

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No : 500-06-000500-104

**SUPERIOR COURT**  
(Class Action)

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**VIRGINIA NELLES**

Plaintiff

-vs-

**ROYAL BANK OF CANADA**

Defendant

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**PLEA OF DEFENDANT**  
**ROYAL BANK OF CANADA**

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**IN RESPONSE TO PLAINTIFF'S AMENDED MOTION INTRODUCTIVE OF CLASS ACTION PROCEEDINGS, THE DEFENDANT PLEADS AS FOLLOWS:**

1. The Defendant Royal Bank of Canada ("**RBC**") admits the allegations contained in paragraph 1 of the Amended Motion Introductive of Class Action Proceedings ("**Motion**");
2. RBC denies as drafted the allegations contained in paragraphs 2 and 3 of the Motion but admits that Earl Jones pleaded guilty to charges of fraud for having perpetrated a fraudulent Ponzi scheme; moreover, Earl Jones dealt with several financial institutions throughout;
3. With respect to the allegations contained in paragraph 4 of the Motion, RBC refers to the judgment rendered by the Honourable Robert Mongeon, J.S.C. dated July 14, 2010, and denies anything that is inconsistent therewith;
4. With respect to the allegations contained in paragraph 5 of the Motion, it refers to the proceedings and denies that it is liable for any damages sought by Plaintiff and members of the Class;
5. RBC admits the allegations contained in paragraph 6 of the Motion as to how Earl Jones held himself out to be and that he administered funds on behalf of

third parties such as estates, but denies knowledge of who exactly comprised these third parties;

6. RBC denies knowledge of the allegations contained in paragraph 7 of the Motion and prays act of the admission that the funds were intended to be invested to generate returns;
7. It denies knowledge of the allegations contained in paragraph 8 of the Motion, adding that Earl Jones conducted some of his banking with RBC;
8. RBC denies knowledge of the allegations contained in paragraphs 9 and 10 of the Motion;
9. RBC denies the allegations contained in paragraphs 11 and 12 of the Motion;
10. RBC denies as drafted the allegations contained in paragraph 13 of the Motion;
11. RBC admits the allegations contained in paragraph 14 of the Motion;
12. RBC denies as drafted the allegations contained in paragraph 15 of the Motion, adding that the account was named and described as a function of the type of account;
13. With respect to the allegations contained in paragraph 16 of the Motion, RBC admits having provided cheques compliant with the type of account and denies the rest of the paragraph;
14. RBC denies the allegations contained in paragraph 17 of the Motion, adding that Earl Jones lied to or mislead many people, including his close family members;
15. RBC denies as drafted the allegations contained in paragraph 18 of the Motion, adding that Earl Jones chose to operate his business in such a manner;
16. RBC denies the allegations contained in paragraphs 19 and 20 of the Motion, adding that "Royal VIP Service" is simply a banking service and fee saving package that Earl Jones signed up for in June 2006; RBC offers a variety of banking service packages; the "Royal VIP Service" package did not grant Earl Jones any particular client status nor did it afford him any *irregular and inappropriate privileges*;
17. RBC admits the allegations contained in paragraph 20A)i) of the Motion, adding that RBC acted in good faith, had no notice of defect in title, and that Earl Jones and/or his staff represented that he was always authorized to receive as holder, or holder in due course, and to negotiate cheques on behalf of his clients and to negotiate by delivery and deposit cheques to the account that were not payable

