File No. CI 06-01-46955

THE QUEEN'S BENCH
Winnipeg Centre

B E T W E E N:

BERNARD W. BELLAN, and ROBERT NELSON,

Plaintiffs,

- and -

THE GOVERNMENT OF MANITOBA,

Defendant

Proceedings under *The Class Proceedings Act*, C.C.S.M. c. C130

STATEMENT OF CLAIM

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STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court

office, **WITHIN 20 DAYS** after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: MAY 0 8 2006 Issued by: P. CECH-MANEK
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
FOR MANITOBA

Registrar

TO: **THE GOVERNMENT OF MANITOBA**
Attorney General
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CLAIM

1. The plaintiffs claim, on their own behalf and on behalf of all shareholders who owned class A common shares in The Crocus Investment Fund on December 10, 2004, except those persons hereinafter excluded:

a. an order certifying this proceeding as a class proceeding and appointing one or more representative plaintiffs;

b. an order directing that this action be tried together, or in sequence, with another, related proposed class proceeding, entitled *Bellan* v. *Curtis et al.*, Manitoba Court File No. CI 05-01-4276 (hereinafter, "*Bellan #1*");

c. a declaration that The Government of Manitoba (the "Crown") is directly and vicariously liable to the plaintiffs and to other class members for the damages they have suffered as a result of the conduct of directors of the Crocus Investment Fund ("Crocus Fund") who were officers, agents or servants of the Crown (the "Government Insiders");

d. a declaration that the Crown is directly and vicariously liable to the plaintiffs and to the other class members for the damages they have suffered as a result of the conduct of the Crown's officers, agents or servants;

e. damages in the sum of $150,000,000;

f. punitive and exemplary damages in the sum of $50,000,000 or such other sum as this Honourable Court may find appropriate;

g. a reference or such other directions as may be necessary to determine issues relating to liability and damages not determined in the trial of the common issues;

h. prejudgment and post-judgment interest pursuant to *The Court of Queen's Bench Act*, C.C.S.M. c. C280;

i. costs of this action pursuant to *The Court of Queen's Bench Act*, C.C.S.M. c. C280 as between a solicitor and his own client, including any applicable taxes; and,

j. such other relief as this Honourable Court may deem just.

2. Excluded from the class are the defendants in *Bellan #1*, members of the immediate family of each of the individual defendants in *Bellan #1*, subsidiaries or affiliates of the corporate defendants in *Bellan #1*, corporations or entities controlled by any person referred to above and the legal representatives, heirs, successors and assigns of any person referred to above.

OVERVIEW

3. The Crocus Fund is a labour sponsored venture capital corporation created by *The Crocus Investment Fund Act*, C.C.S.M. c. C308 (the "*Crocus Act*"). The Crocus Fund was incorporated March 21, 1992. The Crocus Fund has been a reporting issuer in Manitoba since 1992. The class period in this action (the "Class Period") runs from the date of the Crocus Fund's incorporation, on March 21, 1992, until trading in its shares was halted on December 10, 2004.

4. The Crocus Fund engaged in a continuous offering of its class A common shares under a prospectus since its incorporation which have not changed in any material respect. The most recent prospectus is dated January 21, 2004, amended October 14, 2004. Prospectuses which were identical in all material respects, except as provided otherwise below, were generally issued annually during the Class Period. They are collectively referred as "the prospectus".

5. The prospectus, at all material times, contained a certificate signed by two officers of the Crocus Fund and two members of the board of directors on behalf of all of the board of directors, including the Government Insiders, that the prospectus constituted full, true and plain disclosure of all material facts relating to the securities offered by the prospectus in accordance with part VII of the *Securities Act* and the regulations thereunder and does not contain any misrepresentation.

6. Throughout the Class Period the Government Insiders continually made the Representation, namely, that the Crocus Fund was properly valued at fair value and that the share price was not overstated (the "Representation"). This single Representation was made by the Government Insiders or any of them and persons acting under their direction and control through the prospectus.

