Re Bergeron

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

ANDRÉ BERGERON

2008 IIROC 8

Investment Industry Regulatory Organization of Canada
Hearing Panel (Quebec District)

Heard: March 26, 27, April 16, 17, 29, May 2, 5 and 9, 2008 in Montreal, Quebec
Decision: July 30, 2008
(128 paras.)

Hearing Panel:
Mtre Alain Arsenault, Chair
Lise Casgrain, Panel Member
Gilles Archambault, Panel Member

DECISION

Unofficial English Translation

A Introduction

1. On June 1, 2008, the Investment Dealers Association of Canada (IDA) merged with Market Regulation Services Inc. to form the Investment Industry Regulatory Organization of Canada (IIROC) and, in accordance with the rules and regulations resulting from such merger, hearings which were commenced before June 1, 2008 are to be continued pursuant to the IDA rules and regulations applicable before June 1, 2008;

2. After conducting an investigation, IDA Staff determined that the Respondent, André Bergeron, while a full-service representative with Desjardins Securities Inc. ("Desjardins Securities"), a Member firm of the IDA at all material times, may have committed a number of contraventions of IDA By-laws and Regulations;

3. On November 21, 2007, the IDA served a Notice of Hearing on the Respondent, alleging the 4 following contraventions:

    1. Between November 2001 and May 2002, the Respondent, while employed as a registered representative at Desjardins Securities Inc., a Member firm of the Association, failed to use due

diligence to learn and remain informed of the essential facts relative to the identity of 45 new clients, by opening delivery-against-payment accounts with Desjardins Securities Inc. for accounts held with B2B Trust without having met the clients, contrary to Regulation 1300.1(a) read in the light of Association By-law 29.1.

2. Between November 2001 and May 2002, the Respondent, while employed as a registered representative at Desjardins Securities Inc., a Member firm of the Association, engaged in business conduct or practice unbecoming, failed in his duty to protect the public and showed wilful blindness, contrary to Association By-law 29.1, by systematically opening 47 new delivery-against-payment accounts with Desjardins Securities Inc. for accounts held with B2B Trust, at the request of a third party, without having met or spoken with each of the clients, although he knew or should have known that the circumstances surrounding the new client applications were or could be an indication of suspicious activity or activity contrary to the interests of the clients.

3. Between November 2001 and May 2002, the Respondent, while employed as a registered representative at Desjardins Securities Inc., a Member firm of the Association, engaged in business conduct or practice unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by acting as a registered representative in 47 off-the-book accounts with B2B Trust, the approximate value of which was equal to $1,418,256, without the knowledge or consent of Desjardins Securities Inc.

4. Between November 2001 and May 2002, the Respondent, while employed as a registered representative at Desjardins Securities Inc., a Member firm of the Association, engaged in business conduct or practice unbecoming or detrimental to the public interest, contrary to Association By-law 29.1, by failing to advise 47 clients for whom he had opened delivery-against-payment accounts with Desjardins Securities Inc. for accounts held with B2B Trust, in the following circumstances:

   (a) upon the purchase of private placements by two of his clients while he was employed as their registered representative and although he knew or should have known that the circumstances surrounding such private placements were or could be an indication of suspicious activity or activity contrary to the interests of the said clients;

   (b) by holding accounts most of which contained private placements bought by his clients, although he knew or should have known that the circumstances surrounding such private placements were or could be an indication of suspicious activity or activity contrary to the interests of the clients.

4. On February 15, 2008, the Respondent, acting through his lawyers, sent the IDA a response denying the contraventions alleged by the IDA;

5. In his response, the Respondent basically alleged the following facts:

   48- The Respondent always complied with the internal rules and regulations in force at Desjardins Securities;

   49- Furthermore, the Respondent always caused his actions, which are alleged in the proceeding, to be approved by his Branch Administrative Manager and by the Compliance Department at Desjardins Securities;

   (…)

   54- The Respondent, therefore, sought the approval of Desjardins Securities before accepting to become the designated representative for these various clients;

   (…)

57- Before opening the various *Delivery-against-Payment* accounts, the Respondent secured the approval of his Branch Administrative Manager and of the Compliance Department at Desjardins Securities;

(…)

68- This dealer-switch procedure was crucial to ensure that the Respondent and Desjardins Securities would be informed of the transactions in the account so as to be able to advise the clients properly for the future;

(…)

75- Moreover, when the Respondent became the representative of the clients referred to in the proceedings, the alleged transactions had all been completed;

(…)

83- Desjardins Securities knew at the time that the Respondent had not met with his clients personally as this was clearly indicated in the new client application form and such forms had been signed and approved by the Branch Administrative Manager and the Compliance Department;

84- Furthermore, there were no rules in force at Desjardins Securities which required a representative to meet with a client before opening a *Delivery-against-Payment* account with Desjardins Securities;

6. The IDA called the following five witnesses:

   - Yannick Béland, an IDA investigator
   - R.G., a former client of the Respondent
   - Laurie-Ann Gingras, IDA Registration Department Manager
   - Mary Hagerman, a Branch Manager at Desjardins Securities
   - Diane Lamothe, a Compliance Adviser at Desjardins Securities

7. For his part, the Respondent testified and called Jacques Allard as a witness.

8. The hearing of evidence commenced on March 26, 2008 and continued on March 27, April 16, 17 and 29, and May 2, 5 and 9, 2008 for a total of 8 days of hearing.

9. More than one hundred exhibits were put into evidence, most subject to an order prohibiting the disclosure of information on the identity of the Respondent's clients and their personal financial situation.

10. The Hearing Panel retired to consider its decision on May 9, 2008.

11. At the hearings, the IDA was represented by Mtre Diane Bouchard, who was assisted by Yannick Béland. The Respondent represented himself.

B The Evidence

Testimony of the Investigator Yannick Béland

12. Yannick Béland, a witness called by the IDA, reported on the results of an investigation which was first started in October 2004 under the authority of the Bourse de Montréal following a complaint filed by a client of the Respondent. The case was then referred to the IDA with the Respondent's consent on January 5, 2005 (Exhibit P-5).

13. Mr Béland submitted virtually all the documentary evidence gathered by him in the course of his investigation, although not all such evidence was necessary for the purposes of this hearing. This evidence had been disclosed to the Respondent prior to the hearings.

14. Mr Béland's testimony and the relevant documentary evidence substantiate the principal allegations of fact in the complaint which triggered this case, namely;

(...)

6. The complaint relates to the purchase of a private placement in the amount of $34,400 by a client of the Respondent in such client's locked-in, self-administered RRSP account held with B2B Trust.