- to Earl Jones In Trust; in fact most clients expected, accepted or acquiesced in this process, made no complaints regarding this process of negotiation of cheques on their behalves, and in so doing, ratified the transactions and are now estopped and precluded from asserting any fault arising therefrom;
18. RBC refers to the cheques alleged in paragraph 20A)ii) of the Motion with respect to some of the cheques deposited to the Earl Jones In Trust Account;
  19. RBC denies as drafted the allegations contained in paragraph 20A)iii) of the Motion;
  20. RBC denies the allegations contained in paragraph 20A)iv) of the Motion, adding that RBC does not control or monitor the underlying business operations of its customers, rather it processes the banking transactions as directed by such customers;
  21. RBC denies the allegations contained in paragraph 20A)v) of the Motion;
  22. RBC denies knowledge of the allegations contained in paragraph 20A)vi) of the Motion;
  23. RBC denies the allegations contained in paragraph 20A)vii) of the Motion, adding that in most, if not all, transactions Earl Jones' clients authorized him to receive as holder, or holder in due course, and to negotiate their cheques on their respective behalves, and in fact most clients expected, accepted or acquiesced in this process, made no complaints regarding this process of negotiation of cheques on their behalves, and in so doing, ratified the transactions and are now estopped and precluded from asserting any fault arising therefrom;
  24. RBC denies the allegations contained in paragraphs 20A)viii) and 20A)ix) of the Motion adding that a bank is only responsible for examining the last endorsement on a cheque negotiated at the counter as the teller has no way, and is not required, to authenticate the legitimacy of any previous endorsements;
  25. RBC admits the allegations contained in paragraph 20B)i) of the Motion in respect to that which is prescribed by law;
  26. RBC denies the allegations contained in paragraph 20B)ii) of the Motion, adding that it does not control the banking operations or business dealings of its customers;
  27. RBC denies the allegations contained in paragraph 20B)iii) of the Motion, adding that neither the Plaintiff nor any other members of the class ever required from RBC any specific protection for the funds that they entrusted to Earl Jones and that in any event, pursuant to s. 437 of the *Bank Act* (SC 1991, c. 46):

*(3) A bank is not bound to see to the execution of any trust to which any deposit made under the authority of this Act is subject.*

*(4) Subsection (3) applies regardless of whether the trust is express or arises by the operation of law, and it applies even when the bank has notice of the trust if it acts on the order of or under the authority of the holder or holders of the account into which the deposit is made.*

28. RBC denies the allegations contained in paragraph 20B)iv) of the Motion;
29. RBC denies the allegations contained in paragraph 20B)v) of the Motion;
30. RBC denies the allegations contained in paragraph 21 of the Motion;
31. With respect to paragraph 22 of the Motion, RBC admits Exhibit P-5, adding that the note was made in the context of a sales call whereby the advantages of having a business account in his company's name (as opposed an account in his personal name) were related to Earl Jones;
32. RBC denies the allegations contained in paragraph 23 of the Motion;
33. RBC denies knowledge of the allegations contained in paragraph 24i) of the Motion;
34. RBC denies the allegations contained in paragraph 24ii) of the Motion;
35. RBC admits the allegations contained in paragraph 24iii) of the Motion;
36. RBC denies knowledge of the allegations contained in paragraph 24iv) of the Motion;
37. With respect to the allegations contained in paragraph 25 of the Motion, RBC admits Exhibit P-6, adding that the inquiry determined that the account activity was consistent with Earl Jones' business as disclosed to RBC;
38. With respect to the allegations contained in paragraph 26 of the Motion, RBC admits receiving Exhibit P-7, but denies knowledge of the veracity of its content;
39. RBC admits that it opened a Business Deposit Account, but denies the rest of the allegations contained in paragraph 27 of the Motion;
40. With respect to paragraph 28 of the Motion, RBC admits Exhibits P-8 and P-9, but denies the rest of the allegations contained therein;

41. RBC denies the allegations contained in paragraph 28.1 of the Motion, adding that many class members, along with Earl Jones, are responsible for their own losses;
42. RBC admits the allegations contained in paragraph 29 of the Motion;
43. RBC denies knowledge of the allegations contained in paragraphs 30, 31 and 32 of the Motion;
44. RBC denies the allegations contained in paragraph 33 of the Motion;
45. RBC denies the allegations contained in paragraph 34 of the Motion, adding that the Plaintiff has the burden of proving that the evidence enables the establishment with sufficient accuracy of the total amount of the claims of the members;
46. RBC denies the allegations contained in paragraphs 35, 36, and 37 of the Motion;
47. With respect to the allegations contained in paragraph 37i), it refers to Exhibit P-11, and denies anything that is inconsistent therewith;
48. With respect to the allegations contained in paragraph 37ii), it refers to Exhibit P-12, and denies anything that is inconsistent therewith;
49. With respect to the allegations contained in paragraph 37iii), it refers to Exhibit P-13, and denies anything that is inconsistent therewith;
50. With respect to the allegations contained in paragraph 38, it refers to Exhibit P-14 and denies anything that is inconsistent therewith, adding that the cheque dated September 17, 2008, deposited to the Earl Jones Consulting & Administration account falls outside of the scope of this class action;