7. This Representation was untrue, and the value of the shares in the Crocus Fund was dramatically over-stated. When information was finally revealed to the public concerning the true value of the Crocus Fund's assets, it became necessary for the Manitoba Securities Commission ("MSC") to halt trading in the Crocus Fund on December 10, 2004. None of the plaintiffs or any other Class Members have been able to redeem their shares in the Crocus Fund since that date.

PARTIES

The Plaintiffs

8. The plaintiff, Bernard W. Bellan (Bellan), lives in the City of Winnipeg, in the Province of Manitoba, and is a letter carrier. He owns 350 class A common shares of the Crocus Fund, which he purchased in 2001 at a cost of $13.98 per share.

9. The plaintiff, Robert Nelson, lives in the City of Winnipeg, in the Province of Manitoba, and is a retired transportation worker. He owns 237.1541 class A common shares of the Crocus Fund, which he purchased in 2003 at a cost of $12.65 per share.

The Crown

10. The Crown has had multiple and conflicting roles in the direction and supervision of the Crocus Fund since its inception. It has been a shareholder, an investment partner, an investment advisor, a promoter, an advocate, and a director of the Crocus Fund. It also owed a positive obligation to the plaintiff and class members to ensure that the Crocus Fund complied with the requirements of the *Crocus Act*. Its interests as a shareholder, investment partner, investment advisor, promoter, advocate and director of the Crocus Fund conflicted with its obligations to uphold the requirements of the *Crocus Act*.

11. The Crown passed the *Crocus Act* which created the Crocus Fund. Pursuant to section 1 of the *Crocus Act*, the Crown was made a Class G shareholder in the Crocus Fund and was entitled to elect one director to the board of the Crocus Fund. The Crown exercised this right, and appointed a series of its servants to the board of the Crocus Fund, including John Clarkson, Hugh Eliasson, Robert Swain and John Meldrum, to represent the Crown's interests in the management of the Crocus Fund. Details of these Government Insiders at the Crocus Fund are as follows:

a. John Clarkson ("Clarkson") was a director of the Crocus Fund from 2002 until 2004. He also executed a certificate attached to the 2002 and 2003 prospectuses attesting to the disclosure of all material facts relating to the distribution of the class A shares. He is also the Deputy Minister to the Crown, for the Ministry of Energy, Science and Technology. At all material times he acted as an officer, agent or servant of the Crown while sitting on the board of directors of the Crocus Fund;

b. Hugh Eliasson ("Eliasson") was a director of the Crocus Fund until 2002. He is also the Deputy Minister to the Crown, for the Ministry of Industry, Trade and Mines. At all material times he acted as an officer, agent or servant of the Crown while sitting on the board of directors of the Crocus Fund;

c. Robert Swain ("Swain") was a director of the Crocus Fund. He was also the Secretary to the Crown's Economic Development Board, and the CEO of the Crown's Economic Innovation and Technology Council. At all material times he acted as an officer, agent or servant of the Crown while sitting on the board of directors of the Crocus Fund;

d. John Meldrum ("Meldrum") was a director of the Crocus Fund. He was also the Secretary to the Crown's Economic Development Board, and the CEO of the Crown's Economic Innovation and Technology Council. At all material times he acted as an officer, agent or servant of the Crown while sitting on the board of directors of the Crocus Fund.

12. In addition, the Crown had other servants directly involved in the management of the Crocus Fund. These included Charles E. Curtis ("Curtis"), another Crown servant who sat on the board of directors of the Crown Fund, but was officially appointed in various years to represent either Class A or Class I shares. Curtis was a director of the Crocus Fund from 1992 until 2005. He is also a financial advisor to the Crown, Minister of Finance. At all material times he acted as an officer, agent or servant of the Crown while sitting on the board of directors of the Crocus Fund.

13. As well, the Crown appointed representatives to the Crocus Fund's Investment Advisory Committee, including Crown servant James F. Kilgour ("Kilgour"), the Director of Financial Services at the Crown's Department of Industry Trade and Mines.

