

**SUPREME COURT OF PRINCE EDWARD ISLAND
(GENERAL SECTION)**

BETWEEN:

(Court Seal)

CAPITAL MARKETS TECHNOLOGIES, INC. and 7645686 CANADA INC.
Plaintiffs

and

GOVERNMENT OF PRINCE EDWARD ISLAND, WES SHERIDAN, STEVE MACLEAN,
ALLAN CAMPBELL, CHRIS LECLAIR, BRAD MIX, CHERYL PAYNTER,
STEVEN DOWLING, WILLIAM DOW, MELISSA MACEACHERN,
ROBERT GHIZ, GARY SCALES, TRACEY CUTCLIFFE, NEIL STEWART,
PAUL JENKINS, and 7628382 CANADA CORPORATION
Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Prince Edward Island.

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 forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

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

DOCUMENT FILED
JUN 14 2018
Supreme Court of P.E.I.

Date June 14 2018

Issued by E. Murray
Local Registrar

Address of
court office: Sir Louis Henry Davies Law Courts
PO Box 2000
42 Water Street
Charlottetown, PE C1A 7N8

TO: GOVERNMENT OF PROVINCE OF PRINCE EDWARD ISLAND
c/o Stewart McKelvey
65 Grafton Street
Charlottetown, PE C1A 1K8

AND TO: WES SHERIDAN
c/o Stewart McKelvey
65 Grafton Street
Charlottetown, PE C1A 1K8

AND TO: STEVE MACLEAN
c/o Stewart McKelvey
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AND TO: ALLAN CAMPBELL
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AND TO: CHRIS LECLAIR
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AND TO: GARY SCALES
McInnes Cooper – Regional Lead Partner
McInnes Cooper Building
141 Kent St.
Charlottetown PE C1A 1N3

AND TO: TRACEY CUTCLIFFE
Atlantic Lottery Corporation
58 Kensington Rd.
Charlottetown PE C1A 9S8

AND TO: NEIL STEWART
c/o Stewart McKelvey
65 Grafton Street
Charlottetown PE C1A 1K8

AND TO: PAUL JENKINS
1 Bardin Crescent
Charlottetown PE C1A 1L8

AND TO: 7628382 CANADA CORPORATION
1 Bardin Crescent
Charlottetown PE C1A 1L8

CLAIM

1. The plaintiff, 7645686 Canada Inc., claims against the defendant, Government of Prince Edward Island:

- (a) damages for breach of its good faith performance of contract and failure to act honestly in the performance of its contractual obligations in the amount of \$50,000,000;
- (b) alternatively, damages for breach of exclusivity and confidentiality in the amount of \$50,000,000;
- (c) prejudgment interest in accordance with section 57 of the *Judicature Act*, R.S.P.E.I. 1988, J-2 ;
- (d) postjudgment interest in accordance with section 58 of the *Judicature Act*;
- (e) the costs of this proceeding, plus all applicable taxes; and
- (f) such further and other relief as to this Honourable Court may seem just.

2. The plaintiffs, Capital Markets Technologies, Inc. and 7645686 Canada Inc., claim against Wes Sheridan, Steve Maclean, Allan Campbell, Chris LeClair, Brad Mix, Cheryl Paynter, Steven Dowling, William Dow, Melissa MacEachern, Robert Ghiz, Gary Scales, Tracey Cutcliffe, Neil Stewart and the Government of Prince Edward Island, jointly and severally, and severally to the claim in subparagraph 1(a) above:

- (a) damages for misfeasance in a public office in the amount of \$50,000,000;

- (b) prejudgment interest in accordance with section 57 of the *Judicature Act*;
- (c) postjudgment interest in accordance with section 58 of the *Judicature Act*;
- (d) the costs of this proceeding, plus all applicable taxes; and
- (e) such further and other relief as to this Honourable Court may seem just.

2A. The plaintiffs, Capital Markets Technologies, Inc. and 7645686 Canada Inc., claim against the defendants, Robert Ghiz, Neil Stewart and the Government of Prince Edward Island, severally to the claim in subparagraph 1(a) above;

- (a) damages for spoliation in the amount of \$50,000,000;
- (b) prejudgment interest in accordance with section 57 of the *Judicature Act*;
- (c) postjudgment interest in accordance with section 58 of the *Judicature Act*;
- (d) the costs of this proceeding, plus all applicable taxes; and
- (e) such further and other relief as to this Honourable Court may seem just.

3. The plaintiffs, Capital Markets Technologies, Inc. and 7645686 Canada Inc., claim against the defendant, Paul Jenkins, severally to the claim in subparagraph 1(a) above;

- (a) damages for breach of fiduciary duty in the amount of \$50,000,000;
- (b) prejudgment interest in accordance with section 57 of the *Judicature Act*;
- (c) postjudgment interest in accordance with section 58 of the *Judicature Act*;

- (d) the costs of this proceeding, plus all applicable taxes; and
- (e) such further and other relief as to this Honourable Court may seem just.

DEFINITIONS

4. In this Amended Statement of Claim:

- (a) “7645686” is the plaintiff, 7645686 Canada Inc., a wholly-owned subsidiary of CMT;
- (b) “7628382” is the defendant, 7628382 Canada Corporation, which corporation was incorporated and controlled by Jenkins;
- (b1) “Beck” was Rory Beck who was Chief of Staff to Robert Ghiz and Clerk of the Executive Council;
- (c) “Campbell” is the defendant, Allan Campbell, who was an officer of the Crown from October of 2011, when he was appointed Chief of Staff to Robert Ghiz, up until 2014 when he left that position;
- (d) “CMT” is the plaintiff, Capital Markets Technologies, Inc.;
- (d1) “Cutcliffe” is Tracey Cutcliffe who is a Government Relations Specialist with KCM Strategy Group (now Group M5) and was contracted by both the Government of Prince Edward Island and CMT to provide government relations services;

- (d2) “Dowling” is Steven Dowling who was a General Counsel in the Consumer, Corporate and Insurance Division of the Department of Justice and Public Safety;
- (d3) “Dow” is William Dow and was counsel to Innovation PEI;
- (e) “FMT” means Financial Markets Technologies, which was a trade name for 7645686;
- (e1) “Ghiz” is Robert Ghiz who was Premier of Prince Edward Island from 2007 up to his resignation on February 23, 2015;
- (f) “Innovation PEI” was a department of the Government of Prince Edward Island responsible for advancing economic development for Prince Edward Island;
- (g) “Jenkins” is the defendant, Paul Jenkins, who is a pharmacist and businessman who resides in the Province of Prince Edward Island;
- (h) “Jessop” is Gary Jessop, a lawyer and a director of CMT. Up until January of 2013, Jessop practiced with Blake, Cassels & Graydon, practicing primarily in the area of corporate re-organization and mergers and acquisitions. When Blake, Cassels & Graydon closed their Ottawa office, Jessop continued to practice law in the partnership of Jessop & Proulx LLP in Ottawa, Ontario;
- (i) “LeClair” is the defendant, Chris LeClair, who was an officer of the Crown as Chief of Staff to Robert Ghiz until October of 2011, and thereafter, as an agent of the Crown, when he joined the law firm of McInnis Cooper LLP and became a member of the PEI Gaming Committee;

