

Gouvernement du Québec  
Ministère de la justice

**PROCÈS-VERBAL**  
(en matière civile)

N° de dossier <b>500-06-000500-104</b>	Cour <input type="checkbox"/> du Québec <input checked="" type="checkbox"/> supérieure
Nom du juge <b>ROBERT MONGEON, J.C.S.</b>	Inscription <input type="checkbox"/> par défaut <input type="checkbox"/> ex parte <input checked="" type="checkbox"/> contestée
Chambre <input checked="" type="checkbox"/> CIVILE <input type="checkbox"/> FAMILIALE Salle n° <b>16.05</b>	Référée de la salle Date <b>Le 12 mai 2011</b>

PARTIE DEMANDERESSE  PARTIE REQUÉRANTE  PRÉSENTE  ABSENTE

<b>VIRGINIA NELLES</b>	<b>ME ROBERT KUGLER - KUGLER KANDESTIN</b>
	<b>ME NEIL STEIN - STEIN &amp; STEIN</b>

PARTIE DÉFENDERESSE  PARTIE INTIMÉE  PRÉSENTE  ABSENTE

<b>ROYAL BANK OF CANADA</b>	<b>ME ALEXANDRE DE ZORDO</b>
	<b>Borden Ladner Gervais</b>

PARTIE  PRÉSENTE  ABSENTE


PARTIE  PRÉSENTE  ABSENTE


Nature de la cause : **Objections et Requête no. 26**

Greffier(ière) <b>MANON QUESNEL</b>	Interprète Nil	Sténographe nil	\$
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**ENREGISTREMENT MÉCANOGRAPHIQUE**

DÉBUT AM: <b>9:43</b>	FIN AM: <b>12:25</b>	DÉBUT PM: <b>14:16</b>	FIN PM: <b>15:52</b>
Compteur cassette AM		Compteur cassette PM	

**AFFAIRES RÉFÉRÉES AU MAÎTRE DES RÔLES**

<input type="checkbox"/> pour encombrement <input type="checkbox"/> suite à une demande des parties <input type="checkbox"/> suite à une ordonnance du juge <input type="checkbox"/> cause en progrès	Temps prévu <div style="border: 1px solid black; width: 100px; height: 100px;"></div>	<input type="checkbox"/> affaire réglée hors cours <input type="checkbox"/> affaire en délibéré <input type="checkbox"/> jugement rendu le _____ <input type="checkbox"/> autre :	<input type="checkbox"/> affaire rayée <input type="checkbox"/> affaire en délibéré après notes
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Remarques

Date: <b>Le 12 mai 2011</b>	Signature du greffier(ière) <i>MCS</i>	Signature du juge (s'il y a lieu)
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CANADA  
PROVINCE DE QUÉBEC  
District de Montréal

N° 500-06-000500-104

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Dist. An Mois Jour Cas.

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Dist. An Mois Jour Cas. Salle Piste

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## RÉFÉRENCES

9h43	<b>Ouverture de la cause et identification des procureurs</b>
	Me De Zordo s'adresse au Tribunal
9h48	Me Kugler s'adresse au Tribunal
9h50	Me De Zordo s'adresse au Tribunal
9h52	La Cour s'adresse aux procureurs
9h59	<b>Débat sur objections</b>
11h14	<u>Suspension de l'audience</u>
11h29	<u>Reprise de l'audience</u>
	Poursuite du débat sur objections
12h25	<u>Suspension de l'audience</u>
14h16	<u>Reprise de l'audience</u>
	Poursuite du débat sur objections
	<b>Jugement sur objections: voir la colonne intitulée "Décision" dans le document ci-joint, <u>sauf</u> pour la question O-33, page 6, qui est reliée à la requête "Defendant's Motion for Permission to Examine Members of the Class before Plea" (no. 26)</b>
15h18	<u>Suspension de l'audience</u>
15h45	<u>Reprise de l'audience</u>
	<b>Débat sur requête "Defendant's Motion for Permission to Examine Members of the Class before Plea" (no. 26)</b>
	Me Stein s'adresse à la Cour

## PROCÈS-VERBAL D'AUDIENCE (suite)

LE 12 MAI 2011

VIRGINIA NELLES  
VS  
ROYAL BANK OF CANADA

CANADA  
PROVINCE DE QUÉBEC  
District de Montréal

N° 500-06-000500-104

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Dist.	An	Mois	Jour	Cas.


Dist.	An	Mois	Jour	Cas.	Salle	Piste

RÉFÉRENCES

15h46 Le Tribunal s'adresse aux procureurs

La requête (no. 26) et l'objection O-33 sont continuées, *pro forma*, le 24 mai 2011 en salle 16.12

15h52 La séance est levée (liste des objections ci-jointe)

  
Manon Quesnel, g.a.c.s.