14. Conflict of interest also characterized the inter-personal relationships the Crown allowed to exist in its supervision and management of the Crocus Fund. Eugene Kostyra ("Kostyra") had been a director of the Crocus Fund. After

leaving the Crocus Fund, he went on to become Secretary to the Crown's Ministry of Industry, Economic Development and Mines ("IEDM"), which had responsibility for monitoring the Crocus Fund and ensuring its compliance with the *Crocus Act.*

15. For reasons of misguided loyalty to their colleagues and former colleagues at the Crocus Fund, or for other improper reasons, the Government Insiders, Kilgour and Kostyra abused their public office with the Crown to prevent, block and otherwise shield the Crocus Fund from adequate investigation by the Crown.

16. Because of the above conflicts of interest, the Crown did not properly enforce the *Crocus Act* and deliberately ignored multiple warning signals over a sustained period regarding the management of the Crocus Fund. But for the Crown's conduct, the Crocus Fund would not have been able to make the Representation, or it would not have been able to make it for as long as it did. A foreseeable result of the Crown's conduct was damage to the plaintiffs and the other class members.

17. The Crown was also an investment partner of the Crocus Fund. The Crown invested in the Manitoba Science and Technology Fund, Limited Partnership, a subsidiary of the Crocus Fund. The Crown also invested in numerous companies in which the Crocus Fund invested through its Manitoba Industrial Opportunities Program.

18. The Crown was also an advocate and promoter of the Crocus Fund, including through the Labour Sponsored Investment Fund Program ("LSIFP") of the Ministry of Industry, Economic Development and Mines. The Crown sought to encourage Manitobans to invest in the Crocus Fund.

MATERIAL FACTS

Valuation Process

19. As set out above, the Crocus Fund offered class A common shares to the public by prospectus. The subscription process for class A shares is described in the prospectus.

20. On every Valuation Date (every Friday), the Crocus Fund calculated a pricing NAV (net asset value) per common share (the class A share price) as at 3:00 p.m. on the Valuation Date. The class A share price is the price at which one class A share could be purchased or redeemed on the Valuation Date. All subscriptions for class A shares and requests for redemption for class A shares which had been received since the last Valuation Date were processed on the Valuation Date using the class A share price. All purchases and redemptions were processed in this manner.

21. The Crocus Fund prospectus sets out the manner in which the class A share price is established starting at page 27, in its most recent iteration. In summary, the process was:

a. on each Valuation Date the board of directors (the board) was required to determine the fair value of the class A shares;

b. the board was required to follow a specific set of rules for determining the fair value of the class A shares. This required the board to determine the value of the investment assets of the Crocus Fund on each Valuation Date;

c. there were specific rules for determining the value of the investment assets based upon whether or not the investment assets had a public market (e.g., were listed on a stock exchange);

d. if, on a Valuation Date, the board determined there was a change which may have a material effect on the value of any investment asset the board was required to cause a re-evaluation of that investment asset or investment assets as at the Valuation Date;

e. the board, in 1999, delegated the setting of the class A share price to any two directors of the board who were authorized to sign a share price valuation certificate on behalf of the board as a whole.

22. The board established a process for determining the value of the investee companies to establish a net realizable value for the portfolio.

23. The staff valuation committee prepared the valuation for each investee company in the portfolio. Valuations were to be prepared at least annually where there was no public market for the securities of the investee company.

24. A valuation was not to be accepted unless all the members of the staff valuation committee agreed on a value.

25. Once valuations were completed they were to go to the valuation subcommittee of the board which comprised two or three board members and an external valuator who was to do a limited review of the valuations and advise the valuation subcommittee.

26. The valuation subcommittee was scheduled to meet monthly. If valuations were not available to be considered the meeting was to be cancelled.

27. On December 10, 2004 there were approximately 35,000 shareholders with approximately 13,500,000 outstanding class A common shares. On October 1, 2004 the publicly announced value of the Crocus Fund was approximately $190,000,000 and the price per class A share was $10.61.

