, at paras 137-140.
[42] **Exhibit P-8** filed in support of the Application; See also *Application* at para 73.

50. By considering more than the complicated[43] nature of the question of prescription, the Judge *a Quo* trenched on the work of the trial judge who will have the benefit of a complete record to decide on prescription.

[43] **Schedule 1**, at para 28.

II. Conclusions

51. For these reasons, may it please the Court to:

I. **ALLOW** the appeal;

II. **SET ASIDE** the judgment in first instance;

III. **GRANT** the Appellant's *Application for Authorization to Institute a Class Action to Appoint the Status of Representative Plaintiff* according to the following modified conclusions in conformity with paragraphs 55 to 59 of the Judgment *a Quo*:

> **GRANT** the present Application;
>
> **AUTHORIZE** the bringing of a class action in the form of an Application to Institute Proceedings in damages;
>
> **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:
>
> > Class:
> >
> > All natural persons, who at any time since July 19th, 2013 (the "Class Period"), while residing in the province of Quebec, had a contract with any of the Defendants in which they were a subscriber and/or contributor (either primary or joint) for a Registered Education Savings Plan ("RESP"), and who were charged a fee (referred to as "Enrolment Fee", "Sales Charge" and/or "Membership Fee"), including the commissions of the distributor and its salesmen, exceeding $200.00 per plan;
>
> **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
>
> English:
>
> a) Do Defendants violate subsection 1.1 (7) of *Regulation 15*?
>
> b) Is the contract entered into between Class members and Defendants, for their RESPs, a contract of adhesion and/or a consumer contract?
>
> c) If so, is the clause providing for Enrolment Fees, Sales Charges and/or Membership Fees in excess of $200.00 per plan abusive under article 1437 CCQ?
>
> d) If so, should the abusive clause be declared null and should the obligations arising out of the abusive clause be reduced to $200.00 per plan?

e) Are the members of the Class entitled to compensatory damages and/or restitution and, if so, in what amount?

f) Should an injunctive remedy be ordered to force Defendants to immediately cease the practice of charging Enrolment Fees/Sales Charges in excess of $200.00 per plan?

g) If applicable, are the resiliation fees charged by Defendants to the Applicant and the Class members in excess of the actual harm suffered by the Defendants?

Français:

a) Les défenderesses enfreints-elles le paragraphe 1.1 (7) du *Règlement C-15 sur les conditions préalables à l'acceptation du prospectus des fondations de bourses d'études* (V-1.1, r. 44) ?

b) Le contrat conclu entre les membres du Groupe avec les défenderesses pour leurs REEE, est-il un contrat d'adhésion et/ou de consommation ?

c) Dans l'affirmative, la clause prévoyant des frais de souscription ou d'inscription, des frais de vente et /ou des frais d'adhésion de plus de 200 $ par plan, est-elle abusive en vertu de l'article 1437 C.c.Q. ?

d) Dans l'affirmative, la clause abusive devrait-elle être déclarée nulle et les obligations découlant de la clause abusive devraient-elles être réduites à 200 $ par plan ?

e) Les membres du Groupe ont-ils droit à des dommages-intérêts compensatoires et/ou la restitution et, dans l'affirmative, à quel montant ?

f) Une action en injonction devrait-elle être ordonnée pour que les défenderesses cessent immédiatement leur pratique de percevoir plus de 200 $ par plan de bourses d'études en frais de souscription ou d'inscription, frais de vente et /ou des frais d'adhésion ?

g) Le cas échéant, les frais de résiliation de contrat facturés au demandeur et aux membres du Groupe excédent-ils le montant du préjudice réellement subi par les défenderesses?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendants on behalf of all the members of the Class;

DECLARE the Defendants liable for the damages suffered by the Plaintiff and each of the members of the Class;

ORDER the Defendants to cease charging consumers residing in

Quebec more than $200.00 per plan in Enrolment Fees and/or Sales Charges;

CONDEMN Defendants C.S.T. Consultants Inc. and Canadian Scholarship Trust Foundation, solidarily, to pay Moshe Segalovich the amount of $7,200.00 itemized as follows:

- Agreement #13041088: fees charged (**$2,200**) - legal maximum (**$200**): **$2,000**
- Agreement #13090933: fees charged (**$2,400**) - legal maximum (**$200**): **$2,200**
- Agreement #21333262: fees charged (**$3,200**) - legal maximum (**$200**): **$3,000**

Total: $7,200

CONDEMN the Defendants to pay to Moshe Segalovich and to the members of the Class compensatory damages for the aggregate of the difference between the amounts charged per plan as Enrolment Fees, Sales Charges and/or Membership Fees and the legal maximum of $200.00 per plan permissible for RESPs, and **ORDER** collective recovery of these sums;