7. Such private placement was purchased on the recommendation of "A", a financial planner and mutual fund salesperson (representative code: 2069 and firm code: 9620) who was also self-employed.

8. The complainant had held this account with B2B Trust since at least 2001 and, at the time, "A" was designated as the adviser in the account, as shown in the RRSP statements of July 1, 2001 to September 30, 2001 and of October 1, 2001 to December 31, 2001.

9. In 2001, "A" asked the Respondent to open a delivery-against-payment account with Desjardins for the account held by the complainant with B2B Trust.

10. At no time did the complainant meet the Respondent, be it upon the opening of the delivery-against-payment account with Desjardins or thereafter.

11. The documentation relative to the opening of the delivery-against-payment account with Desjardins was not completed by the Respondent, except for the signature part.

12. On or about October 31, 2001, a letter on the letterhead of "A", a financial planner, signed by "B", "A"'s administrative assistant, was addressed to the complainant stating *[TRANSLATION] that he was the holder of a B2B Trust plan with investments in an investment club and that changes to the structure of the investment clubs, which had switched legally from a private club structure to a limited partnership structure, required that technical changes be made to the management of the RRSP*.

13. The letter further stated that the investment club part would be transferred administratively to Desjardins with the help of the Respondent, an investment dealer, and the last paragraph read as follows:

    [TRANSLATION] "Please sign the enclosed document where indicated and return the same to us in the enclosed envelope. This is a B2B Trust form to be signed to allow Mr André Bergeron to administer the accounts of the plans for the investment clubs."

14. Similarly, staff of the Association has come across many forms on the B2B Trust letterhead entitled "Non-Financial Account Changes", which are undated, but all of which are signed by the Respondent and the clients and one of which, more specifically, concerned the complainant.

15. In this form, the complainant designated Desjardins as the dealer and the Respondent as the adviser, with an address at 5 Complexe Desjardins, Suite 247, Montreal, for all accounts held with B2B Trust, and further authorized B2B Trust to carry out the instructions of the Respondent.

16. Desjardins' code is 9356 and the Respondent's representative code is P15A.

17. This 'Non-Financial Account Changes' form was signed by the complainant and by the Respondent and was received by B2B Trust on January 14, 2002, as confirmed by a letter dated September 22, 2004 on B2B Trust letterhead, addressed to the complainant and signed by the supervisor of the B2B Trust Client Services Department.

18. On or about October 30, 2001, the complainant opened a self-administered RRSP account with B2B Trust.

19. On the new client application form in the section requiring information on the financial adviser, the Respondent is listed as the representative (code P15A) at Desjardins (code 9356) at 5 Complexe Desjardins, Suite 247, Montreal.

20. As appears from the statements of October 1, 2001 to December 31, 2001, of April 1, 2002 to June 30, 2002, and of July 1, 2002 to September 30, 2002 relating to such RRSP account, the Respondent is designated as the representative (code P15A) at Desjardins (code 9356) at 5 Complexe Desjardins, Suite 247, Montreal.

21. In the meantime, on or about November 7, 2001, the Respondent opened the complainant's delivery-against-payment account with Desjardins for the locked-in, self-administered RRSP account held with B2B Trust, without having met or spoken with the complainant. This form was signed by the Respondent on November 13, 2001.

22. This account was opened with Desjardins at the request of "A".

23. On or about January 29, 2002, the complainant purchased a private placement in his B2B Trust account while the Respondent was his representative.

24. Such investment appears on the four B2B Trust statements for 2002.

25. The name of the Respondent as representative as well as his P15A code at Desjardins (code 9356), at 5 Complexe Desjardins, Suite 247, Montreal also appear on such statements.

26. On or about April 5, 2002, the Respondent wrote to the complainant on Desjardins letterhead, as follows:

    [TRANSLATION] "Please find enclosed a copy of your new client application form and agreements. I would like to take this opportunity to thank you for having chosen me as your investment adviser.

    I shall make sure that you are provided with the best financial services and advice in keeping with your objectives. You will also find enclosed a copy of my resume with a detailed description of my qualifications and experience. (…)".

15. According to Mr Béland's testimony, all the Respondent's clients found themselves in the same situation as the complainant who filed the complaint triggering this case;

16. Claude Lavigne, an investment club promoter, met with dozens of people to familiarize them with the investment clubs known as HT101, HT102, HT103, HT104 and HT105. It would seem that, through skilful presentations, he managed to convince these people that he possessed the ideal formula to grow his clients' assets.

17. The formula basically consisted in receiving sums of money which his clients had generally withdrawn from their RRSPs, and then investing them, still in the form of RRSPs, with B2B Trust on behalf of the investment clubs. Mr Lavigne would then purchase companies operating in the same industry, mainly in the high-tech industry and, through leveraging, grow the assets of such investment clubs. The profits would then be returned to the clients' RRSPs.

18. In reality, things turned out quite differently. The clients were never made aware of any investments made in any companies by these investment clubs; they were never provided with detailed financial statements, let alone a prospectus; they received no dividends on their investments; and have yet to recover their capital.

19. To add a certain gloss to the formula, the RRSP transfers were completed by Jacques Allard who, at the time of the transactions, was an insurance broker and mutual fund representative for PEAK. However, Mr Allard was subsequently informed by PEAK that he could no longer take part in the transfer of RRSPs to B2B Trust. At Claude Lavigne's suggestion, Mr Allard met with the Respondent to assign all his investment club clients to him.

20. Approximately 47 persons were involved in such investment clubs, some of whom received member dividends or interest payments in advance. These amounts were paid in cash upon the delivery of their RRSPs to the various investment clubs; no taxes were paid on these transactions;

21. The evidence shows that all the Desjardins Securities new client application forms (NCAF) for the 47 clients of the Respondent bear the Respondent's signature as well as that of the Branch Manager, Mary Hagerman, and refer to an account number with B2B Trust. Furthermore, each of the NCAF contains essential identifying details about the clients: annual income, net equity, investment objectives and acceptable risk factor;

R.G.'s testimony

22. The Hearing Panel then heard R.G., the second witness called by the IDA and one of the Respondent's 47 clients.

23. According to R.G.'s testimony, she had never met the Respondent. She testified that Jacques Allard, who was her financial adviser at the time, and his assistant Nicole Mercier had completed all the documentation required for her investment in Claude Lavigne's investment clubs;