- (i1) “MacEachern” is Melissa MacEachern who was Deputy Minister of Tourism and Culture up to November of 2011 and thereafter was Deputy Minister responsible for Innovation PEI;
- (j) “MacLean” is the defendant, Steve MacLean, who at all material times was an officer of the Crown. He was the Clerk of the Executive Council and Secretary to the Cabinet;
- (k) “Maines” is Paul Maines, the President and a director of CMT;
- (k1) “Manago” is Sebastiano Manago who was Director of Consumer Sales & CRM at Innovation PEI;
- (l) “Mix” is the defendant, Brad Mix, who at all material times was an officer of the Crown as the Senior Director, Prospecting and Innovations Programs, for Tourism PEI;
- (m) “MOU” is the Memorandum of Understanding entered into between Innovation PEI and 7645686 on or about July 6, 2012;
- (n) “Paynter” is the defendant, Cheryl Paynter, who was at all material times an officer of the Crown as the Chief Executive Officer of Innovation PEI;
- (n1) “Scales” is Gary Scales, a lawyer with McInnis Cooper, who was contracted by the Province of Prince Edward Island to provide management services to the PEI Gaming Committee;

- (o) “Sheridan” is the defendant, Wes Sheridan, who was at all material times an officer of the Crown. He was a Member of the Legislative Assembly for Kensington-Malpeque. He was appointed Provincial Treasurer on June 12, 2007 and, in 2010, was appointed Minister of Finance and Municipal Affairs. He was the Chair of the Treasury Board and Chair of the PEI Lotteries Corp. He was also a member of the PEI Gaming Committee. On February 23, 2015, Sheridan resigned his seat in the Legislature;
- (p) “Simplex” is Simplex Consulting Ltd., a corporation incorporated in the United Kingdom and based in London, England;
- (q) “Sterci” is Sterci SA, subsidiary of Steria Group based in Geneva, Switzerland; and
- (s1) “Stewart” is Neil Stewart who was Deputy Minister Workforce and Advanced Learning;
- (r) “Walsh” is Philip Walsh who was the Chief Executive Officer of Simplex.

CORPORATE STRUCTURE OF THE PLAINTIFFS

- 5. 7645686 is a corporation incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, on September 10, 2010, with its registered office at 140 Plug Street, R.R. #1, Kensington, PE C0B 1M0.
- 6. 7645686 is a wholly owned subsidiary of CMT with all of the voting shares in 7645686 being held by CMT.
- 7. Up until at least October 5, 2012, Jenkins was the sole director of 7645686.

8. The current directors of 7645686 is are Jessop and Maines.
9. CMT is a corporation incorporated in the State of Florida with its registered head office at 8 Faneuil Hall Marketplace, 3rd Floor, Boston, Massachusetts.
10. CMT is registered as an extra-provincial corporation under the *Extra-Provincial Corporations Registration Act*, R.S.P.E.I. 1988, E-14, its address for service is 140 Plug Street, R.R. #1, Kensington, PE C0B 1M0.
11. The directors of CMT are Maines, Jessop and Andrew McCreath.
12. Throughout the material period, from 2011 to 2014, CMT controlled 32% of the common voting shares of Simplex. The balance of the common voting shares in Simplex were held by Sterci and Walsh.
13. Sterci was a leading international corporation in STP software development and has over 25 years' experience in financial messaging.

SIMPLEX GLOBAL TRANSACTIONS PLATFORM

14. CMT in 2007 became a listed entity, by way of reverse takeover, of a dormant NASDAQ listed company which had no outstanding liabilities and significant carry forward losses which made it attractive to investors.
15. The company was reorganized and rebranded as CMT to carry on the business of providing financial technology solutions to global financial institutions and major corporations.
16. In 2007 CMT acquired 100% of Simplex.

17. Simplex was an authorized user of SWIFT secure financial messaging services and a SWIFT accredited partner.
18. SWIFT is a global member-owned cooperative and is the world's leading provider of secure financial messaging services.
19. Simplex had developed, as a SWIFT partner, a comprehensive and proven platform that provided for a system of settling financial transactions for a broad range of currencies and jurisdictions among numerous financial institutions using SWIFT, which platform became the Simplex Global Transaction Platform.
20. CMT obtained accreditation from the Bank of England for use of the Simplex Global Transaction Platform with the Bank of England acting as a settlement agent.
21. As Simplex became significant technology partners with global banks, it was required to increase its capital account to satisfy the regulatory requirements of the banks. Tier 1 banking partners are required to have \$20,000,000 in liquid net assets. CMT partnered with Sterci who could provide the required capital. Sterci became a 51% equity owner of Simplex, with CMT maintaining control of the board of directors.
22. CMT had the exclusive licence from Simplex to establish the Simplex Global Transaction Platform in any state or province in North America.
23. In early 2010, CMT, through Simplex, had realized significant growth of the use of its platform with existing clients, such as the Bank of Scotland, HSBC, ABN Amro, GLG Mann and Bank of America, 5 of the largest banks in the world, as users of the Simplex Global Transaction Platform.

24. In September of 2010, upon the direction and suggestion of Jenkins and LeClair, 7645686 was incorporated for the purpose of negotiating a contract with the Government of Prince Edward Island to establish a financial electronic payments and transaction management platform in Prince Edward Island under the direction and management of CMT.

25. The strategic plan of CMT and Simplex was to establish the Simplex Global Transaction Platform in a jurisdiction in North America. Once the Simplex Global Transaction Platform was established in North America, both existing clients of Simplex and new clients of CMT who were in need of the management of their financial electronic payments and transactions in North America could be contracted as users of Simplex, creating a steady revenue stream for the plaintiffs.

26. As owner of the North American rights for the Simplex Global Financial Platform, CMT would be responsible for all of the costs associated with negotiating with the Government of Prince Edward Island and incurred in the establishment of the Simplex Global Transaction Platform in Prince Edward Island.

MEMORANDUM OF UNDERSTANDING (“MOU”)

27. On or about July 6, 2012, Innovation PEI entered into a Memorandum of Understanding with 7645686 (the “MOU”).

28. Paynter signed the MOU on behalf of Innovation PEI and Jessop signed on behalf of 7645686.

29. The preamble of the MOU stated that Innovation PEI was interested in 7645686 locating a financial services centre in Prince Edward Island and was willing to provide 7645686 with any necessary contacts it had in order to facilitate the creation of such a facility in the province.