**AND FOR FURTHER PLEA TO PLAINTIFF'S ACTION, DEFENDANT ADDS THE FOLLOWING:**

**Cause of the alleged losses**

51. Earl Jones caused all losses and damages resulting from his illegal Ponzi scheme fraud;
52. Earl Jones knowingly enticed people to give him money to invest with him through various means and stole from his clients under the cloak of an apparently legitimate and successful business operation; he never dealt

exclusively with RBC and RBC has discovered that his purported investments were varied and went well beyond the In Trust Account;

53. Earl Jones had both the *mens rea* and the *actus reus*, at all times, in his dealings with his clients, including the class members herein;
54. Earl Jones was charged with various counts of fraud under Section 380(1)a) of the *Criminal Code of Canada*, as appears from the court records 500-01-027331-096 and 500-01-032683-093;
55. Earl Jones admitted his fraud and pleaded guilty to having, "*by deceit, falsehood or other fraudulent means, defrauded the persons who invested with him or his company Earl Jones Consulting and Administration Corporation, of a sum of money, of a value exceeding \$5,000.00*", committing thereby the indictable offence provided by section 380(1)a) of the *Criminal Code*;
56. Earl Jones is a convicted criminal;

#### **Royal Bank of Canada**

57. RBC is a Canadian chartered bank, operating under the *Bank Act* (SC 1991, c. 46) by federal charter since 1869;
  58. RBC engages in the business of banking and such business generally as appertains thereto, as prescribed by the *Bank Act* (SC 1991, c. 46);
  59. RBC does not interfere in the affairs of its customers and is not in the business of supervising fiduciary arrangements between its customers and third parties;
- a) Opening and Operation of the In Trust Account
60. On October 22, 1981, Earl Jones opened a chequing account number 00361-5266622, with the description "in trust" (herein designated "**In Trust Account**") at the RBC Beaconsfield branch, as appears from the copy of the client profile for B. Earl Jones, Exhibit P-3;
  61. The "in trust" designation did not have the effect of creating a valid trust, nor would any trust bind RBC to see to the execution of the trust to which any deposit was made;
  62. At the time of account opening, Earl Jones appeared to be operating his business personally, under a trade name;
  63. Available accounts then included personal, non-personal and business accounts;

64. The In Trust Account was considered a non-personal account consistent with RBC protocol for individuals carrying on business, associations and non-incorporated businesses and consistent with the fact that Earl Jones was not incorporated;
65. According to the CIDREQ, Earl Jones only incorporated his business "Earl Jones Consultant and Administration Corporation" in 1984, as appears from a copy of the CIDREQ report communicated herewith as **Exhibit D-1**;
66. Earl Jones only formally advised RBC of the incorporation of his business in June 1993, when he sent a copy of the certificate of incorporation for Earl Jones Consultant and Administration Corporation to the Beaconsfield branch, as appears more fully from a copy of his correspondence dated June 29, 1993, communicated herewith as **Exhibit D-2**;
67. Earl Jones listed his business activities as being an administrator of estates, and it was generally known in the community that Earl Jones assisted clients in administering and winding up estates;
68. In many cases, if not all cases, Earl Jones was specifically authorized by power of attorney, letter of instruction or tacit consent to transact on behalf of his clients, and it was this actual and ostensible authority that Earl Jones manipulated and abused so as to commit his fraud against the class members;
69. Earl Jones chose and maintained the type of account that he wanted to fit the needs of his financial affairs, at the time; in fact, Earl Jones was extremely knowledgeable in banking products and processes having worked for another financial institution for close to 16 years;
70. Upon opening of the In Trust Account, there was nothing to suggest that Earl Jones would be using the account for illegitimate or unlawful purposes or that he would subsequently embark upon a scheme of deception, forgery and fraud;
71. Up until Earl Jones' Ponzi scheme collapsed in or about July 2009, there is no record of any RBC Beaconsfield branch representative having received inquiries or complaints from any of the class members regarding Earl Jones' business, the type of account he used, the operation of the In Trust Account or the negotiation of cheques to or upon the In Trust Account, nor did any class member allege defect in title with respect to cheques as negotiated by Earl Jones to the In Trust Account, nor did any class member disclose to RBC any suspicious circumstances concerning their dealings with Earl Jones and his In Trust Account over period of approximately 27 years;
72. Ultimately, the type of account had no bearing whatsoever on Jones' scheme of deceit and fraud;