24. Included in the documentation submitted into evidence by this witness are the following:

- the B2B 'Non-Financial Account Changes' form, which designates the Respondent as the new dealer/adviser for her account held with B2B Trust, which form accompanied Nicole Mercier's letter of October 26, 2001 (Exhibit P.C. 44.6);
- the Desjardins Securities new client application form and agreement signed by R.G. on January 8, 2002, which accompanied Jacques Allard's letter of January 8, 2002 (Exhibit P.C. 44.9);
- a copy of the Desjardins Securities new client application form, signed by the Respondent on February 4, 2002, and by his Branch Manager, Mary Hagerman, on February 12, 2002 (Exhibit P.C. 44.10);
- various B2B Trust RRSP statements showing that, for the period ending December 31, 2001, Jacques Allard was the designated representative and, for the period ending March 31, 2002, the Respondent was the new designated representative; his particulars at Desjardins Securities also appear on the statement (Exhibit P.C. 44.1);

25. R. G. also produced the following letters and documents:

- Letter of October 26, 2001 from Jacques Allard's assistant Nicole Mercier, stating that:

  > [TRANSLATION] "Changes to the structure of the investment clubs, which switched legally from a private club structure to a limited partnership structure, require that technical changes be made to the management of your RRSPs. The mutual fund part will remain with PEAK Investment Services in a self-administered retirement plan. The investment club part will be transferred administratively to Desjardins Securities with the help of Mr André Bergeron, a securities dealer." (Exhibit P.C. 44.2)

- the January 29, 2002 letter from Marc Jobin, Vice-President Full Service Brokerage at Desjardins Securities, which letter welcomed R.G. to Desjardins Securities and invited her to contact the Respondent for any additional information (Exhibit P.C. 44.3);

- the Respondent's letter of April 5, 2002 stating that:

  [TRANSLATION] "I shall make sure that you are provided with the best financial services and advice in keeping with your objectives. You will also find enclosed a copy of my resume with a detailed description of my qualifications and experience." (Exhibit P.C. 44.4)

- a share certificate from investment club HT102 dated January 15, 2001; the instructions to B2B Trust to issue a cheque for $63,960 to investment club HT102; and other related documents also dated January 15, 2002 (Exhibit P.C. 44.7).

26. Finally R. G. also produced the following documents, signed by her and all dated January 15, 2002 (Exhibit PC 44.7)

    (a) the offer, addressed to the board of directors of investment club HT102, to subscribe for 6,396 shares at $10 per share;

    (b) the instructions to the trustee B2B Trust directing it to purchase the said 6,396 shares and to issue a cheque in the amount of $63,960 drawn from her self-administered RRSP;

    (c) a letter of direction to B2B Trust to the same effect;

    (d) a letter of indemnification in favour of B2B Trust in connection with such investment;

    (e) an exoneration clause in favour of B2B Trust in connection with such investment;

27. As a result of all these administrative measures and through the combined effect of these documents, R.G. was deprived of her $63,960 RRSP. Similar documents were produced for many other clients of the Respondent.

28. We are here at the core of the Respondent's defence where he alleges that this $63,960 investment was decided upon and completed before, i.e., on January 15, 2002, he became R.G.'s representative or adviser. Indeed, R.G. signed the Desjardins Securities new client application form on January 18, 2002 while the Respondent himself signed such form on February 4, 2002 and his manager on February 12, 2002, whereas the documents relative to the investment are dated February 15, 2002.

29. We will have to determine the issue of the Respondent's liability with respect to the quality of this investment;

Testimony of Mary Hagerman

30. Mary Hagerman was the manager at the branch where the Respondent had been posted;

31. Her testimony basically focused on whether Desjardins Securities was aware or unaware of the Respondent's activities relating to the opening of off-the-book accounts with B2B Trust for his 47 clients referred by Claude Lavigne.

32. Thus she testified that, the moment Desjardins Securities became aware of the situation in June 2002, the Respondent was suspended from his duties by letter addressed to him on June 17, 2002 by Marc Jobin, Vice-President of Desjardins Securities (Exhibit P 3.1) as Desjardins Securities, as a matter of general policy, prohibited its representatives, without exception, from keeping off-the-book accounts.

33. The only exception concerned the case of a representative who, upon arriving at Desjardins Securities, already had clients whose accounts could not be transferred to Desjardins Securities. The representative was then allowed to keep these clients in off-the-book accounts. The witness herself acknowledged that such an exception had been made for her with respect to 2 or 3 clients.

34. However, the evidence shows that, prior to June 2002, Ms Hagerman signed all or substantially all the 47 Desjardins Securities new client application forms in her capacity as Branch Manager. Almost all

such forms referred under "Type of Account, Remarks" to an account number with B2B Trust and indicated that the Respondent was the contact person for such accounts with B2B Trust.

35. Furthermore, every quarter Ms Hagerman received, in her office at Desjardins Securities, B2B Trust's RRSP statement for each of the 47 clients, which indicated that the Respondent was the registered representative at B2B Trust.

36. One of the first B2B Trust RRSP statements referring to the Respondent as representative, i.e., the statement for R.G., is for the period ending December 31, 2001 (Exhibit PC18.3). Therefore, it would have reached Desjardins Securities about 10 to 15 days later.

37. In another example relating to R.G., who testified before the Hearing Panel, her B2B Trust statement for the period from January 1 to March 31, 2002 was sent to Desjardins Securities. It referred to the Respondent and included his representative code. This was well before the letter of June 17, 2002 suspending the Respondent from his duties at Desjardins Securities.

38. In her capacity as Branch Manager, Ms Hagerman is responsible for opening the mail addressed to the representatives. She would therefore have had the opportunity to read these B2B Trust statements, beginning in mid April 2002 as regards R. G., and well before that as regards other clients of the Respondent.

39. The Hearing Panel noted that, whenever these matters were referred to during her testimony, Ms Hagerman tended to downplay her responsibilities and drop her voice, which affects her credibility in the eyes of the Hearing Panel.

40. She wanted the Respondent and the Respondent alone to bear the entire responsibility in this matter.

41. This does not mean that responsibility on the part of Ms Hagerman or Desjardins Securities clears the Respondent of any liability.

42. However, the case at bar concerns only the Respondent.

Testimony of Diane Lamothe

43. At all material times, Ms Lamothe was a compliance adviser at Desjardins Securities. As such, she was involved in the Respondent's case in November 2002, at the time the November 10, 2002 letter (Exhibit P 4.33) was drafted and sent to all the Respondent's clients. In this letter, Desjardins Securities declared that the Respondent's transactions occurred "without the authorization of, and unbeknownst to, the management of Desjardins Securities."

44. According to Ms Lamothe, the accounts opened by the Respondent were delivery-against-payment accounts for the 47 clients in question. She testified that the accounts could be opened, provided that the transactions were executed at Desjardins Securities, even if the profits could be remitted to a third party, such as B2B Trust. However, with very few exceptions, off-the-book accounts were not allowed.