30. The MOU acknowledged that 7645686 and Innovation PEI were willing to enter into formal discussions regarding the terms and conditions of an agreement to be entered into between the parties that would provide for the establishment by 7645686 of a financial services centre in Prince Edward Island.

31. The MOU, *inter alia*, imposed certain terms upon 7645686 and Innovation PEI, specifically:

- (a) in paragraph 4, it established an “Exclusivity Period” which was defined as the 60-day period following the signing of the MOU during which period neither 7645686 nor Innovation PEI, nor any of its employees, officers, contractors, agents, representatives and/or professional advisors, could discuss with any other Canadian provincial government the opportunity and know-how for a financial services centre to be created;
- (b) in paragraph 6, it provided that any party that received Confidential Information, as that term was defined in the MOU, would keep such information confidential.; and
- (c) in paragraph 11, the MOU requires “each party to act in good faith in all further discussions and negotiations relating to the matters contemplated by this MOU.”

EVENTS LEADING TO THE MOU

32. In July of 2010, Jenkins represented to Maines that he had contacts with influential members of the Government of Prince Edward Island and that he had been advised by these contacts that the Government of Prince Edward Island had lost a great number of technology jobs and, as its priority, had an interest in attracting and partnering with financial services companies such as CMT.

33. Further, Jenkins represented to Maines that the Government of Prince Edward Island could provide CMT with a tax free zone where international clients could set up business without Canadian taxes, in addition to grants, employee rebates and other financial incentives if CMT could create jobs in Prince Edward Island.

34. On July 23, 2010, Maines and Walsh travelled to Charlottetown and met with Jenkins, to discuss the opportunities that were being proposed to CMT by the Government of Prince Edward Island.

35. Jenkins represented to Maines and Walsh that he had been advised by LeClair and Mix that having a "local PEI" corporation with a Prince Edward Island resident acting as controlling director was a necessary condition to securing the Government of Prince Edward Island as a strategic partner.

36. Jenkins further represented to Maines and Walsh that the incorporation of a wholly-owned Canadian controlled subsidiary was required to enable the Government of Prince Edward Island to partner with CMT for the purpose of establishing the Simplex Global Transaction Platform in Prince Edward Island.

37. Jenkins insisted that he control the new Canadian corporation and represented to Maines and Walsh that it was important to the Government of Prince Edward Island to have a resident of Prince Edward Island appear to control the corporation. Maines, Walsh and Jessop agreed on the following conditions: (a) that no separate bank account be set up for the new corporation, (b) that CMT be the sole shareholder of the newly incorporated Canadian corporation, (c) that Jessop have control over incorporating the new corporation on behalf of CMT, and (d) that there would be no risk to the existing shareholders of CMT.

38. On August 19, 2010, following a request by Jenkins, Maines provided proprietary information to Jenkins of Simplex's existing banking contracts and detailed responses to requests for proposals by Simplex to proposed bank contracts.

39. On August 20, 2010, Maines and Jenkins travelled to Ottawa for a meeting with Jessop. At the meeting Jenkins advised Maines and Jessop that he had met with LeClair and Mix on behalf of CMT.

40. It was agreed at the meeting of August 20, 2010 by Jenkins, Maines and Jessop that the new proposed corporation would be incorporated as a numbered company under the *Canada Business Corporations Act*.

41. It was further agreed by Jenkins, Maines and Jessop at the meeting that the formal legal name of the corporation would not be changed until a professional marketing plan was put into place, but that they would temporarily use the business name of Financial Markets Technologies, or FMT, to refer to the corporation.

42. In August of 2010 Jenkins and Maines instructed Jessop Blakes to incorporate 7645686 on behalf of CMT.
43. Jenkins established a physical office in Prince Edward Island for 7645686 in the same building in which he carried on his pharmacy business.
44. Financial Markets Technologies was subsequently registered as a business name of 7645686.
45. At his request, and in accordance with the previous agreement with Maines and Jessop, Jenkins was appointed as the sole director of 7645686.
46. Jenkins arranged for business cards for a planned visit to New York that used the name FMT and showed Jenkins as the President with the address of 220 Water Street, Charlottetown, PE, an address owned by Jenkins at the time.
47. On September 10, 2010, ~~7628382~~ 7645686 was incorporated by Jessop Blakes.
48. By email dated September 29, 2010, Jenkins outlined to Maines all of the funding options offered by the Government of Prince Edward Island that would be available to 7645686.
49. Jenkins began to arrange for the introduction of Maines to various representatives of the Government of Prince Edward Island.
50. In early October of 2010, Walsh was introduced to representatives of GMP Securities L.P. ("GMP"), one of Canada's top investment banking firms, at a conference in London, England.
51. GMP was interested in Simplex's Global Transaction Platform and saw that it fit into the needs of the international gaming community.

52. Maines became involved in the negotiations with GMP and began meeting with the head of technology, and a senior banker at GMP.

53. Maines met with the representatives of GMP at the Virgin Gaming offices in Toronto and teleconferenced with Walsh to discuss several issues, including, Simplex becoming the preferred payment company for Virgin Gaming, the possibility of GMP becoming CMT's investment banker, and GMP's sponsorship of CMT's for its anticipated listing as public company.

54. Maines informed Jenkins of his discussion with GMP and Jenkins, in turn shared this with LeClair.

55. LeClair sought and obtained funding from the Government of Prince Edward Island to have Patrick Mason ("Mason"), a consultant to Innovation PEI, write a recruiting package for CMT and Simplex. Mix also participated in the preparation of the recruiting package.

56. LeClair arranged for Mix, outside counsel to Innovation PEI, to prepare a recruiting package for CMT and Simplex.

57. Mix arranged and authorized Patrick Mason ("Mason"), a consultant to Innovation PEI, to prepare the recruiting package for CMT and Simplex. Mix added PEI Venture Capital Fund to the documentation and indicated that it would match all funds raised from Prince Edward Island residents.

58. LeClair, Mix and Mason represented to Maines and Walsh that CMT and 7645686 would benefit by a relationship with the Government of Prince Edward Island in the following ways:

- (a) Prince Edward Island had state-of-the-art infrastructure, which one would expect only in a much larger centre;
- (b) because the government is small, the Plaintiff's business would be highly valued and there would be greater access to government decisions makers which would avoid red tape making it easier to conduct business;
- (c) Prince Edward Island takes a partnership approach and invests in companies beyond their original agreement;
- (d) the plaintiffs would have "first mover" advantage on Prince Edward Island where it would be the provider of choice for existing and new customers alike;
- (e) the plaintiffs would stand to gain customers through Prince Edward Island's heavy investment in attracting companies from the ~~video game~~ gaming and financial services sector; and
- (f) the Canadian subsidiary could direct revenues and costs through an off-shore operation (ie. US) minimizing taxes paid in Canada.