73. But for representations that Earl Jones might have made to certain of his clients regarding the In Trust Account, the type of account was of no interest or concern to any of his clients and RBC could not, due to privacy laws and duties of confidentiality to all customers, disclose to third parties what type of account any individual customer is using at any given time;
74. At all relevant times, the account that Earl Jones was using for his alleged business purposes was regularly operated by RBC and its representatives;
- b) Absence of any signs of misdealing
75. RBC never had any actual knowledge that Earl Jones was accepting investment funds, purportedly offering superior guaranteed interest rates (between 8% and 18%) and running an illegal Ponzi scheme through the In Trust Account;
76. Moreover, RBC was not aware of anything that would have alerted it to the fact that Earl Jones' business affairs were being conducted in an irregular or illegal manner;
77. By its very nature, a fraudulent Ponzi scheme is set up under a cloak of deceit making it difficult to identify by anyone, including a reasonable banker, and is neither dependent on nor facilitated by the use of an "In Trust Account" or any other species of account;
78. In the circumstances, there were no transactions effected by Earl Jones in the RBC Beaconsfield branch that were out of step with the ordinary manner in which the In Trust Account was used and managed in service of others, over a period of approximately 27 years;
79. In order for a Ponzi scheme fraud to succeed, particularly for such a long period of time as was the case for Earl Jones, additional funds are always required and new investors are enticed by returns that other investment vehicles cannot guarantee, such as investment returns that are either abnormally high or unusually consistent;
80. The rates of return that Earl Jones was offering on investments made by the class members were so abnormally high and unusually consistent as compared to relevant market conditions that the class members knew or ought to have known that such investments were suspicious and irregular;

81. The class members, or at least some of them, evidently had superior information and knowledge concerning the representations made by Earl Jones and his business practices, which individually or collectively, should have been identified as suspicious circumstances warranting inquiry or investigation by those persons; such knowledge included, without limitation, the fact that:
- a) Earl Jones had promised some of the class members that he could make investments on their behalf (even though he had no specific licence or qualification to do so);
  - b) Investments were not limited to the In Trust Account and included commercial and real estate ventures, mortgages, bridge loans to estates (sometimes over unusually lengthy periods), inter-client loans, private loans, partnerships, finder or referral fees, and others;
  - c) the investment returns promised to the class members were guaranteed and substantially in excess of then available market returns for similar investment products, being anywhere between 25% to 75% above then commercially available investment returns;
  - d) the investment returns Earl Jones could provide, being substantially in excess of available commercial rates, were purportedly through a secret or special private relationship available only through him;
  - e) the investment returns promised to the class members were unusually consistent in that they did not fluctuate with ordinary market conditions over time;
  - f) other class members that were doing business with Earl Jones were also supposedly receiving such preferential rates and to the knowledge of many or most of the class members, through an un-segregated account;
  - g) to the knowledge of the class members, they were either directly or indirectly advancing funds to Earl Jones, and not to a licensed or regulated financial institution, all without any guarantee of deposit insurance or any other standard investment protection;
  - h) when some of the class members requested the return of their funds, Earl Jones would delay in making timely payment or would make only a partial return and resist making full repayment as required;
  - i) Earl Jones provided the class members with inadequate, incomplete and fabricated investment statements, all of which should have caused concern, suspicion and inquiry;

