

CLERK OF THE COURT  
**FILED**  
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JUDICIAL CENTRE  
OF CALGARY  
Clerk's Stamp

COURT FILE NUMBER 1401-13650  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFFS JOHN EDMUNDS, ^ and MERLYN STECIW as  
representative plaintiffs and THE INVESTMENT  
EXCHANGE MORTGAGE CORPORATION

DEFENDANT ROYAL BANK OF CANADA  
DOCUMENT **AMENDED STATEMENT OF CLAIM**

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**NOTICE TO DEFENDANT**

You are being sued. You are a Defendant.  
Go to the end of this document to see what you can do and when you must do it.

**Statement of Facts:**

**Parties**

1. The representative plaintiffs John Edmunds, ^ and Merlyn Steciw are individuals ordinarily resident in Alberta.
2. The defendant Royal Bank of Canada ("RBC") is a Schedule I Chartered bank pursuant to the *Bank Act* that carries on business in Alberta and elsewhere including at a retail branch located at 4820 Northland Drive NW, Calgary.

AMENDED this 22 day of February 2016 Pursuant to  
Rule 3-68  
dated the 22 day of February 2016

~~CLERK OF THE COURT~~

### The Investment Exchange Mortgage Corporation Fraud

3. The plaintiff The Investment Exchange Mortgage Corporation (“TIE”) is an Alberta company incorporated by one Kenneth Charles Fowler. At all material times, Fowler was TIE’s operating mind and sole director.
4. At all material times, TIE held a business bank account at the RBC Northlands branch, account # 1041862 (“TIE RBC Account”). Fowler was the sole or primary person authorized to access the TIE RBC Account.
5. Between about 2002 and 2010, Fowler, TIE and various employees, agents or affiliates of them, including one Douglas Wayne Schneider as the principal salesperson, solicited subscription investments in TIE. In meetings, written publications and other communications occurring during that time, TIE and said individuals made the following express representations, among others, to prospective subscription investors:
  - a. TIE had the following “corporate mission”:

To lend to entrepreneurs on a fully secured basis, short-term or interim financing to assist them in properly formulating a capital structure for their business.

And to provide investors with an exceptional fully secured rate of return while qualifying as a Mortgage Investment Corporation under the Canadian Income Tax Act.
  - b. TIE qualified as a mortgage investment corporation pursuant to the *Income Tax Act*.
  - c. TIE offered for sale 12% cumulative, retractable, preferred shares, redeemable March 31<sup>st</sup>, 2014 each with a par or redemption value of \$100.
  - d. The minimum subscription was 1000 preferred shares or \$100,000. A purchaser of preferred shares would become a “shareholder” of preferred shares issued by TIE.

- e. TIE would use the investment proceeds to invest primarily in residential mortgages, and might also hold funds on deposit at a bank or credit union, acquire interests in real property, invest in other Mortgage Investment Companies or real estate investment trusts, invest in commercial real estate mortgages, or carry out other investment activities which were permitted by law.
- f. Shares were RRSP-eligible and could be purchased as a current contribution to a self-directed RRSP, or purchased directly by an existing self-directed RRSP with available cash.

(The above are hereafter collectively referred to as the "Investment Representations".)

- 6. Between about 2002 and 2010, and in reliance on the truth of the Investment Representations, a total of approximately 200 investors purchased TIE preferred shares. The TIE investors included the representative plaintiffs as well as other individuals or entities from Alberta and elsewhere. Share purchases by TIE investors varied, but ranged from \$100,000 (1,000 shares) to in excess of \$1,000,000 (10,000 shares), and totaled an estimated \$27,000,000 ("Investment Proceeds").
- 7. Share purchases were typically made:
  - a. by investors providing funds to Fowler or TIE, or
  - b. in the case of shares to be purchased as a current contribution to a self-directed RRSP, by an intermediary trust company transferring the funds on behalf of the investor to Fowler or TIE.
- 8. The Investment Proceeds were then deposited by Fowler directly into the TIE RBC Account or the SGI TD Account.
- 9. The TIE investment was an unlawful Ponzi-type scheme perpetrated by Fowler and others to defraud TIE investors ("TIE Fraud").

10. The Investment Representations were fraudulent, in that:
  - a. they were intended to, and did, induce subscription investment in TIE; and
  - b. they were knowingly false or were made without a *bona fide* intent to act in accordance with them.
11. Fowler did not operate TIE as a mortgage investment company, or as any legitimate or lawful business at all.
12. The Investment Proceeds were not used by Fowler or TIE to invest in residential mortgages, or any secure investment.
13. Fowler, TIE and others instead misappropriated, converted or otherwise unlawfully disposed of the Investment Proceeds.
  - a. Fowler used the Investment Proceeds for his own personal gain and to finance an opulent lifestyle for himself, his family and others, including the purchase of a luxury homes, automobiles and clothing, international travel and trips aboard private aircraft. Fowler also used the Investment Proceeds to day-trade stocks, and lost an estimated \$4.68 million doing so.
  - b. Substantially all of the Investment Proceeds were transferred from the TIE RBC Account to a TD Waterhouse trading account controlled by Fowler, Fowler's personal bank accounts, or those belonging to corporate entities owned or controlled by Fowler, or others including Schneider.
  - c. Fowler used a portion of the Investment Proceeds to pay ostensible, but false, share dividends to TIE investors in an effort to perpetrate and conceal the TIE Fraud.
14. Fowler primarily used the TIE RBC Account between about 2002 and 2012 to process the monetary transactions comprising the TIE Fraud.