59. On or about January 31, 2011, Mason advised Maines and Walsh by email that he had been involved with the "gaming file on PEI" and further advised Maines and Walsh that a key priority for Innovation PEI at that time was to attract a gamer who would move processing jobs and revenue to Prince Edward Island and that the e-Gaming Committee needed an established provider for their proposed transaction platform.

60. Mason further assured Walsh and Maines that the first gamer to sign on with Prince Edward Island would have a strong influence on the requirements of the platform to provide the processing.

61. Mason further advised Walsh and Maines that Prince Edward Island was comforted by the fact that Simplex already had gaming clients that were using the Simplex Global Transaction Platform and that they could currently service e-gaming clients.

62. Mason also advised that the Government of Prince Edward Island was also looking for a payment platform that could provide financial transaction services to multiple clients.

63. In February of 2011, LeClair, when he was Chief of Staff to the [Premier] requested Maines to assist the Government of Prince Edward Island in bringing other new businesses to Prince Edward Island and set up meetings in Toronto with Maines for the purpose of attracting such business.

64. Maines was given all the confidential recruiting packages that had been prepared by Innovation PEI to enable him carry out his recruiting efforts. Maines had several meeting with both LeClair and Mix on the 5th floor offices of the Executive Building for this purpose.

65. Jenkins, LeClair and Mix advised Maines and Walsh that it was very important to Innovation PEI that the Simplex Global Transaction Platform be able to provide gaming services immediately and that the initial focus be to service e-gaming.

66. Upon the request of LeClair and Mix, Maines began to recruit businesses that could utilize the Simplex Global Transaction Platform and would be interested in locating operations in Prince Edward Island.

67. In March of 2011, Maines began meeting with the PEI Gaming Committee.
68. The PEI Gaming Committee was a committee that was set up by Sheridan when he was Minister of Finance. It [was] comprised of Sheridan, LeClair, Scales, Michael O'Brien, Kevin Kiley and Don MacKenzie, counsel to the Mi'kmaq Confederacy.
69. It was acknowledged by Sheridan, as Minister of Finance, and by MacKenzie, as Director of the Mi'kmaq Confederacy, that the PEI Gaming Committee was a working group for a joint initiative between the Government of Prince Edward Island and the Mi'kmaq Confederacy. It was further acknowledged by Sheridan that McInnis Cooper, a local law firm, had been retained to provide "project management services".
70. The meetings of the PEI Gaming Committee were not open to the public and were confidential.
71. On or about April of 2011, Maines recommended to the PEI Gaming Committee that the Simplex Global Transaction Platform be used as the solution to establishing the necessary financial transactions platform to satisfy the e-gaming requirements for the e-gaming operations contemplated by the committee and to attract other gaming clients to Prince Edward Island.
72. On April 14, 2011, Jenkins submitted a consulting bill for \$21,000.00 to CMT for consulting services for government placement.
73. On May 17, 2011, on the invitation of LeClair and the PEI Gaming Committee, Maines brought Walsh and other Simplex executives to Prince Edward Island. On this date the Government closed the Crowbush Crow golf course to the public in order to entertain CMT, Simplex and its affiliates.

74. In preparation for the May 17, 2011 meeting Jenkins prepared briefing notes for Ghiz in advance of the meeting.

75. On May 20, 2011, Jenkins arranged a meeting with Ghiz and Walsh.

76. Also on May 20, 2011, Jenkins arranged for Walsh to meet with the PEI Gaming Committee. Maines formally introduced Walsh at the PEI Gaming Committee meeting.

77. Immediately after the meeting of May 20, 2011, Maines, Walsh and Jenkins began negotiating with Scales regarding establishing the Simplex Global Transaction Platform in Prince Edward Island.

78. Sheridan, LeClair and Scales were advised by Maines and Walsh, and knew, that the Simplex Global Transaction Platform would be established through a company to be incorporated in Prince Edward Island and controlled by CMT.

79. Scales commissioned Simplex to prepare a "Feasibility & Solution Design Proposal" to carry out the first stage of design to establish a global electronic payments and transactions management platform on Prince Edward Island based upon the Simplex Global Transaction Platform. The request to prepare the proposal was made to Simplex and not 7645686 because the commission was on an expedited basis and Simplex already had third party contacts with the Government of Prince Edward Island in place.

80. The Feasibility & Solution Design Proposal was to have been paid for by the Government of Prince Edward Island.

81. The Feasibility & Solution Design Proposal was delivered to the PEI Gaming Committee on June 2, 2011.
82. As part of the Feasibility & Solution Design Proposal the Government of Prince Edward Island was to have issued a press release announcing the launching of the global financial transaction platform.
83. On June 2, 2011, a draft press release was prepared for Sheridan, as Minister of Finance and Municipal Affairs, to announce that the Government of Prince Edward Island was launching a global financial transaction platform to complement the government's IT growth strategy.
84. Despite the recommendation in Simplex's Feasibility & Solution Design Proposal to issue a press release to announce the launch, Sheridan did not issue the release.
85. Sheridan, as Minister of Finance, through Scales, commissioned Simplex to write a report on the technical requirements necessary to establish its Global Transaction Platform on Prince Edward Island in accordance with the proposal put forward by Walsh.
86. On or about June 5, 2011, unbeknownst to Maines or Walsh, on information provided by Jenkins, LeClair used his wife's maiden name to invest in the public company that was being targeted by CMT.
87. Simplex worked on the project for several months. The initial report was estimated to cost \$60,000.00 for the first 37 days because of necessary contracting with third party consultants and for the extensive travel costs necessary to facilitate the report. Payment terms were 60 days from the delivery of the report.

88. On June 3, 2011, at the request of Jenkins and LeClair, Jenkins was written into the Feasibility & Solution Design Proposal, and it was determined that, as director of FMT, Jenkins would be the conduit for all communications between the government parties and CMT and its affiliates, including Simplex.

89. On June 3, 2011, Simplex completed the report and delivered it to Scales in accordance with his instructions.

90. On June 3, 2011 Sheridan, by email, thanked Walsh for his prompt co-operation with the Government of Prince Edward Island and indicated to Walsh that Simplex's presence in Prince Edward Island would prove to be mutually beneficial for both parties.

91. An invoice was rendered by Simplex for the report, but the invoice was never satisfied despite repeated assurances by Scales that it would be looked after by the Government of Prince Edward Island. LeClair and Scales advised CMT and Simplex that the government was slow but always paid. On this assurance, CMT and Simplex kept working on the proposal. Simplex was advised that they could provide a final invoice once the project was fully funded by the Government of Prince Edward Island.