45. Ms Lamothe testified that Desjardins Securities was unaware that the Respondent presented himself as a representative for clients of Desjardins Securities at B2B Trust. According to her, the moment Desjardins Securities became aware of that fact in June 2002 through Rajie Logan's letter (Exhibit P 4.2), the Respondent was suspended from his duties.

46. According to Ms Lamothe, no statement from B2B Trust reached the Compliance Department at Desjardins Securities before June 2002. She added that there was no particular procedure for opening the mail, a statement which the Hearing Panel finds astounding considering that such a procedure is common practice in the industry and that statements from B2B trust would normally have been sent to Desjardins Securities in mid-January and mid-April 2002.

47. At times the Hearing Panel observed a certain reluctance on the part of the witness to answer questions regarding *inter alia* the difference between "delivery-against-payment" accounts and off-the-book

accounts. In an irritated and aggressive tone, she answered that it was all the same thing and that it was prohibited.

48. Finally, Ms Lamothe underscored the fact that, at that time, the Compliance Department's resources were limited, especially when compared with today.

49. Neither Ms Hagerman nor Ms Lamothe was able to enlighten the Hearing Panel as to why the Respondent's suspension was lifted so quickly in July 2002. Nor were they able to explain the absence of any report relative to such suspension and the lifting thereof. According to their testimony, the problem resolved itself when the Respondent resigned in November 2002. The Hearing Panel finds this whole question of suspension rather puzzling.

50. According to the Respondent, he resigned in November 2002 because of the undue performance objectives imposed upon him at the time by the management of Desjardins Securities;

51. It should be noted that this resignation came about at the same time as Desjardins Securities sent its letter to the Respondent's clients informing them that the Respondent's transactions had been unauthorized (Exhibit P 4.33).

Testimony of Laurie-Ann Gingras

52. Ms Gingras, who is the IDA Registration Manager, testified that the Respondent had been working in the securities industry since 1985 and that he had been hired by Desjardins Securities as a full service representative in October 2001.

Testimony of the Respondent, André Bergeron

53. Testifying in his defence, the Respondent basically reiterated all the points he had made in his defence of February 15, 2008. He particularly insisted upon the fact that the investments in the investment clubs had all been completed before his involvement in the 47 files at issue and that, as a result, there was no need for him to communicate with his new clients in this matter or to meet them in the short term to get to know them better. He did not dwell on his responsibility resulting from his duty to protect the public when performing his professional duties.

54. However, the Respondent admitted certain important facts on cross-examination. He testified that many new client application forms (NCAF), if not all, had not been filled in by him and, more particularly, that he did not know who had determined the investment objectives and risk factors, according to his testimony of May 1, 2008:

> Q. (46) You also don't remember who could have determined the investment objectives and the risk factors that you see on the application form completed over the telephone?
>
> A. No idea, Counsellor, no idea. Sorry, but that would be pure speculation on my part.

55. He further testified that, in the fall of 2001, he had attended meetings, called "road shows", in which the promoter, Claude Lavigne, would explain these investment clubs. Following these meetings, he says he came to the conclusion that he did not want to have anything to do with these clubs because his questions had remained unanswered. However, according to his testimony of May 1, 2008, he has only a vague recollection of the questions he asked:

> Q. (154) And why did they come to you in particular?
>
> A. I don't know why they … I really don't know why they came to me in particular because I absolutely have never had anything to do with any of those investment clubs, unless possibly, and there again it's very vague in my mind, was it before, was it after I'd been to one of those meetings to give details on what this type of investment was and so on. Possibly that's what it was, but more than that.
>
> (…)

Q. (186) O.K. And do you remember on what basis he said that such private placements could one day become public? Do you remember?

A. On what basis?

Q, (187) Well, do you remember the terms of his …

A. Rephrase your question because I can't think of any possible answer.

Q. (188) O.K. So, what I want to know is, during these road shows, when he told people that these companies would become public, then…

A. Ah! It was… it was...

Q. (189) So what kind of representations did he make with respect to that part of the private placements?

A. It's what he was saying. He had nothing to support it. So it's during these representations that I began to ask some questions because, of course, what you don't understand, you ask questions. And I asked myself "What's the book value of that? What do you base that on when you say you're going to sell them at ten dollars ($10) per share or one hundred dollars (100$) per share and it's going to be worth..." Because sometimes he would come up with figures, the value of a private company he wanted to include in there, and so on and ... you know. He would come up with certain figures. And it's the only concrete thing you could work with, something concrete.

Q. (190) Figures he would come up with.

A. That he would come up with, definitely. And don't ask me any figures, it's too long ago to recall.

Q. (191) Did you get any satisfactory answers to your questions at that time?

A. Never

Q. (192) You never got any satisfactory answers.

A. Never. And that's why I believe it was during my first… my first time that I went to a road show by Claude Lavigne that I made up my mind that, no, I would never invest my clients' money in that.

Q. (193) O.K. As regards those investments, were they worth anything or weren't they worth anything?

A. Today, it's easy to say "it wasn't worth anything". At the time, it may have worked but the risk was so high and the proof that it would work was so thin that that's why I said to myself ...

Q. (194) You would never sell any.

A. …I don't want to have anything to do with that.

(…)

Q. (799) O.K. Do you know approximately when you decided that "I don't want … I don't want to involve my clients in that?"

A. When, no. The time, I mean ... no, that looks like the same thing. The exact period is when I began to hear Mr Lavigne talking about those investments.

Q. (800) That was at the beginning?

A. That was at the beginning, exactly. You ask me when. I can't tell you exactly. But I can tell you that those investments for my clients…

Q. (801) That was in the fall of 2001?

A. We should, yes. For my clients, it was never something I would have wanted my clients to have, in other words, that I would have wanted to buy for my clients.

56. Furthermore, the Respondent says he advised Swiss clients - not referred directly by Mr Lavigne or Mr Allard – not to invest in these investment clubs as he considered them to be too risky, again according to his testimony of May 1, 2008:

Q. (212) Ah! I hadn't understood.

A. But, I can't say they came directly. They were of Swiss nationality.

Mtre DIANE BOUCHARD:

Q. (213) So you told them not to invest in that.

A. Yes, I definitely told them: "Don't invest in that, it's too risky. I can't tell you it won't work, but I can tell you one thing, the risk is enormous and it's too risky."

