SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000932-182

DATE: March 31, 2021

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

QING WANG
Applicant
v.
C.S.T. CONSULTANTS INC.
and
CANADIAN SCHOLARSHIP TRUST FOUNDATION
and
KALEIDO FOUNDATION (personally and in continuance of proceedings for UNIVERSITAS FOUNDATION OF CANADA)
and
KALEIDO GROWTH INC. (personally and in continuance of proceedings for UNIVERSITAS MANAGEMENT INC.)
and
HERITAGE EDUCATION FUNDS INC.
and
HERITAGE EDUCATIONAL FOUNDATION
and
CHILDREN'S EDUCATION FUNDS INC.
and
CHILDREN'S EDUCATIONAL FOUNDATION OF CANADA
and
KNOWLEDGE FIRST FINANCIAL INC. (personally and in continuance of proceedings for HERITAGE EDUCATION FUNDS INC.)
and
KNOWLEDGE FIRST FOUNDATION
and
GLOBAL RESP CORPORATION
and

GLOBAL EDUCATIONAL TRUST FOUNDATION
Defendants

JUDGMENT

OVERVIEW

[1] Defendants promote and distribute group Registered Education Savings Plans ("**Group RESPs**").

[2] The Applicant, Mr. Qing Wang ("**Applicant**"), wants to file a class action against the Defendants. He alleges that Defendants charge Group RESP fees that are either: a) in excess of what is allowed by applicable legislation; or b) abusive.

[3] Defendants contest the application. They allege that their fees comply with applicable legislation and therefore, that they cannot be considered abusive.

ANALYSIS

[4] The main issue in dispute relates to whether the Applicant meets the requirements for the issuance of a class action and specifically the second criterion, which demands that the facts alleged appear to justify the conclusions sought.

[5] If the answer to this question is yes, then the Court must describe the class whose members will be bound by the class action judgment, appoint a representative plaintiff as well as identify the main issues to be dealt with collectively and the conclusions sought in relation to those issues.

1. DO THE FACTS ALLEGED IN THE APPLICATION APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT?

1.1 Conclusion

[6] Considering the low threshold that is applicable at this stage, the requirements are met and the class action is authorized.

1.2 Context

[7] Before analyzing the applicable legal requirements, it is useful to set out the context of the present application.

[8] Governments have adopted various financial incentives to encourage saving for post-secondary education of children. RESPs are one of these measures.

[9] Key features of RESPs include:[1]

9.1. Contributions that are not tax-deductible and can be withdrawn at any time without tax consequences; and

9.2. Investment income that is not taxable while in the plan and is taxed as income of the student when withdrawn in the form of an Educational Assistance Payment when the beneficiary is enrolled in a qualifying educational program.

[10] Defendants promote Group RESPs. These group plans pool together RESPs by single-year age cohort.[2]

[11] When subscribers enroll in a Group RESP plan, they make an initial contribution. They also undertake to make regular additional contributions. These initial and subsequent contributions (the "**Contribution**") are used to purchase a certain number of plan "units" which represent a share of the income available for distribution to the beneficiary at plan maturity.

[12] Upon opening a plan, a subscriber undertakes to pay a fee (the "**Fee**") which is based on the number of units purchased. The Fee is "front loaded" which means that the Fee is paid using the earlier contributions.

12.1. First, 100% of the Contribution is charged against the Fee until they are half-paid;

12.2. Then, 50% of the Contribution is applied to the Fee until they have been paid in full, the other 50% being invested as capital in the plan;

12.3. Finally, once the Fee is fully paid, the subsequent Contributions are fully invested in the plan.

[13] Only the balance (i.e.: the Contribution minus the applicable Fee) is invested.

[14] If subscribers cancel their contract within the first 60 days, their entire Contribution is refunded. However, if they cancel after that time, the Fee is forfeited. Only the portion of the Contribution that exceeds the Fee is reimbursed.

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1 Exhibit P-2, Bill KNIGHT, Bert WASLANDER and Arlene WORTSMAN, *Review of Registered Education Savings Plan Industry Practices*, August 2008, (the "**Informetrica Report**"), p. 3.

2 *Ibid.*, p. 5.

[15] The application contains an example[3] of the Fees charged by one of the defendants in the case of a contract providing for a yearly contribution of $5,000:

Year	Total Contribution ($)	Total Fee ($)	Fee Percentage (%)
1	$5,000.00	$3,798.70	75.97%
2	$10,000.00	$5,194.80	51.95%
3	$15,000.00	$5,194.80	34.63%
4	$20,000.00	$5,194.80	25.97%
5	$25,000.00	$5,194.80	20.78%
6	$30,000.00	$5,194.80	17.31%
7	$35,000.00	$5,194.80	14.84%
8	$40,000.00	$5,194.80	12.99%
9	$45,000.00	$5,194.80	11.54%
10	$50,000.00	$5,194.80	10.39%

[16] On July 19, 2016, Mr. Moshe Segalovich filed an application to be authorized to institute a class action against the same defendants who are involved in the present proceedings.

[17] Essentially, Mr. Segalovitch alleged that:

17.1. Defendants acted unlawfully by charging a fee of $200 for each RESP unit sold, as opposed to a fee of $200 for each RESP plan;

17.2. Defendants acted unlawfully by structuring their scholarship plans so that there is a complete forfeiture of amounts invested when a plan is cancelled before its maturity; and

17.3. The front-loading of sales fees and charges by the Defendants is abusive to the point that the clause in question should be annulled.

[18] Defendants raised two arguments to oppose authorization of the Segalovich class action:

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[3] Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, para. 93.13.

18.1. Firstly, they claimed that the applicable legislation allowed them to charge $200 per unit as opposed to $200 per plan.

18.2. Secondly, they alleged that Mr. Segalovich was time barred.

[19] Justice Brian Riordan heard the application for authorization in May 2018. On June 14, 2018, he rendered his judgment (the "**Riordan Judgment**").[4]

[20] While Justice Riordan considered that Mr. Segalovich had demonstrated a *prima facie* case that the Fees were excessive, he ruled that the claim was prescribed.

[21] Because the arguments raised by the parties here are very similar to those raised in the *Segalovich* case, it is worthwhile expanding on Justice Riordan's reasons.

1.2.1 The legality of charging $200 per unit as opposed to $200 per plan

[22] Just like Applicant, Mr. Segalovich alleged that Defendants could not charge more than $200 per plan.

[23] He based his argument on *Regulation No. 15 respecting Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses* ("***Regulation 15***").[5] The relevant subsection of *Regulation 15* reads as follows:

> 1.1(7) The fees charged, including the commissions of the distributor and its salesmen, must not exceed $200 per plan. The first $100 paid under the plan may be applied against this fee and the balance may be deducted at a maximum rate of 50% of each of the further contributions.
>
> [Underlining by the Court]

[24] Defendants pleaded that *Regulation 15* had been superseded by subsequent regulations.