92. Virgin Gaming, which was recruited by Maines, became the first company to sign and establish an office in Prince Edward Island. Having Virgin Gaming relocate to Prince Edward Island satisfied a priority on the part of the PEI Gaming Committee to attract gamers and provided credibility to their gaming initiative.

93. In May of 2011, while CMT and Simplex were dealing with the PEI Gaming Committee, MacEachern, then Deputy Minister of Tourism, on behalf of Tourism PEI, engaged CMT and

Simplex to adapt the Simplex Global Transaction Platform to support a Loyalty/VIP payment program for PEI Tourism.

94. CMT and Simplex spent approximately 3 months meeting with MacEachern and William Dow, outside counsel to PEI Tourism, to develop the Loyalty/VIP program and to approach prospective provincial vendors. CMT, at its sole cost, brought in Simplex representatives from the United Kingdom to work on the program.

95. CMT hired employees to contact vendors for the Loyalty/VIP program.

96. The Government of Prince Edward Island wanted the Loyalty/VIP card launched at the earliest opportunity. Walsh advised MacEachern that the timetable for launch requested by PEI Tourism was not practical unless Simplex was able to outsource banking suppliers at a cost of \$50,000.00. MacEachern agreed to this cost and authorized the program to proceed.

97. On October 11, 2011, Walsh presented the PEI Gaming Committee with a Transaction Platform Report that set out in detail the steps to be taken to establish the Simplex Global Transaction Platform.

98. The Transaction Platform Report contained a disclaimer and caution that the information that was being provided to the PEI Gaming Committee was confidential and proprietary information of Simplex.

99. The amount of consulting time for which Simplex had been authorized to be paid had been exceeded and no payment had been made to Simplex. Scales and LeClair assured Maines and Walsh that Simplex would be paid and that it should proceed with the implementation of the Simplex Global Transaction Platform.

100. On October 11, 2011, Walsh, in an email to the PEI Gaming Committee, requested that the committee authorize the number of actions set out in the Transaction Platform Report.

101. On October 23, 2011, Maines sent an email to LeClair and Jenkins about Maines meeting representatives of Carta Solutions (“Carta”), a payment processing company. Maines had several meetings with Carta about Carta becoming the retail payment sub-processor for the gaming initiative. During his meetings with Carta, Maines had recruited Carta to relocate jobs to Prince Edward Island and take advantage of the financial incentives being offered by the province.

102. Maines provided the contact information for Carta to LeClair and Jenkins and set up meetings for them. Representatives of Carta joined Jessop and Walsh at the next government meeting in Prince Edward Island and Carta was introduced by Jessop and Walsh to LeClair and Jenkins as a potential technology partner for payment processing.

103. On November 2, 2011, Walsh, Gary Wright and Nick Warden, CFO of Simplex, flew to Charlottetown and met with the PEI Gaming Committee pursuant to the request of the committee. At the meeting Simplex was given instructions by the committee to proceed in accordance with the timetable set out in the Transaction Platform Report.

104. At the meeting of November 2, 2011, the PEI Gaming Committee also requested that Simplex provide assistance to the committee in preparation for the World Gaming Conference that was to take place in London, England in January of 2012.

105. On or about November of 2011, Manago, of Tourism PEI, requested of CMT that a meeting be arranged at Simplex’s offices in London, England in December of 2011 to enable Manago to conduct due diligence on Simplex for the Loyalty/VIP program on behalf of Tourism

PEI. Maines and Edward Francis, an employee of CMT, flew over to London to join the meeting with Manago and representatives of Simplex.

106. After the meeting in London, Manago and MacEachern, on behalf of PEI Tourism, gave CMT and Simplex the authority to launch the Loyalty/VIP program.

107. In February of 2012, Walsh provided MacEachern with the option of launching the Loyalty/VIP program with or without providing gaming services.

108. On or about February 11, 2012, Beck, then Chief of Staff and Executive Clerk to Ghiz, met with Walsh and stated to Walsh that the government's primary interest in CMT was to establish the Simplex Global Transaction Platform to facilitate e-gaming. Beck, at a meeting with both Maines and Walsh, indicated that, despite the legal issues that the PEI Gaming Committee was encountering with establishing e-gaming, the Government of Prince Edward Island wanted to continue with Simplex's Global Transaction Platform Report for the purpose of attracting potential users of the platform, other than for e-gaming, to Prince Edward Island.

109. At the meeting of February 11, 2012, Beck also requested that Simplex and CMT continue to establish the Simplex Global Transaction Platform.

110. In late February of 2012, Simplex prepared a discussion paper, "Establishing a World-Class Financial Services Centre" which was written in anticipation of Simplex establishing the Simplex Global Transaction Platform in Prince Edward Island and the paper was sent to Beck and MacEachern.

111. As part of the implementation process PriceWaterhouseCoopers ("PWC") had accredited the Simplex Global Transaction Platform. PWC had suggested to Maines and Walsh that they

take space in PWC's offices in Halifax, Nova Scotia and launch the Simplex Global Transaction Platform in the Province of Nova Scotia.

112. The Province of Nova Scotia and the Province of New Brunswick began to express interest in CMT establishing the Simplex Global Transaction Platform in their provinces.

113. Prior to entering into negotiations with either Nova Scotia or New Brunswick, Maines and Walsh were asked by one of CMT's investors, Gary Evans ("Evans"), to refrain from negotiating with Nova Scotia or New Brunswick for 48 hours to allow the agreement with the Government of PEI to be concluded.

114. Evans had heard that Ghiz was unaware that the Plaintiffs were looking at other options to implement the Simplex Global Transaction Platform in other jurisdictions and wanted to make sure that it was established in Prince Edward Island.

115. Ghiz met with Evans and assured him that he personally wanted the Simplex Global Transaction Platform to be in Prince Edward Island. At a meeting with Ghiz and Dow, Ghiz directed CMT to submit a memorandum of understanding that he assured would be signed immediately by the Government of Prince Edward Island.

116. Ghiz insisted that a clause be added to the memorandum of understanding precluding CMT from negotiating with any other jurisdiction while the memorandum of understanding was in place.

117. On July 4, 2012, Dow submitted the draft MOU to Paynter who gave approval to Innovation PEI to sign the MOU.

118. On or about July 6, 2012, Innovation PEI entered into the MOU with 7645686.

EVENTS FOLLOWING THE MOU

119. In September of 2012, Simplex signed non-disclosure agreements with several local technology companies as part of establishing the Simplex Global Transaction Platform.