Q. (214) What was your opinion of that promoter, Claude Lavigne, apart from the fact that he was a good salesman?

A. Well, when you say "He's a promoter", that says it all. In our business, a promoter is a promoter.

Q. (215) What does that mean? What do you mean?

A. A promoter, that means someone who's promoting an investment, whether it's good, whether it's bad, whether it's going to succeed or won't succeed, time will tell, but he's a promoter. Therefore, it's something that, for one thing it's risky.

57. The Hearing Panel wonders why the Respondent did not provide the same information to his 47 clients, even though some may have already invested in the H-T clubs before the Respondent became their representative;

58. This failure to provide information is repeated even in the case of F.

59. Questioned by the Hearing Panel, although she had not yet invested in an investment club, the Respondent testified on May 1, 2008 to the Hearing Panel:

Q. (803) O.K. F was your client starting in December.

A. Correct.

Q. (804) Did you advise her?

A. Absolutely not.

Q. (805) … not to invest any money in that? Because we know the money hadn't been invested yet.

A. No.

Q. (806) Did you tell her when …

A. I never spoke to any of those clients.

Q. (807) O.K. And when you opened your account in December, you had information on her investment objectives, did you not?

A. Yes. Then my ...

Q. (808) Moderate, moderate regular account, one hundred percent (100%) growth etc.

A. Yes

Q.(809) Did you... did you think of doing anything or perhaps telling her "don't put any money into that kind of garbage?" Did you talk to Jacques Allard? Did you talk to Claude Lavigne? Maybe you're right that F never invested any money in that. But I want to know why, if she didn't invest any, why not, and if she invested some, why. You're telling me you never spoke to her. Did you speak to anyone and say "Would you please warn Ms ... I don't want to forget her name …

A. F.

Q. (810) … F., not to do that" because you knew it was garbage?

A. O.K. Yes. Now that I knew.

Mtre DIANE BOUCHARD

I don't understand the "yes", however. You said "yes".

THE CHAIR

Let him finish.

Mtre DIANE BOUCHARD

O.K.

A. Well, yes, I mean … Yes, I'm listening to you.

THE CHAIR

Q.(811) Yes, that's it. That's what I understood too.

ME DIANE BOUCHARD

O.K. Sorry..

A. O.K. I certainly learned that there was twenty-one thousand dollars ($21,000) in cash in mid-April.

THE CHAIR

Q.(812) Hm, hm.

A. From there, did I contact anyone? Absolutely not. Did I know there was an investment coming? At present, I have no idea. Did an investment take place? I don't know, it's …

Q. (813) That's not what I'm asking. The question isn't whether there was an investment or not. We don't know. The documents don't say.

A. O.K.

Q. (814) But, according to the statement, we know that on March 31, 2002, F had twenty-one thousand four hundred and fifty-two dollars ($21,452) in her account.

A. Yes.

Q. (815) That you learned that maybe a few days later. We know that F is your client…

A. O.K.

Q. (816) … has been your client since December.

A. Yes.

Q. (817) We know she designated you as her representative with B2B starting in November, don't we?

A. O.K.

Q.(818) You told us that you knew in the fall, to use your expression, that it was garbage and that you didn't want your clients, your own clients …

A. The investment clubs, yes.

Q. (819) The investment clubs.

A. Definitely.

Q. (820) Those investment clubs were referred to you by Jacques Allard, weren't they?

A. No.

Q. (821) Well, not the investment clubs, the clients.

A. Yes.

Q. (822) Yes, that's right. It was a client of Jacques Allard who was referred to you in there.

A. Yes.

60. Even regarding the totally illegal matter of member dividends paid to investors who invested their RRSPs in these investment clubs without paying taxes on this type of RRSP withdrawal, he testified that he was aware without recalling when exactly he became aware, according to his testimony of May 1, 2008:

LISE CASGRAIN, Member:

Q. (854) You knew that. You knew that at the time.

A. What did I know?

Q. (855) You knew that.

THE CHAIR

Q. (856) The member dividends.

A. The fifty percent (50%)?

Q. (857) Well, yes.

A. Yes, I knew that. When exactly? Earlier I was asked when exactly I became aware of that. I couldn't say. I found out at some point, yes. Was it at the beginning of January 2002? Was it in August 2002? I couldn't tell you. Or in October 2001? I couldn't tell you.

Q. (858) Do you remember doing anything, never mind when exactly, when you learned that there were member dividends. Do you remember doing anything? And if so, what?

A. No. Regarding the member dividends, I don't remember doing anything. The only thing I remember is going to road shows about the clubs, how they worked, what they were, as I said earlier, what's an investment club, you know. What do you do with that? Was it just a question of money that people put into that? Millions of dollars were put into that because Claude Lavigne was very well… how should I say … "fed", pardon the expression, with lists from Hydro-Quebec of people leaving with pre-retirements, if you like, and large sums of money. There were lists like that and he would call them up one after the other. Go on! Give it a try!

61. In his testimony of May 1, 2008, the Respondent justified his behaviour in the following terms:

Q. (276) So, Mr Bergeron, when you were told that Mr Allard had orphan accounts, did you know what investments those persons or those clients had in their accounts with B2B Trust? Did you know the nature of the investments held at B2B Trust?

A. Yes.

Q. (277) O.K. Did you know that this was related to the presentations that may have been made by Claude Lavigne, the private placements, investment clubs and so on?

A. I knew it was investment clubs.

Q. (278) O.K. Mr Bergeron, the question I ask myself is: How come you accepted to open "delivery-against-payment" accounts although you knew the type of investments involved, you knew the nature of these investments, of these investment clubs?

A. It's very simple, Counsellor. I never opened any accounts to place those investments in there. I only opened one "delivery-against-payment" account to receive the statement of account and to see how these private placements were doing over time.

Q. (279) O.K. Before opening accounts with Desjardins for these clients, why not wait until the investments became public? Why did you do that at that time?

A. Because …

Q. (280) Because you could have waited.

A. Yes, definitely, but I didn't … if I had waited it's as if I had no way of seeing how it was doing.

Q. (281) Meaning?

A. How the private placement was doing. They always said "the private placement is going to become a public investment." They didn't say …

Q. (282) You mean Mr Lavigne.

A. … in three months, in six months, in six years or whatever, therefore…

Q. (283) When you say "they", was it Mr Lavigne who was saying that?

A. Both him and Mr Allard.

(…)

Q. (293) Mr Bergeron, isn't it true that, as far as you were concerned, these investments contained in the B2B Trust accounts for these forty-seven (47) clients were garbage.

