



A class action by investors against mutual fund sellers and managers can go ahead, the Supreme Court has ruled.

Desjardins Financial Services sold mutual funds and helped people with financial planning. Desjardins Global Asset Management created and managed investments that people could buy.

Mr. Asselin talked to a Desjardins financial planner. The financial planner recommended he buy some investments. He bought them. The investments were “capital-guaranteed,” meaning he wouldn’t lose any money. The representative gave Mr. Asselin documents saying the investments would make money and weren’t risky. In the end, he earned nothing. He did get his original investment back, though.

Mr. Asselin said he only found out later that the investments were risky. He also said they were managed in a risky way. Mr. Asselin said he wouldn’t have bought them if he knew the risks. He argued that Desjardins Financial Services should have told its financial planners about the risk, so they could tell their clients. Other people were in the same position as him. Mr. Asselin decided to launch a “class action” lawsuit on their behalf. He said Desjardins Financial Services was directly responsible for the fact he didn’t make the money he expected. This was because it didn’t give proper instructions to its financial planners and other representatives. He said it was indirectly responsible for the representatives passing on the bad information. He also said Desjardins Financial Management was responsible because it created and managed the investments.

When a large group of people have the same legal problem, they might decide to get together and sue as a group. This is called a “class action” lawsuit. (The “class” is the group, so it’s a *group* action.) A class action lets the whole group get their complaint dealt with at once. Otherwise, each person would have to go to court on their own. A judge has to give permission for (authorize) the class action to go ahead. In Quebec, the judge’s main goal is to make sure the class action isn’t “frivolous” (has no chance of success).

The motion judge said the class action couldn’t go forward. The Court of Appeal said it could.

The majority of judges at the Supreme Court mostly agreed with the Court of Appeal. They said the motion judge went beyond making sure the class action wasn’t frivolous. This was legally wrong at this point in the process.

The majority didn’t make a decision about Mr. Asselin’s claim. It only said he could have his day in court.

The majority agreed with Mr. Asselin that Desjardins Financial Services had a “duty to inform” people about the risks. The majority said a trial judge might eventually hold it responsible directly (for not giving its representatives the information) and indirectly (through the representatives acting on its behalf). However, a trial judge would decide that later.

The majority said a trial judge might eventually hold Desjardins Global Asset Management responsible for how it designed and managed the investments. It might not be responsible for everything, though. Part of the class action asking for “punitive damages” (which aren’t meant to compensate victims, but to punish wrongdoers) wouldn’t go forward. The trial judge would have to decide what this covered.

Class actions are based on people having the same legal issues. This means the court has to deal with “common questions” (questions that are the same for many or all members of the group). But people may also have individual issues and questions. In Quebec, as long as there is one common question that pushes the class action forward, that’s enough. In this case, a common question was whether Desjardins Financial Services didn’t properly inform its representatives, who then failed to tell clients about the risks. It wasn’t about a particular financial adviser who made a mistake. All the financial advisers may have made the same mistake if they weren’t trained properly or given the right information.

Class actions are meant to help people get access to justice. This can be easier to do as a group instead of individually. When a class action is authorized, judges aren’t supposed to look at whether the case will be successful. They are just supposed to look at whether it has a chance of success. Different provinces and territories have different rules, but the goals are the same. The Court previously dealt with class actions in [*Atlantic Lottery Corporation Inc. v. Babstock*](#), [*Pioneer Corp. v. Godfrey*](#), [*L’Oratoire Saint Joseph du Mont Royal v. J.J.*](#), and [*TELUS Communications Inc. v. Wellman*](#).

Breakdown of the decision: *Majority:* Justice Nicholas [Kasirer](#) allowed the appeal in part (Chief Justice [Wagner](#) and Justices [Abella](#), [Karakatsanis](#), [Brown](#), and [Martin](#) agreed) | *Dissenting in part:* Justice Suzanne [Côté](#) said that the appellate courts should have deferred to the motion judge’s decision not to authorize the class action against Desjardins Financial Services, but that it could go forward against Desjardins Global Asset Management (only for compensatory damages though, not punitive damages) (Justices [Moldaver](#) and [Rowe](#) agreed)

More information (case # 37898): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings (in French only): [decision on motion for authorisation](#) (Superior Court of Quebec) | [appeal](#) (Court of Appeal of Quebec)