2002 Solidarité Transaction

28. Under the *Crocus Act*, the Crocus Fund was required to maintain a minimum reserve account equal to the greater of:

a. 15% of the fair market value of its investment assets; and

b. (b) 50% of the total of its outstanding guarantees.

29. Under the *Crocus Act*, in the event that the Crocus Fund fell below its minimum reserve requirements for a period of more than 60 days, the Minister responsible for the Crocus Fund could declare the common shares of the Crocus Fund ineligible for tax credits. If that happened, the ability of the Crocus Fund to raise additional capital would be seriously curtailed or precluded.

30. In 2002, the Crocus Fund prepared an internal cash flow projection analysis covering the period July 2002 to September 2004. That analysis showed that without significant additional capital the Crocus Fund could fall short of its minimum reserve requirements by October 2002 and would stay below its minimum requirements until December 2002 – a 90 day period.

31. In order to prevent a shortfall in its minimum reserve requirements, the Crocus Fund negotiated a short term institutional "investment" of $10,000,000

from the Fonds de Solidarité FTQ (Solidarité) a Québec-based labour sponsored investment fund.

32. Prior to receiving the funds from Solidarité, the Crocus Fund had fallen below its minimum reserve requirement. Without the Solidarité funds, the Crocus Fund would have been in breach of its minimum reserve requirements and would have been unable to raise additional capital.

33. In the summer of 2002, the Crocus Fund arranged with Solidarité for Solidarité to make a $10,000,000 "investment" in institutional shares (class I) of the Crocus Fund, a special class of preferred shares created by the Crocus Fund especially for the transaction. On November 15, 2002, a final agreement was signed for the issuance of 790,513.83 series 3 class I special shares for consideration of $10,000,000. The shares carried a 10% guaranteed annual dividend rate.

34. The agreement was highly restrictive and one-sided in favour of Solidarité. The plaintiffs plead that the transaction, rather than being an "investment" was in effect an onerous loan and was improperly and inaccurately characterised in the relevant financial statements of the Crocus Fund as an investment. The agreement further provided that Solidarité could require the Crocus Fund to purchase all or any part of said shares after May 15, 2004 and that the Crocus Fund was required to purchase any remaining outstanding shares at November 15, 2004. The agreement provided as well for a 10% penalty (in addition to the

annual dividend) on any shares outstanding after November 15, 2004 and 10% interest on unpaid dividends. Under the agreement, Solidarité had a guaranteed right to the dividend payment and it was not discretionary. Had the Crocus Fund not paid dividends (which were paid even when the Crocus Fund was in a loss and deficit position) Solidarité could have taken action to collect the principal investment amount, outstanding dividends and any interest penalties from the Crocus Fund. These characteristics are fundamental characteristics of a liability rather than an investment. The unconditional requirement to repay demonstrates that the transaction was a loan.

35. The plaintiffs plead that the mischaracterisation of the "investment" in the financial statements referred to in this pleading, constitutes a part of the Representation in that the effect inflated the value of the shares of the Crocus Fund.

36. The plaintiffs plead that the conduct of the Government Insiders in participating and consenting to or in failing to disclose the true nature of that arrangement constitutes oppression.

Regulatory Intervention

37. The MSC, issued a cease trading order and the Crocus Fund ceased redeeming its shares on December 10, 2004. In April 2005 the acting CEO of the Crocus Fund suggested that the current value of its shares was just below

$7.00, almost a third less than their supposed value when trading was halted. The devaluation amounts to a $46,000,000 decrease in the Crocus Fund's net asset value. Trading remains halted and more than 30,000 Manitoba investors are still unable to access their investments which total more than $150,000,000. An interim receiver of the Crocus Fund was appointed on the motion of the MSC on or about June 27, 2005. In fact, the net asset value of the Crocus Fund is now substantially less than $7.00 per share and the plaintiffs and the class will likely recover less than 20% of their investment.

38. In a May 2005 report Manitoba's Auditor General identified several issues concerning the Crocus Fund, including:

a. a lack of oversight by the Crocus Fund's board of directors;

b. flaws in the Crocus Fund's investment procedures;

c. abuse of the Crocus Fund's travel and expense policy;

d. the value of the Crocus Fund's assets appeared to have been overstated;

e. the implementation of the valuation process was flawed.