- j) Many clients of Earl Jones did not receive statements from him on a consistent basis;
  - k) Earl Jones had remitted funds back to some of his clients in cash, being an unusual method to account for funds that the class members allege were supposedly subject to some form of a trust;
  - l) Many clients of Earl Jones never declared on their income tax returns the investment earnings they believed they were receiving from him;
82. In the circumstances set forth above, the class members, or some of them, were aware of sufficient suspicious circumstances as to cause a reasonable person to make proper inquiries including upon RBC and/or such regulatory bodies as the *Autorité des marchés financiers*, the *Chambre de la sécurité financière* and the Investment Industry Regulatory Organization of Canada;
83. Notwithstanding, no such inquiries were made by any of the class members or any other third party upon any RBC Beaconsfield branch representatives, such class members choosing not to share their knowledge with RBC despite that they were in a privileged position when compared to RBC to ascertain and evidence said suspicious circumstances, and which inaction caused RBC not to have any actual knowledge that there were any irregularities whatsoever in Earl Jones' business operations;
84. The class members appear to have been satisfied with the business practices of Earl Jones and his promises and representations to them, coupled with the receipt of investment funds back by some of the class members, purportedly being the proceeds of the "superior investment returns";
85. As a consequence of the conduct of the class members, RBC was not aware of anything that would have required its Beaconsfield branch representatives to inquire or investigate the transactions in the In Trust Account, and the class members are estopped and precluded from asserting any fault arising therefrom;
86. In any and all events, at the time and without the benefit of retrospect, there were never any signs of misdealing, let alone any strong signs of misdealing by Earl Jones that would have allowed RBC Beaconsfield branch representatives or any reasonable branch banker, in the circumstances, to observe or discover that any of the transactions in the In Trust Account were suspicious and suggestive of fraud;

c) Business account

87. Over time, as new account products became available, RBC began suggesting that business clients, including Earl Jones, conduct their banking operations through actual business type accounts with banking fees charged accordingly;
88. In this context, in August 2008, Earl Jones agreed to close the In Trust Account and open a business account number 00361-1012350, Exhibit P-8;
89. Notwithstanding the change of account, from non-personal to business, and the fact that the account was no longer called an In Trust Account, Earl Jones apparently continued his Ponzi scheme of deceit for another year such that the class members would no longer have been receiving RBC cheques from Earl Jones with the indication "in trust";
90. In fact, over \$7M was solicited and deposited to this account by Earl Jones over that one year period, as appears more fully from a copy of the account statements for account number 00361-1012350 for the period of July 31, 2008 to June 30, 2009, communicated herewith as **Exhibit D-3**;

d) Means of defence

i) The Bank Act (SC 1991, c. 46)

91. Any documentary evidence prior to June 1, 1982, cannot be set up against RBC;
92. At all times relevant, RBC was not bound to see to the proper performance of Earl Jones' obligations due to the class members by the mere notice that the account was one "in trust";

ii) No extra-contractual liability

93. RBC was not negligent, reckless or wilfully blind in opening and operating a bank account for Earl Jones;
94. There is no *lien de droit* between Plaintiff, the class members and RBC;
95. RBC did not cause the alleged damages claimed collectively herein, and is therefore not liable towards the Plaintiff or the class members;
96. However, if RBC is found to be liable (i.e. for having caused damages), which is expressly denied herein, RBC cannot be held entirely liable for any losses suffered by the class members, including the Plaintiff;

iii) Apportionment of liability

97. The class members accepted the high risks of dealing with Earl Jones and were themselves wilfully blind, reckless and negligent in entrusting Earl Jones with significant funds, authority over their affairs and responsibility, knowing that he was not duly registered or licensed for financial planning, offering superior rates of interest, not disclosing any suspicions to RBC Beaconsfield branch representatives, and in some cases not disclosing their interest revenue to the tax authorities;
98. Moreover, many clients of Earl Jones benefited from his fraudulent Ponzi scheme, receiving more than the funds initially invested to the detriment of the Plaintiff and the class members, and are thus liable to account for such funds pursuant to the law of unjust enrichment;

**Plaintiff's claim**

99. Plaintiff Virginia Nelles, the Class representative, was examined on discovery before plea on December 17, 2010 ("**Examination part 1**"), and January 7, 2011 ("**Examination part 2**"), as appears more fully from a copy of the transcript of her examination communicated herewith as **Exhibit D-4** (collectively the "**Examination**"); this Examination revealed the following;
100. Although Plaintiff's involvement with Earl Jones may have begun with the administration of her late father's estate, she ultimately made the decision to invest the entire proceeds of her inheritance with Earl Jones beginning in 2005 when she was 38 years old such that she would be considered as an aggressive investor who entrusted Earl Jones with substantial funds in order to take advantage of the abnormally high and/or unusually consistent and even guaranteed returns that he was promising;
101. Plaintiff invested the following funds with Earl Jones through his In Trust Account, representing her inheritance from her late father Talbot Nelles (from BMO Nesbit Burns) and the proceeds resulting from the liquidation of her late grandfather William Thomas Whitehead's trust (from Royal Trust, hereafter the "**Corporate Trustee**"):
  - a) Bank draft from BMO Nesbit Burns dated December 13, 2005, payable to the order of Mme Virginia Nelles, in the amount of \$14,197.79 US;
  - b) Bank draft from BMO Nesbit Burns dated December 13, 2005, payable to the order of Mme Virginia Nelles, in the amount of \$191,968.53;