[25] They relied on *Regulation 41-101 respecting General Prospectus Requirements* ("***Regulation 41-101***")[6] which came into force in March 2008 and in particular on *Annex 41-101F3* of *Regulation 41-101* ("***Annex 41-101F3***") which came into force in May 2013.

[26] As of May 2013, *Regulation 41-101* provides that issuers of Group RESPs must file a prospectus in the form of *Annex 41-101F3*.[7]

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4 *Segalovich* v. *CST Consultants Inc. (CSTI),* 2018 QCCS 6122.

5 *Regulation No. 15 respecting Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses*, CQLR, c. V-1.1, r. 44, s. 331.1, sub. 1.1 (7).

6 *Regulation 41-101 respecting General Prospectus Requirements*, CQLR, c. V-1.1, r. 14.

7 *Regulation 41-101 respecting General Prospectus Requirements*, CQLR, c. V-1.1, r. 14., Annex 41-101F3, s. 3.1, para. 2.1.

[27] *Annex 41-101F3* is a response to the Informetrica Report of August 2008, which had recommended improvements to the disclosure obligations of Group RESP issuers.[8] It sets out detailed disclosure instructions with regard to Fees. For example:

> **Item 2 Withdrawal and Cancellation Rights**
>
> Immediately following the disclosure in Item 1, state the following using the same or substantially similar wording, with the last 2 sentences in bold type:
>
> This summary tells you some key things about investing in the plan. You should read this Plan Summary and the Detailed Plan Disclosure carefully before you decide to invest.
>
> **If you change your mind**
>
> You have up to 60 days after signing your contract to withdraw from your plan and get back all of your money.
>
> If you (or we) cancel your plan after 60 days, you'll get back your contributions, less sales charges and fees. You will lose the earnings on your money. Your government grants will be returned to the government. **Keep in mind that you pay sales charges up front. If you cancel your plan in the first few years, you could end up with much less than you put in.**[9]
>
> […]
>
> **Item 8 Risks**
>
> (1) Under the heading "What are the risks?", state the following using the same or substantially similar wording:
>
> If you do not meet the terms of the plan, you could lose some or all of your investment. Your child may not receive their EAPs.
>
> (2) For a group scholarship plan, state the following using the same or substantially similar wording:
>
> You should be aware of 5 things that could result in a loss:
>
> **1. You leave the plan before the maturity date.** People leave the plan for many reasons. For example, if their financial situation changes and they can't afford their contributions. If your plan is cancelled more than 60 days from signing your contract, you'll lose part of your contributions to sales charges and fees. […]
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> [Emphasis on Original Text]

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8 Exhibit P-2, p. 24.

9 *Regulation 41-101*, pp. 251 and 252.

[28] Item 10 of *Annex 41-101F3* relates to costs. In several places the text refers to the possibility of charging a fee per unit:

> **Item 10 Costs**
>
> […]
>
> (4) State the amount of each fee listed in the tables. In the table titled "Fees you pay" state the amount(s) in the column titled "What you pay". In the table titled "Fees the plan pays" state the amount(s) in the column titled "What the plan pays". The amount of each fee must be disclosed based on how the fee is calculated. For example, if a particular fee is calculated as a fixed dollar amount per unit, or a fixed amount per year, it must be stated as such. Similarly, if a fee is calculated as a percentage of the scholarship plan's assets, that percentage must be stated. A statement or note that a fee is subject to applicable taxes, such as goods and services taxes or harmonized sales taxes, is permitted, if applicable. (5) For a group scholarship plan or other type of scholarship plan that normally calculates the sales charge payable as a fixed dollar amount linked to the amount of contribution by a subscriber (i.e. x.x x$ per unit), in addition to stating the fixed amount of sales charge per unit as required under Instruction (3), the disclosure of the amount of the sales charge in the table titled "Fees you pay" in the column titled "What you pay" must also be expressed as a percentage of the cost of a unit of the scholarship plan. If the total cost of a unit of the scholarship plan varies depending on the contribution option or frequency selected, the percentage sales charge must be expressed as a range, between the lowest and the highest percentage of the unit cost the sales charge can represent, based on the different contribution options available to subscribers under the scholarship plan. This must be calculated as follows: (i) divide the sales charge per unit by the contribution option that has the highest total cost per unit, and (ii) divide the sales charge per unit by the contribution option that has the lowest total cost per unit. For example, if a scholarship plan calculates its sales charge as $200/unit, and the total cost per unit for a subscriber can range from $1000 to $5000 (based on the different options available to subscribers), the percentage range of the sales charge disclosed in the table would be 4% (200/5000) to 20% (200/1000). The disclosure in the table must also state that the exact percentage of the sales charge per unit for a subscriber will depend on the contribution option selected for contributing to the scholarship plan and how old their beneficiary is at the time they open the scholarship plan.
>
> [Underlining by the Court]

[29] Based on the above, defendants pleaded that: a) the word "plan" in *Regulation 15* should be interpreted as meaning "unit"; or that b) if indeed *Regulation 15* prohibited charging a fee per unit, this prohibition was no longer applicable given the specific references to a per unit fee in the subsequent *Annex 41-101F3*.

[30] Justice Riordan rapidly dismissed Defendants' first argument:

> [14] On the first point, for nearly a day and a half their well-prepared and heavily fortified lawyers led the Court through a maze of general instructions, pan-Canadian regulations and RESP prospectuses in a never-say-die effort to show that the word "plan" in section 1.1(7) of Regulation 15 actually means "unit". […]
>
> [15] Regulation 15 uses the word "plan" more than 20 times (Exhibit P-29B), yet Defendants challenge its meaning at only one place, subsection 1.1(7). This does not augur well for their argument.[10]

[31] With regard to the second point, Justice Riordan noted that the Defendants themselves refer to *Regulation 15* in their prospectuses. Even though these mentions refer to investment practises, he considered that these references were not compatible with defendants position that *Regulation 15* had been superseded by *Regulation 41-101* and *Annex 41-101F3*:

> [22] It is true that these statements refer to investment practices, but they certainly undermine the argument that Regulation 15 has been "swept away", to borrow a term one defence lawyer used, or even partially replaced. Thus, in the absence of further proof, it is not possible now to reconcile statements of this nature, which occur in each prospectus, with Defendants' position.[11]

[32] He concluded that while the overall case was not clear at this preliminary state of the file, "one thing does seem to be clear: Applicant has at least established an arguable thesis." Thus, according to Justice Riordan, the test imposed by article 575(2) of the *Code of Civil Procedure* ("**CCP**") had been satisfied.[12]

1.2.2 Prescription

[33] On the issue of prescription, Justice Riordan noted that the latest of the three RESPs subscribed by Mr. Segalovich was contracted on February 2, 2009.