PROCÈS-VERBAL D'AUDIENCE (suite)

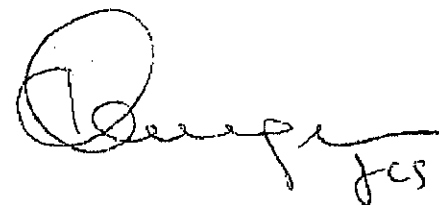
LE 12 MAI 2011

VIRGINIA NELLES  
VS  
ROYAL BANK OF CANADA

TABLE OF OBJECTIONS – Examination of Virginia Nelles, December 17, 2010 and January 7, 2011

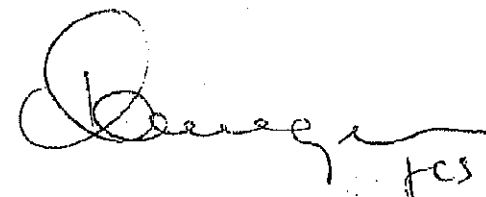
OBJ. No.	Page	Question No.	Question or Undertaking	Reason	Decision
<b>1. Jones' role in the administration of funds and representations made to plaintiff and class members</b>					
O-1 (Dec 17, 2010)	50	U-1	To provide a copy of list of assets and liabilities of Virginia Nelles' late father's estate. (under reserve)	Relevance to common questions	Partial: Document provided by Earl Jones – "Statement of Assets and Liabilities" as of June 30, 2009  The information has been provided under reserve
O-2	51	U-2	To provide a copy of the accounting provided by Earl Jones to Virginia Nelles with regards to the winding up of her late father's estate. (under reserve)	Relevance to common questions	Partial: Document provided by Earl Jones – "Statement of Assets and Liabilities" as of June 30, 2009  The information has been provided under reserve
O-3	71	U-3	To provide copy of the 195 pages documents submitted by Miss Nelles to the Sûreté du Québec	Relevance	Does not possess the documents requested  The objection is maintained. Ms Nelles does not have the documents and does not recall those documents.
<b>2. Knowledge and behaviour of plaintiff and class members</b>					
O-4	73	Q. 271	Okay. Now what would that profile have been?	Relevance to common questions	The information was provided under reserve

OBJ. No.	Page	Question No.	Question or Undertaking	Reason	Decision
O-5	76	U-4	To provide a copy of the list of investments held at BMO Nesbitt Burns	Relevance	Does not possess the documents requested  The objection is maintained. The common questions are not dealing with this issue nor does the introductory motion.
O-6	76	U-5	To obtain a copy of the investor profile form from BMO Nesbitt Burns	Relevance	Does not possess the documents requested  The objection is maintained
O-7	76	Q. 282	So would it be fair to say that the investment portfolio had at BMO Nesbitt Burns would have been a conservative portfolio in accordance with his profile that you've established as being conservative?	Relevance	The objection is maintained
O-8	77	Q. 284	Is it the first time you sat down with an investment advisor to discuss portfolio, investments, and I'm talking about your meeting with Jean Saucier?	Relevance to common questions of fact and law	The objection is maintained. No relevance to common questions
O-9	80	Q. 292	And do you recall having sat down with these investment advisors and having gone through an investor profile with each of them?	Relevance to common questions of fact and law	The objection is maintained for reasons given on objection O-8
O-10	81	Q. 301	Okay. And would it be fair to say that this investment portfolio would have been a conservative investment portfolio?	Relevance to common questions of fact and law	The objection is maintained for reasons given on objection O-8



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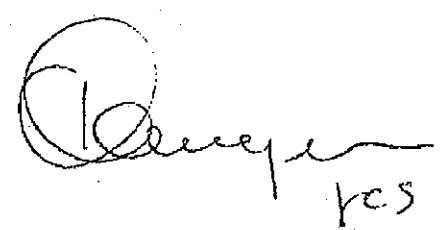
Obj. No.	Page	Question No.	Question or Undertaking	Reason	Decision
O-11	83	U-6	To provide a copy of the final statements of investment portfolio statement of Miss Nelles from RBC Dominion Securities, before it was cashed out and sent to BMO Nesbitt Burns; a copy of the final or most recent investment portfolio statement of Miss Nelles from BMO Nesbitt Burns, and also a copy of Miss Nelles investor profile form that she would have filled out with each of these investment brokerage houses		Does not possess the documents requested  The objection is maintained for reasons given on objection O-8
O-12	84	U-7	To verify whether there is any documentation of Miss Nelles authorizing the cashing out of the investments with BMO Nesbitt Burns, specifically in relation to the 2 cheques mentioned in P-4, pages 104 and 106.	Relevance	The objection is maintained. No relevance
O-13	87	Q.323	What was the rate of return on these investments your father was getting at BMO Nesbitt Burns?	Relevance to common questions of fact and law	The objection is maintained for reasons given on objection O-8
O-15	114	U-9	To verify and provide if any document, receipt, acknowledgement of receipt or other document was signed by Robert Tétrault upon receiving cash payments from Earl Jones in February and July 2008.		Does not possess any such documents  The questions have been answered
O-16	114	Q.453	Had you, when you held investment portfolios at Dominion Securities or BMO Nesbitt Burns, were you able to withdraw cash from those portfolios as easily?		Maintained for the reasons previously given