- c) Bank draft from Royal Trust dated June 21, 2007, payable to the order of Virginia Nelles Tetrault and Earl Jones Consultant & Administration Corporation, in the amount of \$200,000.00;
  - d) Bank draft from Royal Trust dated June 21, 2007, payable to the order of Virginia Nelles Tetrault and Earl Jones Consultant & Administration Corporation, in the amount of \$62,910.51 US;
  - e) Bank draft from Royal Trust dated August 14, 2007, payable to the order of Virginia Nelles Tetrault and Earl Jones Consultant & Administration Corporation, in the amount of \$158.82 US;
  - f) Bank draft from Royal Trust dated February 28, 2008, payable to the order of Virginia Nelles Tetrault and Earl Jones Consultant & Administration Corporation, in the amount of \$25,000.00;
- a) Estate Talbot Nelles proceeds
- 102. Earl Jones was apparently a close family friend of the Nelles family, having worked with Plaintiff's father Talbot Nelles for approximately 16 years at another financial institution prior to setting up his own business in 1981; he was also godfather to the Plaintiff's brother;
  - 103. Less than one year before he passed away on May 15, 2004, Talbot Nelles named 3 liquidators in his last will and testament: his daughter Virginia Nelles, Plaintiff herein, his son Robert Nelles, and Scotia Trust (formerly Montreal Trust), the firm he spent his entire career at, as appears more fully from a copy of Talbot Nelles' last will and testament dated July 14, 2003, communicated herewith as **Exhibit D-5**;
  - 104. Upon Talbot Nelles' passing, Plaintiff immediately appointed Earl Jones as "agent" to the liquidators of his estate and removed Scotia Trust as one of the three liquidators as per Earl Jones' recommendation, as appears from pp. 36 and 44 of the Examination part 1 and as appears more fully from the letter of appointment dated May 20, 2004 (identified in the Examination as Exhibit VN-1) communicated herewith as **Exhibit D-6**;
  - 105. Despite the title, Earl Jones was apparently much more than an "agent" to the remaining two liquidators of the Estate of Talbot Nelles, as per the letter of appointment signed by Plaintiff which specifically provides that Jones "*shall make all necessary arrangements to complete the inventory of assets and liabilities of the subject Estate, file all required income tax returns with the taxing authorities, ensure that all taxes and other liabilities are paid, and generally attend to all matters pertaining to the administration of the subject Estate*", as appears more fully from said letter, Exhibit D-6;

106. In fact, Earl Jones acted as an actual liquidator throughout, taking inventory, liquidating assets such as Talbot Nelles' car, negotiating estate cheques and making estate payments, all to Plaintiff's entire knowledge and satisfaction (pp. 48 to 52 of the Examination part 1);
107. Prior to appointing Earl Jones, abetting Jones in replacing Scotia Trust, and entrusting him with the life savings of her late father (and later those of her late grandfather), Plaintiff Virginia Nelles admittedly made no verifications whatsoever as to his credentials, his abilities, his operations, his business or his manner of proceeding (pp. 28 to 33 of the Examination part 1);
108. Notwithstanding the foregoing, Plaintiff also acknowledged having signed, for and on behalf of her late father, a cheque drawn by Earl Jones on her late father's account back-dated to two days before his death, for \$100,000 payable to the order of Earl Jones in trust (pp. 49 and following of the Examination part 1) as appears from a copy of said cheque dated May 13, 2004, (identified in the Examination as Exhibit VN-3) communicated herewith as **Exhibit D-7**;
109. During the administration of the estate, any cheques payable to Talbot Nelles, or his estate, were remitted or directed to Earl Jones with the expectation that he negotiate these cheques; thereafter, Jones accounted for the cheques negotiated and deposited into his In Trust Account with RBC, such that Plaintiff either directly authorized Earl Jones to negotiate cheques by way of endorsement, specific endorsement or double endorsement, or tacitly provided consent to such operations;
110. Plaintiff also acknowledged that she knew Earl Jones was receiving the estate funds, that she was fully apprised of the ins and outs of the account and that she was at the time satisfied with Jones' administration of her father's estate (p. 48 of the Examination part 1);
111. More particularly, Plaintiff specifically directed that all cheques from her father's estate be sent to Earl Jones, or even gave him the cheques herself (p. 52, 71 and 72 of the Examination part 1);
112. Plaintiff Virginia Nelles also gave Earl Jones cheques (and/or bank drafts) that were made out to her order without ever endorsing same and knew Jones was negotiating and depositing them as an investment on her behalf (pp 98, 99 and 169 of the Examination part 1), Plaintiff having therefore provided her prior consent to Earl Jones for such negotiation thereby allowing him to be a holder in due course of these cheques (and/or bank drafts);