SUBSIDIARILY,

DECLARE abusive the following clause which appears in the Defendants' contracts of adhesion in the following, or similar terms:

> "*You acknowledge that a sales charge of $_____ (_____ units x $200 per unit) is deducted from early contributions.*
>
> *The sales charge is deducted from your contribution as follows:*
>
> *All of your contributions are applied to the Sales Charge until it is one-half paid.*
>
> *After that, only one half of contributions will be applied to the Sales Charge until it is fully paid.*"

REDUCE the obligations of Class members arising from the abusive clause so that they pay only the permissible maximum of $200.00 per plan;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action and to Appoint the Status of Representative Plaintiff*;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with

interest and costs;

CONDEMN the Defendants 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;

RENDER any other order that this Honourable Court shall determine;

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;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the 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;

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 in the "News" sections of the Saturday editions of LA PRESSE and the MONTREAL GAZETTE;

ORDER that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice to Quebec RESP Group Plan Subscribers";

ORDER the Defendants to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class action";

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publications fees.

IV. **REFER** the file to the Chief Justice of the Superior Court to determine the district in which the class action should be brought and to designate the judge who will manage the case;

V. **CONDEMN** the Respondents to pay the Appellant the legal costs in first instance and on appeal.

This Notice of Appeal has been notified to **(i)** C.S.T. CONSULTANTS INC., **(ii)** CANADIAN SCHOLARSHIP TRUST FOUNDATION, Me Stéphane Pitre (BORDEN LADNER GERVAIS LLP), **(iii)** HERITAGE EDUCATION FUNDS INC., **(iv)** HERITAGE EDUCATIONAL FOUNDATION, **(v)** CHILDREN'S EDUCATION FUNDS INC., **(vi)** CHILDREN'S EDUCATIONAL FOUNDATION OF CANADA, **(vii)** KNOWLEDGE FIRST FINANCIAL INC., **(viii)** KNOWLEDGE FIRST FOUNDATION, Me Julie-Martine

Loranger (McCARTHY TÉTRAULT LLP), **(ix)** UNIVERSITAS MANAGEMENT INC., **(x)** UNIVERSITAS FOUNDATION OF CANADA, Me Vincent de l'Étoile (LANGLOIS AVOCATS), **(xi)** GLOBAL RESP CORPORATION, **(xii)** GLOBAL EDUCATIONAL TRUST FOUNDATION, Me Laurent Nahmiash (DENTONS CANADA LLP) and to the Office of the Superior Court of Quebec, District of Montreal.

This August 2, 2018 in Montreal

(s) LPC Avocat Inc.

_____

LPC AVOCAT INC.
Me Joey Zukran
Attorney for the Appellant – Applicant
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Montréal, Québec, H4W 2T5
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CANADA

COURT OF APPEAL

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

S.C.M. No.: 500-06-000803-169
C.A. No.:

MOSHE SEGALOVICH, domiciled and residing at 6015 Krieghoff Street, Côte St-Luc, district of Montreal, Province of Quebec, H4W 3C5

APPELLANT – Applicant

v.

C.S.T. CONSULTANTS INC., legal person having its head office at 2235 Sheppard Avenue East, Suite 1600, Toronto, Ontario, M2J 5B8

ET ALS.

RESPONDENTS – Defendants

LIST OF SCHEDULES IN SUPPORT OF NOTICE OF APPEAL
APPELANT
August 2, 2018

SCHEDULE 1: Notice of Judgment dated July 5, 2018 and Judgment by the Honourable Brian Riordan of the Superior Court, District of Montreal, rendered June 14, 2018;

This August 2, 2018 in Montreal

(s) LPC Avocat Inc.

LPC AVOCAT INC.
Per: Me Joey Zukran
Attorney for the Appellant – Applicant
5800 blvd. Cavendish, Suite 411
Montréal, Québec, H4W 2T5
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S.C.M. N°: 500-06-000803-169
C.A. N°: 500-09-027725-183

COURT OF APPEAL OF QUEBEC
DISTRICT OF MONTREAL

MOSHE SEGALOVICH

APPELLANT – Applicant

v.

C.S.T. CONSULTANTS INC.
ET ALS.

RESPONDENTS – Defendants

NOTICE OF APPEAL
(Article 352 C.C.P.)
Appellant
August 2, 2018

COPY

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Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal. (Article 358, para. 2 C.C.P.).

The parties shall notify their proceedings (including briefs and memoranda) to the appellant and to the other parties who have filed a representation statement by counsel (or a non-representation statement). (Article 25, para. 1 of the Civil Practice Regulation)

If a party fails to file a representation statement by counsel (or non-representation statement), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine. (Article 30 of the Civil Practice Regulation)