[34] Thus, from that point onward, Mr. Segalovich should have been aware of the illegal nature of the Fees. Ignorance of the law is not sufficient to interrupt prescription.[13]

[35] Even if one were to consider the date on which the Fees were last paid, prescription would still have run by December 2014.

[36] Thus, he found that Mr. Segalovich was not in a position to properly represent the class members that therefore that the requirement of article 575(4) CCP was not met.

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10 *Segalovich* v. *CST Consultants Inc. (CSTI)*, *supra*, note 4, paras. 14 and 15.
11 *Ibid*, para. 22.
12 *Ibid*, paras. 23 and 24.
13 *Ibid*, paras. 36 to 38.

[37] He dismissed the application.

1.2.3 Appeal

[38] Both parties appealed.

[39] The applicant argued that Justice Riordan had erred in deciding that his claim was time-barred.

[40] Defendants argued that Justice Riordan had erred in deciding that applicant had demonstrated an arguable case.

[41] On June 15, 2018, the Applicant filed his application for authorization of class action. These proceedings were suspending pending a decision from the Court of Appeal.[14]

[42] The Court of Appeal issued its judgment on December 11, 2019.[15] With regard to Defendants' appeal, the Court pointed out that there is no need for a winning party to cross-appeal to attack grounds with which it does not agree. This being said, it nonetheless noted that it could find no fault with Justice Riordan's reasoning:

> *[22] Par ailleurs, les intimées ne nous convainquent pas que le juge de première instance a erré dans l'exercice de sa discrétion en concluant que l'appelant avait démontré que les faits allégués paraissaient justifier les conclusions recherchées. La question du bien-fondé de ce qui est allégué par les appelants ne peut être vidée convenablement qu'au fond d'un tel recours.*[16]

[43] With regard to the prescription, the Court of Appeal confirmed that it had started to run when Mr. Segalovich signed his contract:

> *[14] Or, la cause d'action, telle qu'exposée dans la demande en autorisation, repose entièrement sur l'illégalité des frais facturés et leur caractère abusif. Le juge a donc eu raison de conclure que l'appelant avait connaissance des faits qui fondent son recours dès la signature des RÉÉE collectifs. L'ignorance de l'illégalité alléguée ne constitue pas une impossibilité d'agir, car elle découle de l'ignorance de la loi. Le fait que l'appelant n'ait pas jugé utile de faire ses vérifications plus tôt ne saurait retarder le point de départ de la prescription.*[17]

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[14] *Wang* v. *C.S.T. Consultants Inc.*, S.C. Montréal, No. 500-06-000932-182, July 16, 2018, Chantal Chatelain, s.c.j.

[15] *Segalovich* v. *CST Consultants Inc.*, 2019 QCCA 2144 (Motion for Leave to Appeal to the Supreme Court dismissed (Can C.S., 2020-05-28) 39054).

[16] *Segalovich* v. *CST Consultants Inc.*, supra, note 15, paras. 20 to 22.

[17] *Ibid*, para. 14.

1.3 Legal Principles

[44] A class action is a procedure by which a person, the class representative, sues on behalf of all members of a group that have a similar claim. Because the class representative is not specifically mandated to act on behalf of these members, prior authorization of the Court is required before a class action can be filed.[18]

[45] Article 574 CCP provides that an application for authorization to file a class action must set out: i) the facts on which it is based; ii) the nature of the class action; and iii) the class on whose behalf the person intends to act.

[46] According to article 575 CCP, the Court must authorize the class action if it is of the opinion that:

1° the claims of the members of the class raise identical, similar or related issues of law or fact;

2° the facts alleged appear to justify the conclusions sought;

3° 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; and

4° the class member appointed as representative plaintiff is in a position to properly represent the class members.

[47] The Court's role at the authorization stage has been described as "screening." It must weed out those untenable and frivolous cases that clearly do not meet the requirements for the issuance of class action (article 575 CCP). The threshold is low. The requirements must be interpreted in a broad and liberal fashion designed to give effect to the social goals of class actions (facilitating access to justice, modifying harmful behaviour and preserving scarce judicial resources).[19]

1.3.1 Similar issues of law and fact (article 575(1) CCP)

[48] This requirement is usually easy to meet.

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[18] *L'Oratoire Saint-Joseph du Mont-Royal* c. *J.J.*, 2019 CSC 35, para. 6.

[19] *Desjardins Cabinet de services financiers inc.* c. *Asselin*, 2020 CSC 30, paras. 27 and 55; *L'Oratoire Saint-Joseph du Mont-Royal* c. *J.J.*, *supra*, note 18, paras. 18, 19, 20, 56 and 58; *Vivendi Canada Inc.* v. *Dell'Aniello*, 2014 CSC 1, paras. 1 and 37; *Infineon Technologies AG* v. *Option Consommateurs*, 2013 CSC 59, paras. 59 to 61; *Benamor* c. *Air Canada*, 2020 QCCA 1597, para. 35; *Godin* c. *Aréna des Canadiens inc.*, 2020 QCCA 1291, paras. 49 and 50; *Tenzer* c. *Huawei Technologies Canada Co. Ltd.*, 2020 QCCA 633, para. 20; *Belmamoun* c. *Ville de Brossard*, 2017 QCCA 102, paras. 73 and 74; *Charles* c. *Boiron Canada inc.*, 2016 QCCA 1716, para. 40 (Motion for leave to appeal to the Supreme Court dismissed with dissent (Can C.S., 2017-05-04) 37366).

[49] It is not required that the claims of group members be identical or that the determination of common issues lead to the complete resolution of the case. A single identical, similar or related question of law is sufficient "provided that it is significant enough to affect the outcome of the class action" or to enable "all the clams to move forward."[20]

[50] Furthermore, when there are multiple defendants, it is not necessary for the class representative nor other class members to have a personal cause of action against each of the defendants.[21]

1.3.2 Allegations that appear to justify the conclusions sought (article 575(2) CCP)

[51] With regard to the second criterion, article 575 CCP states that the facts alleged must "appear" to justify the conclusions sought.

[52] Vague, general or imprecise claims are not sufficient to meet this burden. Nor are mere assertions made without factual basis or claims which are hypothetical or purely speculative.[22]

[53] This being said, the applicant, "does not have to show that his claim will probably succeed." All that is needed is that the applicant demonstrate, on a *prima facie* basis, that there is an arguable case in light of the facts and the applicable law.[23]

[54] With regard to the law, the allegations need to be "specific enough to allow the legal syllogism to be considered," but "it is not necessary to provide step-by-step details of the legal argument." The allegations may be imperfect but their true meaning may nonetheless be clear. Inferences can be drawn from the allegations.[24]

[55] With regard to the facts, it is not required to specify in minute detail the evidence that the applicant intends to present on the merits of the case. The allegations of the claim and the exhibits filed in support of them are assumed to be true, unless contradicted by summary and obvious evidence.[25]

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20 *L'Oratoire Saint-Joseph du Mont-Royal* c. *J.J.*, *supra*, note 18, paras. 6, 8 and 44; *Vivendi Canada inc.* v. *Dell'Aniello*, supra, note 19, paras. 42 and 58; *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 19, para. 72; *Rozon* c. *Les Courageuses*, 2020 QCCA 5, para. 74 (Motion for leave to appeal to the Supreme Court dismissed (Can C.S., 2020-11-16) 39115).