A. It's a word I used before.

Q. (294) O.K. So how could you think that that garbage, to use your expression, could one day become public?

A. The same way those people invested in that, the hope that it would become …

Q. (295) Mr Bergeron, you're not just an ordinary person without any knowledge. You're a full service representative.

A. One can always …

Q. (296) You are specially trained in securities. How could you think that it would one day become public?

A. One always hopes that the clients didn't get conned by a third party where one has no control. One always… Maybe it's my fatherly side, as they say. But, unfortunately, when

clients are transferred to your name, you don't choose what he bought before, you try to do the best you can with what he bought. If it's tradable, you can give him advice on how exactly... If it isn't tradable, you hope for his sake that he didn't get conned and you try, during... you try to know as much as possible on how the product is doing.

62. In the opinion of the Hearing Panel, the Respondent's testimony demonstrates a high degree of indifference to the interests of his 47 clients and the public at large. He clearly shows the little consideration he gave to his duties as an adviser.

Testimony of JACQUES ALLARD

63. Subsequently, the Respondent called Jacques Allard to testify in his defence.

64. According to Mr Allard, the first time he met the Respondent at Desjardins Securities, the Respondent discussed client files with someone from the Compliance Department at Desjardins Securities, although Mr Allard could not hear the conversation which took place in a hallway near the Respondent's office.

65. Immediately after this discussion, Mr Allard received the Desjardins Securities new client application forms (NCAF) from the Respondent, which Mr Allard himself or his assistant completed for the Respondent.

66. He testified that there was going to be numerous investment clubs, but that each club would contain a limited number of clients, i.e., 48, 49 or 50.

67. Mr Allard emphasized the fact that the Respondent had never taken part in any subscriptions or offers of the investment clubs and that he himself was suspicious of investment clubs as a result of past experience.

68. Mr Allard also mentioned that he was aware of the member dividends for clients who invested their RRSPs in these clubs, and that the taxes were never paid.

69. Based on Mr Allard's testimony, the Hearing Panel finds that the Respondent is not in any way absolved of responsibility for his actions or omissions with respect to his 47 clients.

THE LAW

As regards the representative's obligations:

70. The securities industry is an important industry in Canada which operates in a regulatory environment intended to ensure that investors are protected and that the market runs smoothly. All players in the securities industry must play by the rules which govern them and take all necessary measures to ensure compliance therewith The Superior Court decisions in *British Columbia Securities Commission* v. *Brands* and in *Pezim* v. *British Columbia (Superintendent of Brokers)* (1994) 2 S.C.R. 557 are very eloquent in this regard.

71. Thus the role of a representative in a securities firm is considered to be important and contains many duties. As stated by the Honourable Mr Justice Michel Richard SCJ in *Cannone* v. *Financière Banque Nationale*, (2007) QCCS 4391:

> [TRANSLATION] "[75] In addition to acting with care, caution and in the best interests of their principals, as provided in the *Civil Code*, investment advisers are required, under the *Securities Act,* to act with the degree of care to be expected of a knowledgeable professional in the same circumstances (s. 160.1 *Securities Act*).
>
> [76] Before making any recommendations to their clients, investment advisers are also required to ensure that such recommendations are in keeping with the investment objectives and financial situation described by the clients (s. 161 *Securities Act*).
>
> [77] To assist investment advisers in their duties, the *Securities Regulation* (R.Q. c.V-1.1, r.1) requires them to fill in a form prescribed by Regulation (s. 232 *Securities Regulation*).

[78] In this regard, the new client application form must describe the client's investment objectives, degree of knowledge about investments, annual income and net assets.

[79] Finally, advisers are required to keep such information up to date (s. 57).

[82] The Court is aware of the requirements imposed on investment advisers, who must deal with the uncertain nature of the market. This is undoubtedly the reason why not just anybody can become a broker.

[88] Nevertheless, the adventure must not be devoid of any control or assessment measures. Under the Act, a dealer is required to act as a knowledgeable professional. Corporations, including the Defendant, have drawn up investor profiles and assessed the risks associated therewith. The greater the risk to the client, the slighter the certainty of a return and, therefore, the less a dealer can be held accountable for losses resulting from the management of a portfolio of this nature.

[89] This is why investment advisers are required to draw up an investor profile, with specific objectives to be followed under the regulations governing advisers' duties.

[90] Thus as knowledgeable professionals, advisers must respect the profile drawn up and the objectives relating thereto.

(…)

[113] And because advisers are professionals, their degree of prudence should extend beyond that of a prudent administrator. Under the *Securities Act*, the applicable standard is that of a knowledgeable professional in the same circumstances."

AS REGARDS THE BURDEN OF PROOF

72. The authors Jean-Guy Villeneuve, Nathalie Dubé and Tina Hobdury address this issue as follows:

> [TRANSLATION] "In disciplinary matters, the burden of proof is on the complainant to prove, on a balance of probabilities, the essential and determining elements of the acts which the professional is alleged to have committed so that he or she may be found guilty. The evidence must be serious, clear, unambiguous and compelling."

73. In support of their argument, the above authors cite *Paquin* c. *Avocats (ordre professionnel des)* (202) D.D.O.P. 203 (T.P.), a decision of the Professions Tribunal, which in turn cites *Léveillé* c. *Lisanu*, R.E.J.B. 1998-09853.

AS REGARDS THE PROTECTION OF THE PUBLIC IN CONNECTION WITH INDICATIONS OF REPREHENSIBLE CONDUCT

74. In the light of indications of suspicious activity, a representative must act quickly to protect the public. This Hearing Panel cites with approval a decision rendered by an IDA Hearing Panel in the Matter of Trudeau (IDA Bulletin # 3600 of 11 January 2007):

> 67 [TRANSLATION] "The Hearing Panel is of the opinion that the facts as witnessed by the Respondent could *prima facie* be indicative of conduct which, to say the least, was suspect. The Hearing Panel does not express an opinion on the legality of the circumstances in which the facts unfolded; nor is it required to do so. The count refers to an indication and this, we believe, is very important as it specifies that the Respondent did not need to be certain that the clients' conduct was illegal or suspect.
>
> (…)
>
> 69 In the light of such a scenario, is it not then reasonable to wonder whether F.D. was providing H.V. and C.M. with privileged information? It is illegal to use privileged information for the purpose of trading. Quite clearly, the Hearing Panel does not find that privileged information was

used, but, in the light of such facts, it finds that it is entirely legitimate to ask the question. Therefore, should the Respondent not have asked himself the question?

(…)

71 In the light of this affirmative answer to our first question, it must asked whether the Respondent sought either to infirm or confirm the indication he had observed of suspicious conduct.