15. Fowler admitted to having forged or falsified and distributed TIE financial statements and other communications in an effort to perpetuate and conceal the TIE Fraud.
16. The Alberta Securities Commission (“ASC”) issued a cease trade order in respect of TIE, and charged Fowler and Schneider with offences under the *Securities Act*.
17. As of the date of filing of the within Amended Statement of Claim,
  - a. Fowler ^ was apprehended and returned to Canada and awaits trial on the aforementioned charges, and
  - b. Schneider ^ pleaded guilty to charges under the Securities Act, RSA 2000, c. S-4 in respect of his role in the TIE Fraud, on 20 July 2015.
18. All or substantially all of the Investment Proceeds have been spent, transferred, or otherwise disposed of by Fowler and others, such that the funds are unavailable to satisfy any claim to them by TIE investors. As a result, many TIE investors have lost their life savings or suffered catastrophic economic and other loss.

### **RBC Liability**

19. At the material times RBC (notably, management and staff at the RBC Northland branch in Calgary) knew, or should have known, or was wilfully blind to the following:
  - a. Fowler was the sole director and operating mind of TIE and in that capacity he owed fiduciary, common law, or other legal or equitable duties to TIE and TIE investors;
  - b. Fowler held out TIE as a mortgage investment company;

- c. the pattern, frequency, number, or types of transactions reasonably expected to be processed through an account held by a mortgage investment company;
  - d. Fowler was the sole person, or primary person, responsible for and authorized to access the TIE RBC Account;
  - e. on a daily, monthly or other periodic basis, the balance of the TIE RBC Account, and the particulars of every monetary transaction made using the TIE RBC Account;
  - f. funds passing through the TIE RBC Account were Investment Proceeds from TIE investors, and were either fraudulently obtained or being transferred in furtherance of a fraud; and
  - g. Fowler was and would be using the TIE RBC Account to perpetrate or facilitate a fraud upon TIE investors.
20. In the foregoing circumstances, RBC owed duties to TIE and TIE investors, including a common law duty in negligence and a fiduciary duty and a contractual duty, and said duties required RBC, among other things, to:
- a. act as a reasonable banker and to exercise care, diligence and skill in providing banking services and maintaining the TIE RBC Account so as to avoid causing or contributing to harm to TIE or TIE investors;
  - b. implement and adhere to internal policies or protocols to detect and prevent its accounts being utilized in furtherance of fraud;
  - c. comply with applicable law respecting the detection and reporting of fraud, particularly the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
  - d. monitor the TIE RBC Account and make all necessary and reasonable inquiries regarding any suspicious, irregular or unlawful activities in order

to, *inter alia*, prevent or minimize the likelihood that the TIE RBC Account could be used for fraudulent or unlawful purposes;

- e. if it was known or reasonably suspected that the TIE RBC Account was being used in furtherance of fraud or other unlawful acts, to immediately “freeze” or suspend all activity in the TIE RBC Account;
  - f. act honestly and diligently, in good faith and in the best interest of TIE and TIE investors; and
  - g. to take such further and other steps in furtherance of its duties, as may be proven at the trial of this action.
21. RBC breached its duties to TIE and TIE investors and caused or contributed to their loss, by permitting or aiding the TIE Fraud to be perpetrated by Fowler using the TIE RBC Account. In particular, RBC:
- a. failed to implement or adhere to, or ignored, its own internal policies in respect of the detection and prevention of fraud;
  - b. contravened applicable law in respect of the detection and reporting of fraud, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;
  - c. turned a blind eye to, failed to report or investigate, or permitted the movement of large sums of money from the TIE RBC Account into Fowler’s personal accounts or the SGI TD Account or elsewhere, notwithstanding its knowledge as particularized in herein;
  - d. failed to make any or adequate inquiries concerning Fowler or TIE or the TIE RBC Account, and gave Fowler preferential treatment as an RBC customer that facilitated fraudulent use of the TIE RBC Account;
  - e. committed such further and other breaches of duty in particulars as may be proven at the trial of this action.

22. Had RBC met its duties to TIE and TIE investors, the TIE Fraud would have been detected and prevented altogether, or minimized or mitigated and the loss suffered by TIE investors would have been avoided accordingly.
23. RBC profited or benefitted from Fowler's use of the TIE RBC Account in the TIE Fraud, in the form of:
  - a. receiving account fees and other charges, in amounts known only to RBC; and
  - b. using the funds while on deposit.
24. In the premises, RBC is liable to TIE and TIE investors:
  - a. for judgment or damages, for the loss of the Investment Proceeds, approximately \$27,000,000; or
  - b. a constructive trust in the amount of the lost Investment Proceeds, approximately \$27,000,000; and
  - c. disgorgement or restitution of sums that RBC received as account fees and other benefits received from its use of the Investment Proceeds deposited in the TIE RBC Account, the particulars of which are known only to RBC.

### **Relief Sought**

#### WHEREFORE THE PLAINTIFFS CLAIM OF RBC:

25. certification of the within action pursuant to the *Class Proceedings Act* and appointment of a class representative;
26. judgment or damages in the estimated amount of \$27,000,000 or such other amount proven at trial; or
27. a declaration that funds held by RBC in the estimated amount of \$27,000,000 are impressed with a constructive trust in favour of TIE or TIE investors;



28. restitution of sums RBC received in respect of account fees and other charges, in amounts to be proven at trial; and
29. costs of the action.

**NOTICE TO THE DEFENDANT**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.