21 *L'Oratoire Saint-Joseph du Mont-Royal* c. *J.J.*, *supra*, note 18, para. 44; *Bank of Montreal* v. *Marcotte*, 2014 SCC 55, paras. 41 to 47.

22 *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra*, note 18, para. 59; *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 19, para. 67; *Charles* c. *Boiron Canada inc.*, *supra,* note 19, para. 43.

23 *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 19, para. 65.

24 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, *supra,* note 19, paras. 16 and 17.

25 *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra*, note 18, para. 59; *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 19, para. 67; *Benamor* c. *Air Canada*, *supra,* note 19, para. 35;

[56] The authorization stage must be distinguished from the trial on the merits. The merits of the case should only be considered after authorization has been granted.[26] While authorization judges may decide questions of law, they should refrain from doing so if the decision requires applying the law to findings of fact. Any analysis of the evidence should be deferred to the merits given the frugal and limited evidence available at the authorization stage and the fact that much of the relevant evidence may still be in the hands of the defendants.[27]

[57] When several independent causes of action are invoked in support of the application for authorization, the applicant must demonstrate an appearance of right for each of them. Thus, the Court must separately assess the merits of each and authorize only those that meet this condition.[28]

1.3.3 The appropriateness of the class action remedy (article 575(3) CCP)

[58] Article 575(3) CCP requires that the composition of the class make it "difficult or impracticable" to use other procedural means (for example, a mandate to take part in judicial proceedings on behalf of others (articles 88 and 91 CPC) or consolidation of proceedings (article 143 CPC)). The words "difficult or impracticable" do not mean impossible.[29] The preferability rule does not apply in Quebec and therefore it is not necessary to prove that the class action procedure is the most appropriate procedural vehicle.[30]

[59] The Court of Appeal mentions that to satisfy this criterion, the applicant must show that the class action remedy is a "useful" means to achieve the goals sought by the class.[31]

Baratto c. *Merck Canada inc.*, 2018 QCCA 1240, para. 48 (Motion for leave to appeal to the Supreme Court dismissed (Can C.S., 2019-03-28) 38338).

26 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, supra, note 26, paras. 16 and 17; *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra*, note 18, paras. 7 and 22; *Vivendi Canada inc.* v. *Dell'Aniello*, supra, note 19, para. 37; *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 19, paras. 65 and 68.

27 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, *supra,* note 19, para. 55; *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra*, note 18, paras. 55; *Durand* c. *Subway Franchise Systems of Canada,* 2020 QCCA 1647, para. 48 to 54; *Benamor* c. *Air Canada, supra,* note 19, para. 42; *Godin* c. *Aréna des Canadiens inc.*, supra, note 19, paras. 53, 54, 55, 93 and 113; *Belmamoun* c. *Brossard (Ville de)*, supra, note 19, paras. 81 and 82; *Sibiga* c. *Fido Solutions inc.*, 2016 QCCA 1299, paras. 76 to 86.

28 *Belmamoun* c. *Brossard (Ville de)*, supra, note 19, para. 77; *Delorme* c. *Concession A25, s.e.c.*, 2015 QCCA 2017, para. 6.

29 *Abicidan* c. *Bell Canada*, 2017 QCCS 1198, para. 82.

30 *Vivendi Canada inc.* v. *Dell'Aniello*, *supra,* note 19, para. 67; *Bramante* v. *McDonald's*, 2018 QCCS 4852, para. 55.

31 *D'Amico* c. *Procureure générale du Québec*, 2019 QCCA 1922, para. 56.

[60] When assessing this usefulness, courts can look at the estimated number of members, their geographic location and the applicant's knowledge of their identity and contact details.[32]

[61] When the number of members is important, this is usually sufficient to show that it would be "difficult or impracticable" to proceed otherwise.[33]

1.3.4 A representative who can properly represent the class members

[62] This requirement is usually satisfied when the representative is: a) interested in the suit; b) competent; and c) has no demonstrated conflict of interest with the group members.[34]

[63] These factors must be interpreted liberally. A representative should not be excluded "unless his or her interest or qualifications is such that the case could not possibly proceed fairly."[35]

[64] If any doubt persists at the end of the analysis of the four criteria, the doubt must benefit to the applicant and the authorization must be granted.[36]

1.4 Discussion

1.4.1 Applicant's Application

[65] Applicant's claim is very similar to the one referred to in Mr. Segalovich's application.

[66] He alleges that:[37]

66.1. The Fees imposed on him for the early termination of his two Group RESPs were illegal in that they exceed the $200 legal maximum allowed by subsection 1.1(7) of *Regulation 15*;

66.2. Even if *Regulation 15* was subsequently superseded by *Regulation 41-101* and *Annex 41-101F3*, the Defendants contractually undertook to comply with *Regulation 15* in their respective prospectuses; and

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32 *Abicidan* c. *Bell Canada*, supra, note 29, para. 83.
33 *Valade* c. *Ville de Montréal*, 2017 QCCS 4299, para. 26.
34 *L'Oratoire Saint-Joseph du Mont-Royal* c. *J.J.*, *supra*, note 18, para. 32; *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 19, para. 149; *Tenzer* c. *Huawei Technologies Canada Co. Ltd.*, supra, note 19, para. 30; *Sibiga* c. *Fido Solutions inc., supra,* note 27, para. 97.
35 *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 19, para. 149.
36 *Baratto* c. *Merck Canada inc.*,*supra*, note 25.
37 Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, paras. 88 and 89.

66.3. In the alternative, even if charging a Fee per unit were legally allowed, the amount of the Fee that was charged to him and forfeited upon early termination is excessively and unreasonably detrimental to him such that it is contrary to the requirements of good faith and must be declared abusive.

1.4.2 The applicable criteria

[67] Defendants do not contest that criteria 1, 3 and 4 of article 575 CCP are met.

[68] Indeed, the claim raises common questions, the number of members renders other procedural means impracticable and Applicant can properly represent the class members.

[69] However, Defendants plead that the facts alleged do not, "appear to justify the conclusions sought."