120. CMT and Simplex also began negotiating a unique banking project with HSBC, and in good faith, CMT began hiring firms in Prince Edward Island for consulting projects.

121. Holland College was engaged by CMT to potentially provide employee training for the anticipated business centre that would be required to manage the Simplex Global Transaction Platform.

122. On or about September 4, 2012, Ghiz ordered the deletion and destruction of Beck's emails, contrary to the provisions of the *Archives and Records Act*.

123. On or about September 6, 2012, the MOU, which included the exclusivity and confidentiality provisions, was extended for 30 days.

124. On September 6, 2012, the same day that 745686 received the extension to the MOU, Maines obtained information that certain members of the Government of Prince Edward Island were undermining the MOU.

125. While the MOU was in effect, Sheridan and LeClair were attempting to source financial services corporations in Europe to provide the services contemplated to be provided by 7645686 under the MOU.

126. In addition, Sheridan and LeClair put a proposal to Innovation PEI that recommended a “new company” that was purported by them to be better than the Simplex/CMT group.

127. Maines immediately contacted Cutcliffe, a government relations consultant hired by CMT who, in turn, contacted Paynter at Innovation PEI protesting the violation of the MOU by Sheridan and LeClair and demanded from Paynter a copy of the report that Sheridan and LeClair had made to Innovation PEI.

128. Maines also immediately contacted MacEachern protesting the violation of the MOU by Sheridan and LeClair and requested from MacEachern a copy of the report that Sheridan and LeClair had made to Innovation PEI.

129. MacEachern confirmed to Maines that there was a proposal being passed around, but refused to provide Maines with a copy.

130. Maines began to receive telephone calls from various members of the business community that they had been contacted by Dowling, a lawyer in the Office of the Superintendent of Securities, who had said to them that he was investigating forms of illegal trading and fraud on the part of Maines and CMT.

131. Maines telephoned Dowling several times on September 6, 2012 and the next day Dowling returned his call at which time Maines asked Dowling why he was stating to members of the financial community that he was being suspected of fraud. Dowling indicated to Maines that he had nothing to discuss with Maines at that time. Maines volunteered to meet with Dowling at any time and to provide any information to Dowling that he required.

132. On September 17, 2012 the Superintendent of Securities opened an investigation into the conduct of Maines which investigation was later expanded to include CMT. No notice of the commencement of this investigation was given by the Superintendent of Securities to either Maines or CMT.

133. On September 20, 2012, Maines, Jessop and Walsh flew to Charlottetown to finalize the contract contemplated by the MOU. During this visit CMT had invited several banking and technology clients from Europe to conduct a due diligence on the contemplated Atlantic Technology Center and Holland College's training and education facilities which would establish the Simplex Global Transaction Platform in Prince Edward Island.

134. On September 20, 2012, Dow announced at the meeting with Jessop, Walsh and representatives of HSBC, clients of 7645686, that Innovation PEI had to suspend negotiations with 7645686 because of pending investigation into CMT and 7645686 by the Superintendent of Securities. In particular, Dow stated, in front of potential clients, that the subject of the investigation was that it had been alleged that a woman with cancer had invested all her life savings in CMT and that ~~the~~ her investment had been lost.

135. Following that meeting, neither HSBC nor Holland College had any more contact with CMT or 7645686.

136. As of September 20, 2012, no notice had been given to either CMT, 7645686 or Maines of any investigation by the Superintendent of Securities.

137. MacEachern had informed CMT's government advisor that they had been told by MacLean that MacLean was in possession of the complaint filed with the Superintendent of Securities.

138. On or about September 20, 2012, Dow advised Jessop that he had received information from sources that he would not name, that the nature of the complaint against CMT, 765686 or Maines was that they were attempting to sell fraudulent securities in PEI. Dow further advised Jessop that the information that he had received was that there was a woman with cancer who had put all of her RRSP into CMT and that CMT was trading in fraudulent securities.

139. Jessop advised Innovation PEI that CMT was not going to provide any further information to Innovation PEI until issues regarding the breach by Sheridan and LeClair and the investigation by Dowling were resolved to the satisfaction of CMT and 7645686.

140. On October 17, 2012, representatives of CMT met with Campbell and MacLean.

141. At the meeting of October 17, 2012, MacLean advised Jessop that a written complaint had been filed with the Department of Environment, Labour and Justice and that Shauna Sullivan Curley, Deputy Minister of Environment, Labour and Justice, had delivered a copy of the complaint to MacLean which he had read. When Jessop requested MacLean to provide him with a copy of the complaint he refused to do so, and indicated to Jessop that it would be inappropriate to share it.

142. Both Campbell and MacLean assured the representatives of CMT that the Government of Prince Edward Island had no issues with CMT and Simplex's technology and ability to establish and manage the Simplex Global Transactions Platform in Prince Edward Island. Further,

Campbell and MacLean assured Jessop that there were a number of structures and procedures put in place by the Government of Prince Edward Island designed to facilitate and protect the negotiations between CMT and Innovation PEI and that the negotiations would be unaffected by the investigation of CMT by the Superintendent of Securities.

143. It was agreed at the meeting of October 17, 2012, by MacLean, Campbell and Jessop that the provisions of the MOU would be extended indefinitely and that the exclusivity and confidentiality provisions of the MOU would continue until the process had run its course with respect to the securities allegations.

144. At the meeting of October 17, 2012, Campbell and MacLean indicated that they had knowledge of facts that led them to believe that there was a conspiracy to discredit CMT, but they did not disclose these facts to Jessop.

145. At the end of the meeting of October 17, 2012, MacLean advised Jessop that he would have Dowling contact him.

146. The next day, on October 18, 2012, Jessop received a telephone message from an assistant to Dowling indicating that he had no questions for Jessop at that time.

147. Despite demands made by Maines and Jessop to Dowling and the Superintendent of Securities to meet and answer all questions, under oath if required, no written complaint against Maines, CMT or 7645686 was ever provided to Maines, CMT or 7645686 by Dowling or the Superintendent of Securities.

148. Jessop was never interviewed or contacted by Dowling as part of the investigation conducted by Dowling against Maines and the plaintiffs despite Jessop's repeated requests.

149. Despite the assurances made by MacLean to Jessop on October 17, 2012, and without informing any representative of CMT or 7645686, MacLean had obtained information from Dowling regarding the investigation of the Superintendent of Securities and was circulating the information to members of the cabinet, including MacEachern and other senior members of government, and seeking any information that they had regarding either CMT or Maines. MacLean specifically disclosed to MacEachern and others the names of investors of CMT, which would only have been known to Dowling, and spoke of a woman with cancer who had filed a complaint to the Superintendent of Securities.

150. Following the meeting with Campbell and MacLean, Jessop emailed Dow providing an update of the meeting and requesting that negotiations between CMT, 7645686 and Innovation PEI recommence.