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VIRGINIA NELLES v. ROYAL BANK OF CANADA  
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Obj. No.	Page	Question No.	Question or Undertaking	Reason	Decision
O-17	114	Q.454	Just to complete the record, did you ever effect cash withdrawals in U.S. funds or Canadian funds, from your portfolios at DS or BMO Nesbitt Burns?		The objection is maintained
O-18	125	U-11	To provide any documents establishing the trust and any documents from Royal Trust regarding the administration or the operation of the trust	Relevance to common questions	Partial: Under reserve of our objection, enclosed a copy of the Last Will and Testament of William Thomas Whitehead.  The questions were answered under reserve
O-20	141	Q.558	Do you recall having received this letter? (under reserve)	Relevance to the case of suing the Royal Bank in damages	The questions were answered under reserve
O-21	142	Q.560	Okay. In paragraph 4, in the middle of the paragraph it says, "You should carefully consider the various tax consequences each decision may have for you. We strongly recommend that you consult with your tax advisor to assist you in making the decision that is best for you." Did you in fact consult a tax advisor? (under reserve)	Relevance to the case of suing the Royal Bank in damages	The questions were answered under reserve
O-22	144	Q.564	Before entrusting the funds to Earl Jones, did you consult a lawyer regarding the unseizability of the funds that you were receiving through the termination of the trust? (under reserve)	Relevance to the case of suing the Royal Bank in damages	The questions were answered under reserve

  
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Obj. No.	Page	Question No.	Question or Undertaking	Reason	Decision
O-23	148	Q.576	And the last paragraph it says, "As we are always looking for new ways to help our clients and their families, we wish to offer you, at not charge, a consultation with one of our financial planners." Did you take the Royal Trust up on that offer to meet, free of charge, with one of their financial planners? (under reserve)	Relevance to the case of suing the Royal Bank in damages	The questions were answered under reserve
O-24	152	Q.592	Okay. "We have both made personal investment commitments which we must finalize within the next ten (10) days." What are the "personal investment commitments" that you had made and that had to be finalized within the next ten (10) days? (under reserve)	Relevance	The questions were answered under reserve
O-25	161	Q.635	They're asking you to sign a Release Discharge Indemnity, did you sign one? (under reserve)	Relevance	The questions were answered under reserve
O-26	163	U-13	To provide the last statements received from the Royal Trust showing the origin of the funds which resulted in the 2 cheques that were deposited to Earl Jones trust on June 21, 2007.		Does not possess the final statement from Royal Trust showing the origin of the funds which resulted in the two cheques that were deposited on June 21, 2007 The objection is maintained for reasons given in O-5
O-27	200	U-15	To provide copy of the T5 slips provided to Miss Nelles from Earl Jones regarding the interest earned on her investments	Relevance	The objection is dismissed
O-28	201	U-16	To provide a copy of income tax returns from the year 2004 to 2009 regarding any investment revenue declared by Ms. Nelles on the interest earned on her investments with Earl Jones	Relevance	The objection is maintained