[70] Their thesis is grounded on three arguments:

70.1. The proposed class action constitutes a collateral attack on the decisions of the *Autorité des marchés financiers* ("**AMF**") and the Ontario Securities Commission ("**OSC**");

70.2. The enrolment fees they charge ($ 200 per plan unit) comply with applicable legislation; and

70.3. The conditions that applicant needs to fulfill to obtain the right to the reimbursement of his enrolment fees are not abusive within the meaning of article 1437 of the *Civil Code of Quebec* ("**CCQ**"), being specifically permitted by applicable regulations.

[71] These will be considered in turn.

1.4.2.1 Collateral attack on the decisions of the AMF and the OSC

[72] This argument is new. It was not presented before Mr. Justice Riordan or the Court of Appeal in *Segalovich*.

[73] The argument can be summarized as follows:

73.1. Every person intending to distribute securities must prepare a prospectus and obtain a receipt therefore from the relevant authority.[38]

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[38] Quebec *Securities Act*, CQLR c. V-1.1 ("***Quebec Securities Act***"), s. 11 and Ontario *Securities Act*, R.S.O. 1990, c. S.5 (the "***Ontario Securities Act***"), s. 53.

73.2. A prospectus must comply with applicable regulation and provide full, true and plain disclosure of all material facts relating to the securities proposed to be distributed.[39]

73.3. Group RESPs are subject to the obligation to file a prospectus and obtain a receipt.[40]

73.4. The AMF and the OSC are charged with issuing receipts for prospectuses filed by issuers within their jurisdictions. If an authority is not satisfied that a prospectus complies with applicable legislation, it can refuse to issue a receipt.[41]

73.5. As a result of the Canadian Securities Administrators' *Regulation 11-102 Respecting the Passport System*,[42] a receipt issued by the OSC is the equivalent of a receipt issued by the AMF.

73.6. Thus, according to the Defendants, a decision by the OSC or the AMF to issue a receipt, equates a decision by the AMF that no valid reasons existed to refuse its issuance. As a result, such a decision implies that the prospectus conforms to all applicable legislation. Indeed, the presumption that applies to the validity of administrative decisions implies that the administrative agency considered all the factors that it was required to take into account under the law, even if it does not mention these in its decision or reasons.[43]

[74] Defendants add that if Applicant wishes to contest the validity of the prospectus, he must do so before the Financial Markets Administrative Tribunal.[44]

[75] While at first glance attractive, this argument cannot be accepted.

[76] First, Applicant does not contest the issuance of receipts to the Defendants. On the contrary, part of his argument is based on representations made by Defendants in their prospectuses, for example, their undertaking to comply with *Regulation 15*.

[77] Secondly, while the legislation allows the relevant authorities to refuse to issue a receipt under certain circumstances, it does not go as far as stating that a decision to issue a receipt is a confirmation that no such reasons existed.

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39 *Quebec Securities Act*, s. 13 and *Ontario Securities Act*, s. 54 and 56.
40 *Regulation 41-101*, s. 2.1 and 3.1 (2.1).
41 *Quebec Securities Act*, s. 15 and *Ontario Securities Act*, s. 61; *3iQ Corp (Re)*, 2019 ONSEC 37 (CanLII), para. 38; *Garcia* c. *Autorité des marchés financiers* 2006 QCBDRVM 24, pp. 5 and 6.
42 *Regulation 11-102 Respecting the Passport System,* CQLR, c. V-1.1, r. 1.
43 Yves OUELLET, *Les tribunaux administratifs au Canada* : *procédure et preuve*, Montréal, Les Éditions Thémis, 1997, p. 101.
44 *Quebec Securities Act*, s. 322.

[78] If Defendants argument were to be accepted, it would mean that no recourse would lie before the common law courts for any damages caused to a subscriber because of a non-compliant prospectus. This would have broad consequences. Indeed, in addition to non-compliance with applicable legislation, section 15 of the *Quebec Securities Act* states a plethora of reasons why the AMF can refuse to issue a receipt.

[79] Such reasons include:

79.1. the prospectus or any document filed with it contains a statement, promise, estimate or forward-looking information that is misleading;

79.2. an unconscionable consideration has been paid or is intended to be paid for promotional purposes or for a service or the acquisition of property;

79.3. the resources of the issuer are insufficient to accomplish the purpose of the distribution stated in the prospectus or to operate the business;

79.4. the past conduct of the issuer, an officer, director or promoter of the issuer, is such that the business of the issuer may not be conducted with the integrity necessary to safeguard the interests of its security holders;

79.5. a person that has prepared or certified any part of the prospectus or is named as having prepared or certified a valuation or report in connection with the prospectus does not have the required competence or integrity; or

79.6. adequate arrangements have not been made for the holding in trust of the proceeds of the distribution pending the distribution of the securities.

[80] If a decision to issue a prospectus implied a finding that:

80.1. there are no misleading statements in the prospectus;

80.2. no unconscionable consideration has been paid or is intended to be paid;

80.3. the resources of the issuer are sufficient;

80.4. there is nothing in the past conduct of the issuer or its principles that could lead one to suspect a lack of integrity;

80.5. everyone involved in the preparation of the prospectus or a report that is connected therewith is competent; and that

80.6. adequate arrangements have been made to hold securities in trust,

this would have grave and far-reaching implications.

[81] To add that any such conclusions could only be contested via the mechanism of the Financial Markets Administrative Tribunal would also have important consequences. Indeed, a recourse to overturn a decision of the AMF before the Financial Markets Administrative Tribunal must be instituted within 30 days of the AMF's decision.[45] This would mean that if Applicant wished to contest the Fees imposed by the Defendants, he would have to challenge the issuance of a receipt even before contemplating a subscription to one of the Defendants' plans.

[82] This cannot be the state of the law.

[83] In fact, Defendants could provide no authority to support this argument.

[84] In any event, it is not necessary to decide the question here. At this stage, it suffices that Defendants' collateral attack argument is not sufficient to conclude that Applicant's case devoid of all merit.

[85] With regard to jurisdiction, even if the legality of the Fees was within the jurisdiction of the Financial Markets Administrative Tribunal, this would not prevent Applicant from claiming that the Fees are abusive before the Quebec Superior Court. As the Court of Appeal observed in *Télébec* c. *9238-0831 Québec Inc. (Caféier-Boustifo)* :

> *[48] […] Toutefois, force est de constater que l'approbation d'un tel tarif par le CRTC à l'intérieur des zones désignées ne change en rien l'attribution de compétence à la Cour supérieure afin de statuer sur le caractère abusif des clauses de résiliation de même que sur leur application (abusive). Tel que l'indique la Cour, les objectifs de la* Loi sur les communications *et du* Code civil du Québec *sont distincts. Ainsi, une décision concluant au caractère juste et raisonnable d'une clause de résiliation ne saurait emporter de conclusion à l'égard du caractère abusif des mêmes clauses, puisque l'adéquation entre ces termes n'est tout simplement pas automatique.* [46]

1.4.2.2 Enrolment fees comply with applicable legislation

[86] This argument is the same as the one that was raised before the Superior Court in the *Segalovich* case.