72 According to the evidence presented to the Hearing Panel, the Respondent did not seek to know what was going on. Here is a Respondent who knows or believes there is "collusion" between three clients, who knows or believes that one of his clients, who is an insider of mining companies, is giving the other two clients advice on trading in the securities of such mining companies, and yet who does not seek to know whether this constitutes insider trading or the use of privileged information.

73 This, in particular, is indicative of the fact that the Respondent "did not use due diligence to ensure that the acceptance of the trading orders is within the bounds of good business practice." Indeed, if he had so much as questioned his clients in this matter and explained to them what he had noticed in relation to the fact that F.D. was an insider, he would have used "due diligence to ensure that the acceptance of the trading orders is within the bounds of good business practice." Then, based on the information provided by his clients, he would have felt comfortable continuing to execute their orders or, contrariwise, he would have decided to consult his branch manager on how to proceed or he would simply have decided to stop serving them.

(…)

92 All the evidence clearly shows that the Respondent did not use diligence to learn the essential facts relative to his clients F.D., R.H., C.M. and H.D. On the contrary, the Hearing Panel considers that the Respondent preferred to ignore the facts which required him to communicate with his clients to procure all the necessary information regarding their identity, assets and mutual relationship."

ANALYSIS

75. In the opinion of the Hearing Panel, the evidence clearly shows that the Respondent never had any intention of advising his clients or warning them of the substantial risks associated with the investment clubs set up by Claude Lavigne with the help of Jacques Allard.

76. This failure is all the more serious as the Respondent had this information in his possession and had concluded that these investment clubs were of substandard quality after assessing them in the fall of 2001. Furthermore, the evidence is clear that the Respondent showed no concern for his clients and that he did not even attempt to meet them when opening their accounts;

77. The Respondent has been grossly negligent with respect to his clients. He was reckless and did not have their best interests at heart, whether or not they had already invested in Claude Lavigne's clubs. Indeed, as early as in the fall of 2001, the Respondent knew that the investment clubs were a bad investment.

78. The Respondent learned subsequently at an unknown date that cash member dividends were being used to avoid paying taxes. As regards transferring RRSPs without paying the resulting taxes, Mr Lavigne failed to answer his questions and had no serious financial document evidencing the value of such investment clubs.

79. The Respondent never asked himself any questions on the issue of compliance with the law and, more particularly, the *Securities Act* in regard to the filing of a prospectus or grant of an exemption and the limits imposed by the *Securities Act* on this type of investment clubs.

80. At the hearing, the Respondent did not even attempt to defend the legality of these investment clubs or even deny the existence of indications of suspicious or illegal conduct on the part of the persons involved.

81. The Respondent was required to warn his clients the moment he became aware that the investment clubs were "garbage" and he had a duty to seek information from the relevant authorities as to the legality of the transactions of such investment clubs.

82. As a professional, the Respondent has a duty to report the actions of individuals such as Claude Lavigne to the relevant authorities in order to discharge his general duty of protection of the public.

83. Thus he could have prevented some of his own clients from incurring substantial monetary losses which could represent – this must be emphasized - a substantial portion of their savings.

84. The Respondent attempted to divert the debate to the absence of standards of control and supervision at Desjardins Securities or the absence of supervision at B2B Trust. These issues deserve to be examined by the relevant authorities, but this Hearing Panel has no jurisdiction in the matter.

85. We must now assess the evidence submitted and heard by the Hearing Panel to appraise the four (4) counts alleging violations of the IDA By-laws by the Respondent.

As regards Count 1:

86. Count 1 basically alleges that the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to the identity of 45 new clients when he opened accounts with Desjardins Securities, although he had not met such clients.

87. The Respondent admitted that he had never met these clients. R.G., a witness for the IDA, confirmed that she had not met the Respondent before 2008.

88. The Respondent made this admission in order to absolve himself of any responsibility for the 45 new clients in connection with investments in various investment clubs, which investments had generally been made before the accounts were opened with Desjardins Securities. As he had never met these 45 clients, he claims he could not have advised them.

89. The evidence shows that the clients were identified by Jacques Allard and his assistant and that this identification was in compliance with the standards at the time. In fact, the first new client application form signed by the Respondent and put into evidence is dated November 6, 2001 (Exhibit PC 12.74). This form was signed by Mary Hagerman, the Branch Manager of Desjardins Securities, on December 13, 2001 and by the Respondent on December 14, 2001.

90. However, under IDA Regulation 1300.1(b), the Respondent was required to ascertain the identity of each person "as soon as is practicable after opening the account, and in any case no later than six months after the opening of the account (…)"

91. Furthermore, the Canadian Securities Institute's *Conduct and Practices Handbook* also refers to a 6-month period between the opening of the account and a meeting with the clients.

92. The Respondent emphasized several times that it was difficult for him to travel in winter (January to April 2002) to meet his clients.

93. We can also think that there was no rush on his part to meet his clients as, according to him, the investments in the H.T. clubs had already been made before the opening of the accounts with Desjardins Securities.

94. Others would be tempted to think that, but for Mr Logan's letter of June 2002 (Exhibit P-4.2), the 6-month period would have been largely exceeded. That is possible, but we are being called upon to assess a specific time period in the light of the little oversight that existed at Desjardins Securities.

95. We must acquit the Respondent on this count as the 6-month period was not exceeded and the identification of the clients, an essential element of the contravention, was shown to be properly conducted. There was no error in this regard;

As regards Count 2:

96. Count 2 alleges that the Respondent engaged in conduct unbecoming and failed to perform his duty to protect the public, and showed wilful blindness when opening new accounts at the request of a third party, although he knew or should have known that the circumstances surrounding these files could be indicative of suspicious activity or activity contrary to the interests of the clients.

97. In his own admission, the Respondent quickly realized that the investment clubs set up by Claude Lavigne were of substandard quality, so much so in fact that he did not wish his other clients to invest in them through him. Subsequently, he even dissuaded potential investors from Switzerland from investing in these clubs.

98. He quickly learned that there were cash member dividends in return for the transfer of RRSPs.

99. In the opinion of the Hearing Panel, even before December 14, 2001, on which date the Respondent signed the first Desjardins Securities new client application form, the Respondent had already met Claude Lavigne in investment club road shows. Although these road shows afforded him the opportunity to make inquiries and obtain the necessary documentation to ascertain the value and potential of these investment clubs, he showed wilful blindness by not insisting on being provided with such documentation and on receiving answers to his questions about such investments.

100. The Respondent knew that these different investment clubs were limited to fewer than 50 investors and that there would be many of them. He knew or should have known that no prospectus had been prepared and no exemption granted in respect of these clubs and that the $150,000 limit was greatly exceeded;

101. The Respondent knew or should have known that this was contrary to the provisions of the *Securities Act* (L.R.Q., c. V-1).