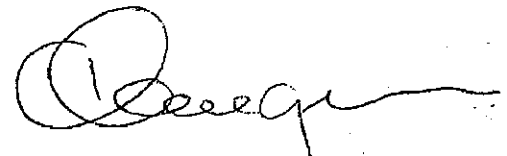
*Cherrie Jones*

OBJ. No.	Page	Question No.	Question or Undertaking	Reason	Decision
O-30	229	U-18	To provide copy of the bank account statements from Scotia bank for the month of September 2008, showing interest rate		The objection is maintained for reasons given in O-8
O-31	231	U-19	To provide the type of account that was held at Scotia and the rates of interest it offered from 2004 to 2009		Partial: The account was a chequing account, and does not know what the rates of interest were.  The objection is maintained for reasons given in O-8
O-12 (Jan 7 2011)	66	Q.178	When you remitted funds in trust to your notary upon the purchase of your property, what type of interest was being generated on those funds, to your knowledge?		The objection is maintained for reasons given in O-8
O-30 (Jan 7 2011)	85	Q.244	Is it true that you refused to reveal the rate of interest that Earl Jones was giving you?	Relevance	The objection is withdrawn
<b>3. Composition of Class</b>					
O-33 (Dec 17, 2010)	234	U-20	To indicate a list of who the class is	No right to require a list of members at this stage.	Does not have any such list
O-34	235	Q.990	Out of these hundred and fifty (150) people that are allegedly part of this class, according to your public demonstration, how many of them are seniors and how many are inheritors like yourself, like Mr. Joey Davis, like Mr...	Relevance to determination of collective loss and common questions	The objection is maintained

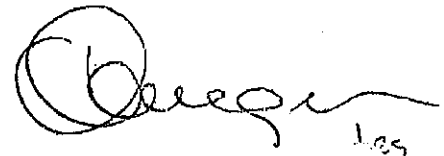
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OBJ. No.	Page	Question No.	Question or Undertaking	Reason	Decision
O-35	236	Q.993	Who are the other members of the committee?	Relevance	The objection is maintained
O-36	236	Q.994	What is your position within the committee?	Relevance	The objection is maintained
O-37	236	Q.995	Do you know how many trusts are part of the class description, as stipulated in paragraph 4?	Relevance	The objection is maintained
O-38	237	Q.996	Do you know how many estates are members?	Relevance	The objection is maintained
O-39	237	Q.997	Do you know how many corporations?		The objection is maintained
O-40	237	Q.998	Do you know how many trustees?	Relevance	The objection is maintained
O-41	237	Q.999	Do you know how all of the members of the class invested their funds with Earl Jones? Do you know if it was the same fashion as you?	Relevance	The objection is dismissed and the answer entered by counsel for Plaintiff is -I don't know-
O-42	237	Q.1000	To your knowledge, were the other members of the class simply looking for twelve percent (12%) interest return on their investment or greater?		The objection is dismissed and the answer is to be given in writing (in the form of an affidavit) by Mrs. Nelles



Obj. No.	Page	Objection No.	Question or Undertaking	Reason	Decision
O-43	238	Q.1001	Are you aware of any other investments or services that were offered provided by Mr. Earl Jones to any of the other class members?	Relevance	The objection is dismissed and the answer is to be given in writing (in the form of an affidavit) by Mrs. Nelles
O-44	238	Q.1002	Are you aware of any private loans that Mr. Jones would have organized, orchestrated?	Relevance	The objection is dismissed and the answer is to be given in writing (in the form of an affidavit) by Mrs. Nelles
O-45	238	Q.1003	Are you aware of any mortgages that he would have set up for any of the class members?	Relevance	The objection is dismissed and the answer is to be given in writing (in the form of an affidavit) by Mrs. Nelles
O-46	238	Q.1005	Are you aware of any of the other class members having conducted cash transactions with Earl Jones?		The objection is dismissed and the answer is to be given in writing (in the form of an affidavit) by Mrs. Nelles
O-2 (Jan 7 2011)	35	Q.76	Are you aware that Earl Jones did convince other class members to renegotiate their mortgages at a, for a higher amount in order to remit those funds and invest them with Earl Jones?		The objection is dismissed, and the answer will be provided by affidavit
<b>4. Quantification of loss suffered by plaintiff and members of the class</b>					
(Jan 7 2011)	23	U-23	To indicate what the capital loss of the estate would have been if the estate had been wound up. (under reserve)		Answer given under reserve
O-1 (Jan 7 2011)	25	Q.56	Were you ever mandated by this committee, by the leaders of this committee to assemble documentation to quantify the collective losses being claimed in the present proceedings?	Capital loss is being calculated by experts	The objection is dismissed and the answer is to be provided or confirmed by affidavit



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OBJ. No.	Page	Question No.	Question or Undertaking	Reason	Decision
O-9 (Jan 7 2011)	60	Q.158	Okay. And what efforts are you aware of – are you aware of any efforts that are being made to recover those funds from ex Earl Jones investors?	Relevance	The objection is dismissed and the answer is to be given by affidavit
O-31 (Jan 7 2011)	89	U-27.	To provide a copy of the documentation used to up with the estimated collective loss of \$40,000,000.		Partial: Ms. Nelles did not come up with the estimate of the collective loss. The estimate was based on the reports prepared by Richter, the RBC records, Mr. Jones' records, as well as the SQ report and records. The actual collective loss is being determined by our experts.  The Defendant shall be given access to all the information perused by the expert of the Plaintiff upon the filing of the expert's report which is to be expected around 30 June 2011.

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