151. In October of 2012, it came to the attention of senior management at Sterci that Mix was contacting potential clients of Simplex and CMT, and advising them that he would be attending SIBOS, an annual conference, exhibition and networking event organised by SWIFT in Osaka, Japan, on October 29, 2012, and representing to them that he had his own expertise in electronic financial transactions platforms.

152. Sterci emailed Maines and Walsh indicating that he had received an email from Mix.

153. Sterci complained about Mix's conduct knowing that Simplex was negotiating with the Government of Prince Edward Island regarding the establishment of the Simplex Global Transaction Platform.

154. Mix was telling potential partners and clients of CMT, 7645686 and Simplex that the plaintiffs were involved in a securities fraud investigation.

155. At no time while the MOU was in effect was there any discussion about Mix going to SIBOS despite the fact that companies who attended SIBOS would generally organize their attendance at least 6 months in advance.

156. Mix attended SIBOS on October 29, 2012 in Osaka, Japan and promoted establishing a financial transaction platform in Prince Edward Island that did not involve the Simplex Global Transaction Platform.

157. At SIBOS, Mix was in possession of all of the plaintiffs' confidential information obtained by the Government of Prince Edward Island from the plaintiffs prior to and during the period that the MOU was in effect and he was using this information in contacting clients, partners and potential clients of the plaintiff without any authorization and in a manner designed to cause harm to the plaintiffs.

158. Jessop, Maines and Walsh all reasserted their efforts with Dowling to correct the false information that was now leaking to the public and harming the reputational integrity of the plaintiffs and Simplex. Dowling refused to acknowledge any of these requests.

159. Jessop, Maines and Walsh decided that no more confidential information on the financial transactions platform should be provided until assurances could be provided by Innovation PEI that they were moving forward with the MOU and the establishment of the Simplex Global Transaction Platform.

160. Walsh advised Maines and Jessop that Mix's representations at the SIBOS tradeshow, specifically the representation by Mix that he had his own expertise in electronic financial transactions platforms, were seriously injuring CMT's and Simplex's credibility and reputation within the industry, where it was known that CMT and Simplex had been working with Innovation PEI to provide such service.

161. Mix's conduct at SIBOS in approaching potential clients of Simplex undermined all efforts of CMT and Simplex during the past year to promote the establishment of the Simplex Global Transaction Platform in Prince Edward Island.

162. On December 12, 2012, Scales, of McInnis Cooper, confirmed to Walsh that the balance of the payments owing by the PEI Gaming Committee to Simplex for the report on the technical requirements necessary to establish the Simplex Global Transaction Platform would be remitted by the Government of Prince Edward Island by the month's end. At the same time Scales advised Walsh that the PEI Gaming Committee had received no funds, when he knew that the funds had already been advanced to the committee.

163. On January 21, 2013, Jessop wrote to Shauna Sullivan Curley on behalf of CMT and 7645686 requesting information regarding the alleged complaint against either CMT or 7645686 under the *Securities Act*. In the letter Jessop advised Curley that the investigation was holding up negotiations and was causing economic damage to CMT and 7645686 because they could not approach another jurisdiction while this investigation was pending.

164. By email dated January 29, 2013, Shauna Sullivan Curley advised Jessop that she had forwarded Jessop's January 21, 2013 letter to Dowling requesting that he follow up with Jessop.

165. On February 10, 2013, Scales advised Walsh that he had spoken to Sheridan and that the payment would soon be forthcoming on the Simplex invoices.

166. On or about February 11, 2013, Evans, on behalf of CMT, met spoke with Campbell to obtain a release of the exclusivity and confidentiality provisions of the MOU. If 7645686 could get a release from the Government of Prince Edward Island it would have enabled 7645686 to begin to negotiate with the Government of Nova Scotia without fear of breaching the MOU.

167. Campbell refused to end the suspension of the MOU, or provide a final release, and stated to Evans that Maines and Jessop had been illegally trading in securities since the early 90's and that under no circumstances would the Government of PEI allow CMT or 7645686 to begin to negotiate with another government.

168. Campbell stated to Evans that ~~the Government of Prince Edward Island was looking for way out of the MOU and that~~ he was aware that proceedings regarding violations of the *Securities Act* by the plaintiffs would be commenced shortly by the Superintendent of Securities. Campbell was not an employee of the department responsible for the Superintendent of Securities, and should not have been privy to any information regarding an investigation by the Superintendent of Securities. The receipt by Campbell of such knowledge would have been a violation of s. 36 of the *Securities Act*.

169. On about February 11, 2013, LeClair advised Mark Rodd, a prominent businessman, that the Government of Prince Edward Island were going after Maines and CMT and that it would issue a press release by the end of the week.

170. The Superintendent of Securities did not publicly announce the investigation against Maines, CMT or 7645686.

171. On or about February 14, 2013, the Superintendent of Securities issued a Motion for Preliminary Relief seeking an interim cease trading order against all of Maines, CMT and 7645686, which motion was returnable on March 7, 2013.

172. In support of the motion, an affidavit has been sworn and filed by Dowling.

173. The Superintendent of Securities, in issuing the Motion for Preliminary Relief, did so in the most public manner by distributing the motion to numerous media outlets without any advance notice to the respondents to the motion.

174. CMT, Maines and 7645686 hired counsel to contest the investigation and act on their behalf in a hearing before the PEI Securities Commission.

175. The Motion for Preliminary Relief was received by the respondents to the motion on February 14, 2013 and they had only 10 business days to respond to the allegations.

176. On March 5, 2013, the lawyer who had been retained by Maines, CMT and 7644586 to respond to the Motion for Preliminary Relief, requested from the Superintendent of Securities the opportunity to cross-examine Dowling and the other witnesses who were intended to be called at the hearing. In addition, she requested that witnesses be allowed to be called on behalf of the respondents.

177. Following the request by counsel for the respondents, the Superintendent of Securities denied the request for cross-examination and the request to be allowed to call witnesses and unilaterally adjourned the Motion for Preliminary Relief.

178. No cease trading order was ever obtained against Maines, CMT nor 7645686.

179. On or about March 21, 2013, Sheridan made a statement to the Charlottetown *Guardian* that he did not know CMT or Simplex and did not know anything about any work that CMT or Simplex may have done in Prince Edward Island.

180. On or about June 4, 2013, Maines, CMT and 7645686 entered into a settlement agreement with the Superintendent of Securities.

181. The settlement agreement was approved by the Superintendent of Securities on June 5, 2013 and provided that CMT pay an administration fine of \$10,000.00 and costs of \$5,000.00. Although the settlement agreement does not specifically state what CMT did that was wrong, it can be inferred from the terms of the agreement that CMT conceded to having sold securities of CMT under National Instrument 45-106 to persons who were not “accredited investors” as defined under the instrument.