39. In a statement of allegations dated April 4, 2005, the MSC alleged, among other things that:

a. the most recent Crocus Fund prospectus did not contain plain and full disclosure concerning the A share price;

b. the board of the Crocus Fund acted contrary to the public interest in numerous ways.

The Value of the Crocus Fund was Overstated

40. The plaintiffs allege that throughout the Class Period the Government Insiders overstated the Crocus Fund's assets and overstated the value of its shares. This resulted from the failure of the Government Insiders to exercise proper oversight with respect to the business and affairs of the Crocus Fund. The Crocus Fund's shareholders were, therefore, misled into purchasing shares at inflated prices. The non-disclosure of the true value of the shares and the continuation of trading in the Crocus Fund shares created a real monetary loss for innocent shareholders.

41. Had the Government Insiders applied reasonable skill and diligence they would have discovered and disclosed the material adverse facts or the risk of material adverse facts. The Government Insiders failed to apply reasonable skill and diligence and failed to discover and disclose the material adverse facts.

42. The Crown, both vicariously through the Government Insiders, and directly through its own statements and actions promoting the Crocus Fund, represented the Crocus Fund as a major success story, a business enterprise benefiting Manitoba with the expectation of growth in the future. The picture thus created was a sham.

Non-Disclosure

43. The prospectus contained the Representation that the Crocus Fund would be properly priced at fair value and that the share price would not be overstated. The prospectus failed to make full, true and plain disclosure concerning the class A share price in the following respects:

a. the Government Insiders routinely and consistently overstated the class A share price valuations and priced the Crocus Fund at inflated values;

b. the Government Insiders routinely and consistently failed to determine the fair value of the class A common shares of the Crocus Fund as at each Valuation Date;

c. the Government Insiders allowed the Crocus Fund to accept subscriptions and pay out redemptions for class A shares using a

class A share price which had not been approved by the Government Insiders as at each Valuation Date;

d. the Government Insiders failed to establish appropriate procedures to ensure compliance with their statutory obligations and the other obligations disclosed in the prospectus, i.e., that the fair value of the class A shares of the Crocus Fund were required to be determined by the board as at each Valuation Date;

e. the Government Insiders failed to ensure valuations were completed in a timely manner;

f. the Government Insiders failed to seek a suspension of trading for the class A shares as soon as they knew or ought to have known of changes which might have had a material effect on the value of any investment asset of the Crocus Fund;

g. the Government Insiders knew or ought to have known throughout the class period that there was an overvaluation of the share price and failed to cause a revaluation of the investment asset or assets affected by such changes as at the earliest possible Valuation Date;

h. the Government Insiders executed or are bound by share valuation certificates thereby signifying that they approved the class A share price after the appropriate Valuation Date and after the price had been set by the Crocus Fund staff and used for the purposes of sales and redemptions of class A shares which were completed prior to the board members approving the share price;

i. valuations were issued which did not reflect a fair valuation of the Crocus Fund's portfolio and specifically did not reflect net realizable value.

44. The plaintiffs also state that the statements to the contrary in the prospectus in general and the Representation in particular were lacking a reasonable basis when they were made.

45. At all material times the Government Insiders knew or ought to have known that the statements to the contrary in the prospectus and the Representation in particular were lacking in a reasonable basis when they were made.

46. By virtue of their position of authority and responsibility within the Crocus Fund, the Government Insiders had access to material information respecting the business and affairs of the Crocus Fund. Each of the Government Insiders

reviewed, approved, ratified and/or authorized, whether explicitly or implicitly, the statements in the prospectuses.

47. By virtue of their positions of authority and responsibility within the Crocus Fund, each of the Government Insiders had a duty to disseminate promptly, or to ensure the prompt dissemination of, truthful, complete and accurate statements, i.e., to make full, plain and true disclosure regarding the Crocus Fund's business and affairs and promptly to correct previously issued materially incorrect information so that the share price and the value of the Crocus Fund would be based upon complete, accurate and truthful information.