113. Moreover, Plaintiff admitted having made no verifications or inquiries as to the investment vehicle by which Earl Jones would be managing and investing her funds and the proceeds of her inheritances (p. 45 of the Examination part 1);
  114. Although Plaintiff claims to have believed that Jones opened an account at RBC in her name, she admitted having never filled out any RBC account opening documentation, having never made any verifications as to Jones' relationship with RBC, having never questioned how Jones would open an account in her name and having never authorized him to open an account on her behalf (at pp. 27 and 46 and following and pp 95, 96, 109, 155 and 156 of the Examination part 1, and pp.69-70 of the Examination part 2);
  115. Plaintiff was, however, more than familiar with investments and admitted having held investment portfolios in the past that required her to sign account and investment documentation with certain brokerage houses (pp 79, 93 and 94 of the Examination part 1);
  116. Plaintiff would have even met with her father's broker and she understood that her father had a "conservative" investor profile, prior to instructing the brokerage firm to cash out her late father's "blue chip" portfolio valued at over \$400,000 and entrusting her share of the proceeds to Earl Jones in December 2005;
  117. Notwithstanding the foregoing, Plaintiff acknowledged that, prior to entrusting Earl Jones with her portion of the proceeds from her late father's investment portfolio, namely the bank drafts for \$14,197.78 US and \$191,968.53 (Exhibit P-4, pages 104 and 105), she had no agreement, understanding or document setting out the terms of the investments Jones would be making, either as to interest, the type of investments or the fees he would charge, despite acknowledging that she knew she was purportedly receiving 12% interest from Jones (pp. 86 to 94 of the Examination part 1);
  118. From these funds, Plaintiff admitted to having received some 90 "monthly remittances" and additional payments "as requested" from Earl Jones, generally in increments of between \$2,000 and \$6,000 for herself and for her mother Wendy Nelles between August 2005 and May 2009, totaling over \$300,000 (pp 206 to 227 of the Examination part 1);
  119. In addition, Plaintiff admitted to having received cash payments from Jones, at least as to those listed on her Earl Jones monthly statements (pp. 110, 111 and 217 of the Examination part 1);
- b) William Thomas Whitehead Trust proceeds
120. In 2007, once the estate of Plaintiff's father Talbot Nelles was substantially wound up, and again upon Earl Jones' suggestion, Plaintiff (along with her

brother and mother) took the necessary measures to terminate the trust that had been set up by her late grandfather in 1952 so that funds totaling over \$800,000 from the liquidation of this "blue chip" portfolio would be remitted to Earl Jones presumably for a greater rate of return (p. 123 of the Examination part 1), as appears more fully from the Motion for Declaratory Judgment dated January 12, 2007, the Judgment dated March 6, 2007 and the May 1, 2007 confirmation letter from the Corporate Trustee communicated herewith *en liasse* as **Exhibit D-8**;