[87] While subsection 1.1(7) of *Regulation 15* clearly states that Fees "must not exceed $200 per plan," Defendants allege that, with regard to this issue, *Regulation 15* was superseded by *Regulation 41-101* and in particular *Annex 41-101F3*.

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45 *Quebec Securities Act*, s. 322.

46 *Télébec* c. *9238-0831 Québec inc. (Caféier-Boustifo)*, 2020 QCCA 1720, para. 48.

[88] According to them, *Annex 41-101F3* specifically allows the charging of a fee per unit. Many passages of *Annex 41-101F3*, highlighted earlier,[47] seem to confirm this. Thus, Defendants claim that they comply with *Regulation 41-101* has some merit.

[89] However, even if they were right on this point, this would not justify a refusal to authorize the class action.

[90] Firstly, compliance with applicable regulations does not shield one from civil liability.[48]

[91] Secondly, Applicant does not allege that Defendants infringe *Regulation 41-101*, they allege that Defendants infringe *Regulation 15*. They point out that there is an obvious contradiction between *Regulation 15*, which provides for a maximum of $200 per plan and the example in *Annex 41-101F3* which refers to $200 per unit. Moreover, they add that there is no mention in *Regulation 41-101* that *Regulation 15* or specifically its subsection 1.1(7) is repealed.

[92] Finally, Applicant adds that Defendants, in their prospectuses, undertake to respect *Regulation 15*. Defendants plead that this undertaking is limited to investment practises and does not apply to Fees. The text of their prospectuses seems to support this conclusion.[49] This being said, the situation is far from clear.

[93] Given this ambiguity, Justice Riordan concluded that Mr. Segalovich had clearly demonstrated a *prima facie* case. The Court of Appeal agreed with him.

[94] Defendants allege that there is a fundamental difference between the *Segalovich* case and the present one as the new regime of *Annex 41-101F3* was adopted in 2013 and therefore did not apply to the Group RESPs subscribed by Mr. Segalovich.

[95] This difference is not persuasive here. The fact remains that the Defendants raised the same argument both before Mr. Justice Riordan and before the Court of Appeal. Both courts ruled that Mr. Segalovich had demonstrated a *prima facie* case. Neither court relied on the effective date of *Annex 41-101F3* to justify its finding. As a result, there is no reason to depart from their conclusions.

1.4.2.3 Fees are not abusive

[96] This argument is a variation of the one above.

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47 See paras. [25] to [28] of the present judgment.

48 *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 19, paras. 96 and 97; *Charles* c. *Boiron Canada inc.*, *supra,* note 19, para. 45; *Martineau* c. *Bayer Cropscience inc.*, 2018 QCCS 634, para. 60 (Motions for leave to appeal dismissed, 2018 QCCA 1283).

49 Exhibits CST-1A, pp.1 and 13; CST-1B, pp. 1 and 13; CST-1C, pp. 1 and 13; CST-1D, p. 1 and CST-1E, p. 1.

[97] Defendants argue that Applicant clearly consented to pay the Fees and knew that they would be forfeited in the event of a premature termination.[50]

[98] They add that since charging a Fee per unit is legally authorized by *Annex 41-101F3*, this practice cannot, by definition, be considered abusive. As a result, courts generally refuse to apply article 1437 CCQ to clauses which are prescribed by law.[51]

[99] There are three potential issues with these arguments:

99.1. The first is that the legality of charging $200 per unit instead of per plan is not as clear as Defendants claim given that *Regulation 15* remains in force.

99.2. The second is that Applicant alleges that, whatever their legal obligations were, Defendants contractually undertook to respect *Regulation 15*.

99.3. The third is that, while *Regulation 41-101* and *Annex 41-101F3* may allow charging a Fee per unit, it only regulates the disclosure obligations surrounding these Fees. It does not regulate the amount of the Fee itself. The legality of charging a certain amount is not specifically regulated by *Regulation 41-101*. Nor are the modalities surrounding the reimbursement of the Fee. Therefore, on this aspect, the present case differs from the cases of *Glykis*, *Ifergan* and *Mielenz* relied upon by the Defendants.[52]

[100] If Defendants' argument were to be accepted, there would be no limit to the amount a Group RESP issuer could charge and no boundaries to the reimbursement modalities. This cannot be the state of the law.

[101] One must not confuse the legality of a clause with its abusive character.

[102] A contractual clause may very well be legal but nonetheless be considered abusive. In fact, there would be no need to refer to the abusive nature of a clause to annul it if it were already illegal for other reasons. Thus, abusive clauses are nearly always legal.

[103] Finally, the abusive nature of a clause must be distinguished from its ambiguous nature or the fact that the adherent validly consented to it. As authors Lluelles and Moore observe, article 1437 CCQ is not intended to penalize ignorance or misunderstanding of the clause, but rather its unfair content. The fact that a party knew of and understood the clause is therefore immaterial.[53]

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50 Exhibits P-13, P-20, P-25 and CST-8.

51 *Glykis* c. *Hydro-Québec*, 2004 CSC 60, para. 21; *Ifergan* c. *Société des loteries du Québec*, 2014 QCCA 1114, paras. 49 and 54 (Motion for leave to appeal to the Supreme Court dismissed (Can C.S., 2015-01-29) 36023); *Mielenz* c. *Procureure générale du Québec*, 2018 QCCS 2178, paras. 16 to 22.

52 *Ibid*.

53 Didier LLUELLES and Benoît MOORE, *Droit des obligations*, 3e ed., Montréal, Les Éditions Thémis, 2018, para. 1840.

[104] When assessing the "unreasonable and excessive" nature of a clause, a court must take into account the internal context – i.e.: the other clauses of the contract - and, to a lesser extent, its external context - the situation of the co-contracting party and the circumstances of the contract.[54] Relevant factors may include: the absence or presence of a serious reason justifying the contested clause, its conformity with the reasonable expectations of the adherent or with usual contractual practices, the rationality of the clause, whether it is reciprocal or not, etc.[55]

[105] Such an evaluation is often difficult in the absence of evidence. For example, in the present case, there is no evidence of the actual costs incurred by the defendants when they open a plan (commissions or other charges).

[106] As Justice Nicholas Kasirer (then at the Court of Appeal) noted in *Sibiga* c. *Fido Solutions Inc.*:[56]

> [63] Ultimately, a determination of whether the contractual arrangement between the appellant and Fido is exploitative or abusive will require the court charged with evaluating the action on the merits to consider the whole of parties' rights and obligations under the contract.

[107] Here, Applicant alleges that of the $20,000 he contributed to his children RESPs, he was charged over $11,500 in Fees.[57] When he prematurely terminated his plan, all of these Fees were forfeited. Thus, he lost more than half of his investment.