48. In certifying that each prospectus contained no material misrepresentations or omissions, the Government Insiders participated in or facilitated the wrongdoing described herein as they knew or ought to have known that it did contain such misrepresentations and/or omissions.

LIABILITY OF THE CROWN

49. The Crown is directly and vicariously liable for the conduct of the Government Insiders as directors of the Crocus Fund, and in particular for their breaches of s.141 of the *Securities Act,* s.234 of the *Corporations Act* and s. 52 of the *Competition Act.* These breaches of duty for which the Crown is responsible include, without limitation:

a. The Government Insiders, or any of them, failed in their duties to provide full, true and plain disclosure to the plaintiffs and class members in the prospectus, and permitted the issuing of the prospectus containing the Representation, a materially false statement, contrary to the *Securities Act*. These breaches by Crown officers, agents and servants were characterized by conflicts of interest, gross or serious carelessness, recklessness and bad faith;

b. The Government Insiders, or any of them, conducted the business and affairs of the Crocus Fund, and exercised their powers as directors of the Crocus Fund, in a manner that was oppressive to the plaintiffs and class members, contrary to s.234 of the *Corporations Act*;

c. The Government Insiders, or any of them, made the Representation to the public, which was false and misleading in a material respect, for the purpose of promoting, directly or indirectly, the sale of shares in the Crocus Fund, or for the purpose of promoting, directly or indirectly, the business interests of the Crocus Fund, contrary to s.52(1) of the *Competition Act*. The plaintiffs and class members have suffered damages as a result and are entitled to recovery of their losses pursuant to s.36 of the *Competition Act*.

50. The Crown is directly and vicariously liable for the damages suffered by the plaintiffs and class members as a result of the conduct of its officers, agents and servants, including the Government Insiders, Kilgour and Kostyra, who abused their public office, and improperly shielded the Crocus Fund from compliance with the *Crocus Act* and from adequate investigation by the Crown. The conduct of the Crown officers, agents and servants was intentional and unlawful and was done with awareness that it was likely to injure the plaintiff and class members.

51. The Crown was negligent in permitting the Government Insiders, Kilgour and Kostyra to exercise authority with respect to the monitoring and investigation of the Crocus Fund, and in not directing that the Government Insiders, Kilgour and Kostyra recuse themselves from such responsibilities given their ties to the Crocus Fund. This was gross or serious negligence and recklessness.

52. The Crown received multiple warning signals, over a prolonged period, that the Crocus Fund was not being properly managed in compliance with the *Crocus Act*, but the Crown chose to ignore these warning signals to the detriment of the plaintiffs and class members. These warning signals included:

a. repeated requests by the Crocus Fund for amendments to the *Crocus Act* which revealed the Crocus Fund's growing liquidity problems. This included a requested change to the Crocus Fund's

pacing requirements. That is, the ratio of net share sales to redemptions. The Crocus Fund was seeking a much more aggressive ratio to deal with the fact that redemptions were outstripping sales of new shares at an unsustainable rate;

b. an internal analysis prepared by the IEDM in January 2001 which revealed the Crocus Fund's growing liquidity problems, and its pacing obligation difficulties; and

c. meetings between officials of the IEDM and representatives of the Crocus Fund, including a meeting in mid 2001, in which officials of the IEDM expressed concerns that the Crocus Fund's long-term investment plans were vague and unfocussed, and were altering the risk profile of the Crocus Fund to the detriment of existing and future shareholders, without notice to the shareholders.