121. Accordingly, she would have instructed and urged the Corporate Trustee to disburse the funds from her grandfather's trust promptly to Earl Jones on the premise that she and her brother had "made personal investment commitments" to Jones (pp. 152 and 153 of the Examination part 1), as appears more fully from the letter of direction dated June 6, 2007 signed by Plaintiff and her brother, Exhibit P-12;
122. Moreover, in her covering letter also dated June 6, 2007 (enclosing the letter of direction), Plaintiff expressly states to the trust officer that she and her brother "*have both made personal investment commitments which we must finalize within the next (10) ten days*" and that "*they have asked Mr. Earl Jones to follow-up on this distribution as he oversees our family financial affairs and will be arranging to complete these personal investment commitments we have undertaken*", as appears more fully from her letter of that date, Exhibit D-9 (Exhibit VN-8 of the Examination);
123. Plaintiff thus directed the Corporate Trustee to send all proceeds from her grandfather's trust to Earl Jones, knew he was receiving, negotiating and depositing the 4 cheques (and/or bank drafts) (Exhibits P-4, pages 104 to 111 and P-13, page 3) on her behalf, gave no instructions as to the type of investment, the returns or the interest to be generated, made no verifications whatsoever with RBC and had full access to the funds at all times (pp. 165 to 185 of the Examination part 1), as appears particularly from the correspondence dated June 6 and June 21, 2007, and February 28 and September 17, 2008 exchanged between Plaintiff and the trust officer (identified as Exhibits VN-8, VN-9, VN-10, VN-13, VN-14 and VN-15 during the Examination) communicated *en liasse* herewith as **Exhibit D-9**;
124. Upon remittance of these funds to Earl Jones, the Plaintiff received monthly statements from Earl Jones indicating the moneys on hand and the purported interest of 12% being generated thereupon (Exhibit P-11);
125. Notwithstanding all of the foregoing, Plaintiff could not quantify her personal loss with any accuracy (p. 203 of the Examination part 1);

126. Although Plaintiff had and continued to report investment income for certain other investments in her personal income tax returns, she had an obligation at law to report all investment interest, but never actually reported any of the interest (at 12%) that she was supposedly earning on the funds that she invested with Earl Jones, and thus the investment itself represented the Plaintiff's own unlawful act;
127. Plaintiff, through her actions, inactions, indifference and reliance on Earl Jones is responsible for the risks associated with and losses resulting from investing with and/or through Mr. Earl Jones, an investment adviser who was neither registered nor qualified in the circumstances, at rates of return that were abnormally high and unusually consistent;
128. Finally, Virginia Nelles never provided RBC with any information that would cause its representatives to inquire or investigate the Earl Jones In Trust Account, such as the fact that she believed she was receiving 12% interest on her investment from RBC;

**The Class Action as instituted**

129. The nature of the relationship between Earl Jones and each of his clients/investors, is so distinctively personal, as was the case for Plaintiff Virginia Nelles, that collective recovery is not possible in the circumstances;
130. Moreover, the evidence produced by Plaintiff does not enable the establishment with sufficient accuracy of the total amount of the claims of the members;
131. Defendant is entitled to request, and hereby requests that this honourable court not order collective recovery, but rather individual recovery to any class members that are capable of proving a veritable loss, to the extent necessary;
132. In addition, the persons, estates of deceased persons, trustees, *es qualité* trusts and corporations comprising the class, as defined, had differing relationships with Earl Jones, different motivations for dealing with Earl Jones, different understandings as to his endeavours, intentions and means, and different degrees of contributory liability;
133. More particularly, RBC has learned that Earl Jones offered and received numerous investments that were completely extraneous to the In Trust Account and which included commercial and real estate ventures, mortgages, bridge loans to estates (sometimes over unusually lengthy periods), inter-client loans, private loans, partnerships, finder or referral fees, and others that were made principally on the strength of their relationship with and trust in Earl Jones;

134. As such, the class, as defined, should be divided to account for these differences, particularly in contrast to estates that Earl Jones would have stolen from;
135. The alleged capital losses claimed collectively by the class members are exaggerated;
136. Plaintiffs' action is ill founded in fact and in law;
137. Defendant's Plea is well founded in fact and in law.

**WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:**

- A. **GRANT** the present Plea;
- B. **DISMISS** Plaintiffs' action;
- C. **RESERVE** all of RBC's rights against any Earl Jones clients that received back more than the capital entrusted with him or his company;
- D. **THE WHOLE** with costs, including the disbursements incurred for the honoraria of experts, for the preparation of experts' reports, preparation of the hearing and attendance at the hearing, as documented.

MONTREAL, August 18, 2011



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