[108] In *Télébec*, the Court of Appeal authorized a class action to proceed where applicant contested a cancellation fee. It noted that such fees could be considered abusive since *Télébec* sought to collect income without offering any consideration or service in return.[58] In *Masson*, the Court of Appeal concluded that a clause that imposes termination fees in excess of 38% of the actual costs incurred was abusive.[59]

[109] While Defendants may have serious reasons to justify their conduct, their reasons are best evaluated on the merits.

[110] At this stage, and on this point as well, an arguable case has been demonstrated.

[111] As the applicant has demonstrated a *prima facie* case with respect to each of his causes of action, the requirement of article 575(2) CCP has been met and the class action must be authorized.

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54 *Ibid*, para. 1853.
55 *Ibid*, para. 1862.
56 *Sibiga* c. *Fido Solutions inc., supra,* note 27, para. 63.
57 Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, paras. 89.7 and 93.7.
58 *Télébec* c. *9238-0831 Québec inc. (Caféier-Boustifo)*, *supra,* note **Erreur ! Signet non défini.**, para. 53.
59 *Masson* c. *Telus Mobilité*, 2019 QCCA 1106, para. 72.

2. HOW SHOULD THE COURT DESCRIBE THE CLASS, THE REPRESENTATIVE PLAINTIFF, THE MAIN ISSUES TO BE DEALT WITH COLLECTIVELY AND THE CONCLUSIONS SOUGHT IN RELATION TO THOSE ISSUES?

[112] Article 576 CCP states that the judgment authorizing a class action must: a) describe the classes and subclasses whose members will be bound by the class action judgment; b) appoint a representative plaintiff; c) identify the main issues to be dealt with collectively and the conclusions sought in relation to those issues; and d) determine the district in which the class action is to be instituted.

2.1 Classes and Subclasses

[113] Applicant seeks approval to represent the members of the following class and subclass:

> Class:
>
> All persons residing in Quebec who, at any time since July 19th, 2013 (the "Class Period"), 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 an "Enrolment Fee," "Sales Charge" and/or "Membership Fee"), including the commissions of the distributor and its salesmen, exceeding $200.00 per plan;
>
> Subclass:
>
> All persons residing in Quebec: (1) who at any time since June 15th, 2015 (the "Subclass Period"), had a contract with any of the Defendants in which they were a subscriber and/or contributor (either primary or joint) for an RESP, (2) who cancelled their RESP as of that date and (3) lost more than 20% of their contributions on account of Enrolment Fees, Sales Charges or Membership Fees;

[114] Thus for the class, Applicant proposes that it encompass all persons who were subscribers as of July 19th, 2013 (irrespective of the date on which they subscribed).

[115] For the subclass, he proposes that it apply to all persons who were subscribers on June 15th, 2015 (irrespective of the date on which they subscribed) and who subsequently lost more than 20% of their investment on account of Fees.

[116] Defendants object. According to them, the Court of Appeal already decided that, regardless of whether the claim was based on the illegal or abusive nature of the Fees, any prescription would start running on the date of the subscription. Indeed, as of that date, any member was aware of the facts on which his claim was based.[60]

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60 *Segalovich* v. *CST Consultants Inc.*, *supra*, note 16, para. 14.

[117] Thus, they argue that the period for both the class and the subclass should start at the earliest on June 15th, 2015, namely three years before Applicant's demand was filed.

[118] Applicant alleges that the filing of Mr. Segalovich's demand for authorization interrupted prescription for all members of the group.[61] As his claim was filed before the decision of the Court of Appeal that made Justice Riordan's decision final, they allege that the period should start on July 19th, 2013.

[119] The judgment of the Court of Appeal is clear. Prescription starts when a potential member subscribes to the Group RESP.

[120] However, Applicant's argument with regard to interruption of prescription also has merit. In a recent decision, which raised an issue of prescription interruption in a situation similar to the present one, the court ruled that it would be imprudent to dismiss most of class members' claims on the basis of prescription without the benefit of complete evidence.[62]

[121] This being said, given the Court of Appeal's decision, irrespective of interruption, RESPs subscribed before July 19th, 2013, cannot be part of the claim.

[122] The definition of the class and subclass will be modified to apply only to those Group RESPs subscribed after July 19th, 2013.

2.2 Representative Plaintiff

[123] The Applicant, Mr. Quing Wang, is appointed as representative of the class and subclass.

2.3 Identify the Main Issues to Be Dealt with Collectively and the Conclusions Sought in Relation to Those Issues

[124] The questions to be dealt collectively and conclusions will be substantially as stated in the Amended application with minor adjustments.

2.4 District in which the class action is to be instituted Discussion

[125] The class action will be heard in the district of Montreal.

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61 Art. 2908 CCQ.

62 *Gaudette* c. *Whirlpool Canada*, 2020 QCCS 1423, para. 76.

CONCLUSION

[126] The class action is authorized. The class and subclass are redefined to comply with the judgment of the Court of Appeal in *Segalovich*.

FOR THESE REASONS, THE COURT:

[127] **GRANTS** in part the present Application;	**ACCORDE** en partie la présente demande;
[128] **AUTHORIZES** the bringing of a class action in the form of an originating application in damages and declaratory judgment;	**AUTORISE** l'introduction d'une action collective sous la forme d'une demande introductive d'instance en dommages-intérêts et en jugement déclaratoire;
[129] **APPOINTS** the Applicant, Mr. Qing Wang, as representative plaintiff of the persons included in the class and subclass herein described as: Class: All persons residing in Quebec who, at any time since July 19th, 2013, signed 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; (hereinafter referred to as the "Class") Subclass: All persons residing in Quebec: (1) who at any time since July 19th, 2013, signed a contract with any of the Defendants in which they were a subscriber and/or contributor (either primary or joint) for an RESP; (2) who cancelled their RESP after that date; and (3) lost more than 20% of	**ATTRIBUE** au demandeur, M. Qing Wang, le statut de représentant des personnes comprises dans le groupe et le sous-groupe ci-après décrits : Groupe: Toutes les personnes résidant au Québec qui, à tout moment depuis le 19 juillet 2013, ont signé un contrat avec l'une des défenderesses dans lequel elles étaient souscripteurs et/ou contributeurs (principal ou conjoint) pour un Régime enregistré d'épargne-études (« REEE »), et qui ont été facturées des frais (appelés « frais de vente », « frais de souscription » et/ou « frais d'adhésion »), y compris les commissions du distributeur et des vendeurs, dépassant 200,00 $ par plan; (ci-après nommé le « Groupe ») Sous-groupe: Toutes les personnes résidant au Québec : (1) qui, à tout moment depuis le 19 juillet 2013, avaient un contrat avec l'une des défenderesses dans lequel elles étaient souscripteurs et/ou contributeurs (principal ou conjoint) pour un REEE; (2) qui a annulé son REEE après cette date;