53. The Crown breached its duty to adequately monitor the Crocus Fund and ensure the Crocus Fund's compliance with the *Crocus Act*. The Crown deliberately or negligently failed to fulfil its obligation to adequately monitor the Crocus Fund's compliance with the *Crocus Act*, including:

a. the IEDM's monitoring efforts were inconsistent and insufficiently documented;

b. decisions by the IEDM as to whether the Crocus Fund was complying with the *Crocus Act* were made on the basis of inadequate documentation and information;

c. the IEDM improperly filled out required information returns on behalf of the Crocus Fund, rather than insist that the Crocus Fund fill out the required information returns;

d. the eligibility of the Crocus Fund's investments was not assessed by the Crown;

e. the Crown applied the wrong time framing when preparing its pacing calculations for the liquidity of the Crocus Fund. As a result, the Crown over-estimated the timelines available to the Fund to meet its pacing obligations;

f. the Crown failed to ensure that the Crocus Fund complied with s.15.1(1)(b) of the *Crocus Act* to provide audit assurance on its returns of information; and

g. the Crown improperly and repeatedly granted the Crocus Fund approval to make investments, totalling $31 million, which were otherwise ineligible under the *Crocus Act*, without insisting on proper documentation or analyses regarding these investments.

54. Because of the Crown's obligations under the *Crocus Act*, and because of its position as a shareholder, director, investment advisor, promoter and advocate for the Crocus Fund, and its unique access to knowledge concerning the operations and management of the Crocus Fund to which the plaintiffs and other class members were not privy, the Crown was in relationship of sufficient proximity to the plaintiffs and other class members as to owe them a duty of care to ensure compliance by the Crocus Fund with the *Crocus Act*, and to warn the plaintiffs and other class members of serious financial difficulties with the Crocus Fund.

55. The plaintiffs and other class members reasonably relied upon the Crown to ensure compliance by the Crocus Fund with the *Crocus Act* and to warn the plaintiffs and class members of serious financial difficulties or risks with the Crocus Fund. The Crown played a prominent and intimate role, directly and vicariously, in managing, promoting, supporting, advocating and investing in the Crocus Fund. The plaintiffs and other class members reasonably relied upon the Crown to take appropriate care in the monitoring and supervision of the Crocus Fund.

56. As set out above, the Crown had actual knowledge that the Crocus Fund was facing increasing liquidity problems, and that its investment strategies were altering the risk profile of the fund to detriment of current and future shareholders, without notice to the shareholders. The Crown ought to have taken steps to warn

the plaintiffs and class members about these serious financial difficulties at the Crocus Fund. Instead, the Crown did nothing.

57. The officers, agents and servants of the Crown for whom the Crown is vicariously liable were, at all material times, acting within the scope of their employment as officers, agents and servants of the Crown. The conduct of the Crown and of its officers, agents and servants was characterized by conflicts of interest, gross or serious carelessness, recklessness and bad faith. The actions and failures to act by the Crown and by its officers, agents and servants were operational in nature. To the extent that the conduct related to policy decisions, those decisions involved bad faith and were an abuse of public office.

DAMAGES

58. The plaintiffs plead that by virtue of the Crown's actions described herein the plaintiffs and other class members suffered loss and damages and the Crown is liable for damages to the plaintiffs and the other class members which are in excess of $150,000,000.

COSTS (INCLUDING THE COST OF INVESTIGATION)

59. Pursuant to s. 36 of the *Competition Act*, the plaintiffs and class members claim recovery of their full costs of investigation in connection with this matter and of these proceedings.

60. The plaintiffs and the other class members are also entitled to recover, as damages or costs in this action, the cost of administering the plan to distribute the recovery in this action which will probably exceed $1,000,000.

PUNITIVE AND EXEMPLARY DAMAGES

61. The Crown's conduct, as described herein, was highhanded, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in disregard of the rights of each class member, indifferent to the consequences, and motivated by improper considerations and as such render it liable to pay punitive damages in the amount of $50,000,000.

RELEVANT STATUTES

62. The plaintiffs plead and rely upon *The Class Proceedings Act*, C.C.S.M. c. C130, *The Securities Act*, C.C.S.M. c. S50, *The Corporations Act*, C.C.S.M. c. C225, *The Proceedings Against the Crown Act*, C.C.S.M. c. P140, and the *Competition Act*, R.S.C. 1985, c. C-34.

Dated: May 8, 2006

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Solicitors for the Plaintiffs