102. Moreover, in a judgment rendered on January 10, 2004 by the Honourable Mr Justice Jean-Pierre Bonin, JCQ, Claude Lavigne was found guilty of violations to the provisions of the *Securities Act.*

103. The Respondent also knew, based on the new client application forms which he had signed, that some of his clients had invested a substantial part of their assets in these investment clubs, which he considered of substandard quality.

104. In the light of these facts, the Respondent failed in his duty to protect the public in general and his clients in particular by failing to inform the latter promptly about the real situation of the investment clubs, which could have ensured the earlier termination of Claude Lavigne's transactions. He also failed in his duty by not reporting Mr Lavigne's actions to the relevant authorities, including the Autorité des marchés financiers (AMF).

105. It is particularly important not to forget that the Respondent is an expert and a professional in the field of securities. He is, therefore, required to be vigilant, to have his clients' best interests at heart and to ensure that he does not put the public at risk through his actions.

106. On the contrary, although he was aware of the substandard quality of the investment clubs, the Respondent did nothing between the time he opened his first account and the time he opened his last account, i.e., December 2001 to March 2002.

107. If the Respondent had acted promptly, his clients might have been able to recover some of their money, take legal action against Claude Lavigne or file a complaint with the AMF and thus ensure that others would not invest in other investment clubs.

108. These dubious transactions on the part of Claude Lavigne could have continued for a long time but for Mr Logan's letter of June 12, 2002 (Exhibit P-4.2), before Desjardins Securities put a stop to them by suspending the Respondent for "no more than" 5 weeks.

109. For all these reasons, the Hearing Panel finds the Respondent guilty on this count.

As regards Count 3:

110. Count 3 alleges that the Respondent engaged in business conduct or practice which is unbecoming or detrimental in that he was the registered representative for 47 clients at B2B Trust, without the knowledge or consent of Desjardins Securities.

111. This Hearing Panel finds it difficult to reconcile the evidence it heard with the claims of the representatives of Desjardins Securities, according to whom Desjardins Securities was unaware of the opening of accounts with B2B Trust until June 2002, on which date the Respondent was suspended.

112. Each of the Desjardins Securities new client application forms (NCAF), completed by Mr Allard or his assistant, has inscribed on it an account number at B2B Trust. All of these forms were signed by Desjardins Securities Branch Manager Mary Hagerman, and a Desjardins Securities file number was assigned to each of the clients. These files, therefore, were seen by the Compliance Department at Desjardins.

113. It also appears that, starting in January 2002, but especially in April 2002, the mail from B2B Trust, and more particularly the quarterly statements, were opened by the staff at Desjardins Securities, including Ms Hagerman.

114. Furthermore, the Respondent testified that he discussed these files with the Compliance Department at Desjardins Securities, which statement is corroborated by the testimony of Jacques Allard, who testified that, at their first meeting, he saw the Respondent discussing with someone the Respondent described as from the Compliance Department of Desjardins Securities. This testimony was not contradicted by any other witness.

115. The Respondent sent welcome letters to the various clients on Desjardins Securities letterhead (Exhibit P.C. 27.17), without any evidence that such letters were sent without the knowledge of Desjardins Securities.

116. Consequently, the Respondent is acquitted on such count.

As regards Count 4:

117. Count 4 alleges in paragraph (a) thereof that the Respondent engaged in business conduct or practice unbecoming, more particularly with respect to two clients, in that he was the representative of these clients at the time of the private placements and he knew or should have known that such private placements were or could be indicative of suspicious activity or activity contrary to the interests of such clients.

118. In paragraph (b), it is further alleged that the Respondent held accounts, most of which contained private placements bought by his clients, although the Respondent knew or should have known that the circumstances surrounding such private placements constituted or could constitute suspicious activity or activity contrary to the interests of the clients.

119. Let us more closely examine the Respondent's actions towards some of his clients.

120. According to the documentary evidence, the following, in chronological order, are the relevant facts relating to R.G., one of the two clients referred to Count 4(a):

- October 30, 2001: opening of an account with B2B Trust in which the Respondent is described as R.G.'s representative (Exhibit P.C. 18.63);

- November 7, 2001: new client application form at Desjardins Securities relative to R.G. (Exhibit P.C. 18.45);
- November 13, 2001: new client application form at Desjardins Securities signed by the Respondent (Exhibit 18.45);
- November 21, 2001: R.G.'s subscription to the Serviplan SEC Investment Club (Exhibit P.C. 18.2);
- December 13, 2001: new client application form at Desjardins Securities signed by Mary Hagerman (Exhibit P.C. 18.45);
- January 29, 2002: payment of an amount equal to $34,414.92 from R.G.'s account with B2B Trust to investment club HT102 (Exhibit P.C. 18.8);

121. The following are the relevant facts in a second file, being that of M.J.W.:

- February 11, 2002: opening of an account with B2B Trust with a deposit of $5,000 (Exhibit P.C. 23.81);
- February 11, 2002: opening of an account with Desjardins Securities (Exhibit P.C. 23.111);
- February 19, 2002: Respondent's signature on the new client application form (Exhibit P.C. 23.111);
- February 22, 2002: Mary Hagerman's signature on the new client application form (Exhibit P.C. 23.111);

122. In the end, and happily for him, M.J.W. did not invest in Claude Lavigne's clubs for reasons unknown to us (Exhibit P.C. 23.152).

123. The evidence in these two cases shows that, at the time the new client application forms were signed, the Respondent knew that these investments were of substandard quality.

124. The Respondent did nothing to inform or advise R.G. or M.J.W. with respect to these investments. He never met with them or with any other client for that matter, and he failed to inform his superiors or the AMF thereof.

125. Four other clients were in the same situation as M.J.W., i.e., D.F. (Exhibit P.C. 11); P.B. (Exhibit P.C. 34); P.C. (Exhibit P.C. 35); and M.R.T. (Exhibit P.C. 38).

126. On this count also, the Hearing Panel must find that the Respondent engaged in conduct unbecoming and finds the Respondent guilty.

127. FOR THESE REASONS, THE HEARING PANEL HEREBY FINDS THE RESPONDENT

(a) guilty on Counts 2 and 4

(b) not guilty Counts 1 and 3

128. The parties will be called to a penalty hearing at a date to be determined by the National Hearing Coordinator for the purposes of hearing submissions on the question of sanctions.

Mtre Alain Arsenault, Chair
Ms Lise Casgrain, Panel Member
Mr Gilles Archambault, Panel Member
Montreal, on this the 30th day of July 2008