their contributions on account of Enrolment Fees, Sales Charges or Membership Fees; (hereinafter referred to as the "Subclass")	et (3) a perdu plus de 20 % de ses cotisations en raison des frais de vente, des frais de souscription ou des frais d'adhésion; (ci-après nommé le « Sous-groupe »)
[130] **IDENTIFIES** the principal questions of fact and law to be treated collectively as the following: a) Did Defendants fail to comply with their undertakings in their respective prospectuses to respect *Regulation No. 15*? b) If so, must Defendants reimburse Class members the Enrolment Fees charged above $200.00 per plan (in violation of subsection 1.1 (7) of *Regulation No. 15*)? c) Is the clause providing for Enrolment Fees in excess of $200.00 per plan abusive under article 1437 CCQ and, if so, what is the appropriate remedy? d) When does prescription start for Class and Subclass members and was prescription interrupted by the filing of Mr. Segalovich's claim? e) Is the forfeiture of sales charges representing an amount of 20% or more of the Subclass members' total contributions abusive, and, if so, should the clause allowing such sales charges be declared null and without effect?	**IDENTIFIE** les principales questions de fait et de droit à être traitées collectivement comme suit : a) Les défenderesses ont-elles fait défaut de respecter leur engagement dans leurs prospectus respectifs de se conformer au *Règlement N°15*? b) Dans l'affirmative, les défenderesses doivent-elles rembourser aux membres du Groupe les frais d'adhésion facturés au-dessus de 200,00 $ par plan (en violation du paragraphe 1.1 (7) du *Règlement N°15*)? c) La clause prévoyant des frais d'adhésion supérieurs à 200,00 $ par régime est-elle abusive en vertu de l'article 1437 C.c.Q. et le cas échéant, quel est le recours approprié? d) Quand la prescription commence-t-elle pour les membres du Groupe et du Sous-groupe et celle-ci a-t-elle été interrompue par le dépôt de la demande de M. Segalovich? e) La confiscation des frais de vente représentant un montant de 20 % ou plus du total des contributions des membres du Sous-groupe est-elle abusive et si tel est le cas, la clause autorisant ces frais de vente devrait-elle être déclarée nulle et sans effet?

[131] **IDENTIFIES** the conclusions sought by the class action to be instituted as being the following:	**IDENTIFIE** les conclusions recherchées par l'action collective à intenter comme étant les suivantes :
GRANT Applicant's class action against Defendants on behalf of all Class members;	**ACCUEILLIR** l'action collective du demandeur contre les défenderesses au nom de tous les membres du Groupe;
CONDEMN the Defendants to pay to Mr. Qing Wang 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 amount of $200.00 per plan provided for under section 1.1(7) of *Regulation No. 15* and **ORDER** collective recovery of these sums;	**CONDAMNER** les défenderesses à payer à M. Qing Wang et aux membres du Groupe des dommages-intérêts compensatoires pour le total de la différence entre les montants facturés par plan en tant que frais d'inscription, frais de vente et/ou frais d'adhésion et le maximum légal de 200,00 $ par plan prévu en vertu de l'article 1.1(7) du *Règlement N°15* et **ORDONNER** la récupération collective de ces sommes;
SUBSIDIARILY,	**SUBSIDIAIREMENT,**
DECLARE abusive the following clause which appears in the Defendants' contracts of adhesion in the following, or similar terms:	**DÉCLARER** abusive la clause suivante qui apparaît dans les contrats d'adhésion des défenderesses dans les termes suivants, ou des termes similaires :
"You acknowledge that a sales charge of $_____ (_____ units x $200 per unit) is deducted from early contributions.	« Vous reconnaissez que des frais de souscription de _____ $ (_____ unités x 200 $ par unité) sont déduits des contributions anticipées.
The sales charge is deducted from your contribution as follows:	Les frais de souscription sont déduits de votre contribution comme suit:
All of your contributions are applied to the Sales Charge until it is one-half paid.	Toutes vos contributions sont appliquées aux frais de souscription jusqu'à ce qu'ils soient payés à moitié.
After that, only one half of the contributions will be applied to the Sales Charge until it is fully paid."	Après cela, seule la moitié des contributions sera appliquée aux frais

REDUCE the obligations of Class and Subclass members arising from the abusive clause so that they only pay the maximum of $200.00 per plan provided for under section 1.1(7) of *Regulation No. 15*; **CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from July 19th, 2016; **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 collective recovery orders; **RENDER** any other order that this Honourable Court shall determine;	de souscription jusqu'à ce qu'ils soient entièrement payés. » **RÉDUIRE** les obligations des membres du Groupe et du Sous-groupe découlant de la clause abusive afin qu'ils ne paient que le maximum de 200,00 $ par régime prévu à l'article 1.1 (7) du *Règlement N°15;* **CONDAMNER** les défendeurs au paiement des intérêts et de l'indemnité complémentaire sur les sommes ci-dessus conformément à la loi du 19 juillet 2016; **ORDONNER** que les créances des membres individuels du Groupe fassent l'objet d'une liquidation collective si la preuve le permet et alternativement, par liquidation individuelle; **ORDONNER** aux défenderesses de déposer au greffe de cette Cour la totalité des sommes qui font partie du recouvrement collectif, avec intérêts et dépens; **CONDAMNER** les défenderesses à supporter les frais de la présente action, y compris les frais de notification, les frais de gestion des réclamations et les frais d'experts, le cas échéant, y compris les frais d'experts nécessaires pour établir le montant des ordres de recouvrement collectif; **RENDRE** toute autre ordonnance que cette honorable Cour déterminera;
[132] **CONVENES** the parties to a further hearing to hear representations on the content of the notice required under article	**CONVOQUE** les parties à une audience afin d'entendre leurs représentations quant au contenu de l'avis requis en vertu

579 CCP, the appropriate communication or publication of the said notice and the appropriate delay for a Class or Subclass Member to request exclusion, such hearing to take place within 60 days of the present judgment, on a date to be determined between the parties and the Court;	de l'article 579 C.p.c., la communication ou la publication appropriée dudit avis et le délai approprié pour qu'un membre du Groupe ou du Sous-groupe demande l'exclusion, une telle audience doit avoir lieu dans les 60 jours du présent jugement, à une date à être déterminée entre les parties et le Tribunal;
[133] **DECLARES** that all members of the Class and Subclass that have not requested their exclusion are bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;	**DÉCLARE** que tous les membres du Groupe ou du Sous-Groupe qui n'ont pas demandé leur exclusion sont liés par tout jugement à rendre sur l'action collective à intenter de la manière prévue par la loi;
[134] **THE WHOLE** with costs.	**LE TOUT** avec frais de justice.

Martin Sheehan

Signature numérique de Martin Sheehan
Date : 2021.03.31 08:51:07 -04'00'

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