182. There were no sanctions imposed upon either Maines or 7645686.

183. The Settlement Agreement, which was approved by the Superintendent of Securities confirmed the fact that “at no time did 7645686 solicit investments from or issue its shares to any person other than its parent company, CMT.”

184. Despite the assurances given by MacLean and Campbell to Jessop that the negotiations between Innovation PEI and 7645686 would be unaffected by the investigation by the Superintendent of Securities, Innovation PEI refused to proceed any further with implementing the MOU.

185. On September 10, 2014, Innovation PEI issued a press release indicating that Carta Solutions was to open a data site in Prince Edward Island with the assistance of Innovation PEI.

186. On or about September 10, 2014, Rui Mendes, the Chief Technology Officer of Carta, stated to the CBC that they had a client who wanted to regulate online gaming for their PEI office.

BREACH OF CONTRACT BY GOVERNMENT OF PRINCE EDWARD ISLAND

187. The plaintiffs state that Government of Prince Edward Island, through the actions of its officers or agents, breached its duty of honest contractual obligations under the MOU that deliberately frustrated the completion of the MOU and prevented the plaintiff, 7645686, from recovering its development costs and obtaining the benefit of the establishment of the Simplex Global Transaction Platform as contemplated in the MOU, specifically,

- (a) while the MOU was in effect and contrary to the exclusivity and confidential provisions contained in the MOU, Sheridan and LeClair approached competitors to the plaintiff seeking the provision of the services contemplated to be provided by 7645686 under the MOU;
- (b) during the term of the MOU, Sheridan and LeClair put a proposal to Innovation PEI for another company to provide the services contemplated to be provided by 7645686 under the MOU;

- (c) during the term of the MOU, Mix, without 7645686's consent or knowledge, attended SIBOS and represented to the clients that he was attending the show as his own financial transactions payment expert and recruited companies away from 7645686;
- (d) during the term of the MOU, Mix hired a professional firm to set up meetings with potential clients, including clients of 7645686 and used proprietary information that CMT and Simplex had shared with Innovation PEI;
- (e) during the term of the MOU, Mix had meetings with potential clients of 7645686;
- (f) during the term of the MOU, Sheridan made public statements denying that the Government of Prince Edward Island had entered into a MOU with 7645686 when he knew it had done so, which statements undermined the credibility of 7645686, Simplex and CMT with the financial institutions that were necessary to implement the Simplex Global ~~Financial~~ Transaction Platform;
- (g) Paynter had knowledge that Sheridan and LeClair were proposing another supplier in violation of the MOU, but took no steps to stop their conduct and withheld this information from the representatives of 7645686;
- (h) Mix, during the exclusivity period and without 7645686's consent or knowledge, wrote to many of 7645686's potential clients and recruited these companies to relocate to PEI;
- (i) LeClair and MacLean initiated an investigation by the Superintendent of Securities under the *Securities Act* against 7645686 suggesting that a woman with cancer had

invested with CMT when they knew the story to have been false and when they knew there was no evidence that 7645686 had violated any provisions of the *Securities Act*;

- (j) Dowling recklessly brought proceedings against 7645686 under the *Securities Act* when he knew that there was no evidence that 7645686 had violated any provisions of the *Securities Act*;
- (k) Dowling refused to allow himself to be cross-examined following the initiation of the proceedings against 7645686 under the *Securities Act*, which would have immediately revealed that there were no grounds for any proceedings against 7645686;
- (l) LeClair, MacLean and Campbell encouraged the Superintendent of Securities to bring proceedings under the *Securities Act* for the express purpose of providing an excuse for Innovation PEI to refrain from fulfilling the MOU;
- (m) LeClair, MacLean and Campbell then used the investigation by the Superintendent of Securities as a reason to suspend the MOU when they knew that there was no basis to the allegations made against 7645686;
- (n) Campbell had assured the plaintiff that the investigation would have no effect upon the implementation of the MOU pending the outcome of the investigation;
- (o) MacEachern prevented Innovation PEI from completing the MOU even after the Superintendent of Securities had determined that 7645686 had not engaged in any wrongdoing under the *Securities Act*;

- (p) MacLean and Campbell refused to provide 7645686 with a release from the exclusivity and confidentiality provisions of the MOU to prevent 7645686 from being able to negotiate with another jurisdiction;
- (q) Dowling, during the term of the MOU, was sharing information on the investigation into 7645686, with MacLean, Campbell, Mix, MacEachern, Dow and Cutcliffe contrary to the provisions of s. 36 of the *Securities Act*;
- (r) Dowling, during the term of the MOU, was sharing information on the investigations into Maines, CMT and 7645686 with business associates of CMT and 7645686 contrary to the provisions of s. 36 of the *Securities Act*;
- (s) MacLean was sharing information that he had received from Dowling with Paynter, Mix, Dow and MacEachern contrary to the provisions of s. 36 of the *Securities Act*;
- (t) Sheridan, LeClair and Mix were, without 7645686's consent or knowledge, negotiating with Carta during the term of the MOU for the purpose of having Carta provide the same services that 7645686 was to provide under the MOU;
- (u) Without notice or the consent of the 7645686, Dow disclosed to joint venturers and business associates of 7645686 information that he had received regarding the investigation of the Superintendent of Securities contrary to s. 36 of the *Securities Act*;
- (v) the Government of Prince Edward Island deliberately and permanently deleted contrary to the provisions of the *Archives and Records Act* the emails of LeClair,

Beck and MacEachern which emails would have confirmed the allegations made by the plaintiff; and

- (w) Innovation PEI breached its obligations for confidentiality as set out in paragraphs 196 and 197 below.

188. As a result of the breach of contract, 7645686 suffered damages from the lost opportunity as contemplated by the MOU of having an established Simplex Global Transaction Platform operating in Prince Edward Island, including lost potential profits that would have resulted had Innovation PEI acted in good faith.

189. In addition, the slanderous statements made by the officers and agents of the Government of Prince Edward Island "Government Agents" have made it virtually impossible to establish the Simplex Global Transaction Platform in any other jurisdiction in North America because of the irreparable reputational damage it has done to the plaintiff's economic relationship with financial institutions, business partners and potential clients.

190. As a result of the breach of confidentiality, the plaintiff, 7645686, suffered the damages set out in paragraphs 216 and 217 below.

BREACH OF CONFIDENTIALITY

191. The Government of Prince Edward Island received confidential information that was proprietary to the plaintiff, 7645686, as follows:

- (a) through the process of CMT's application to Innovation PEI, LeClair and Mix obtained information with respect to potential clients who would utilize the Simplex Global Transaction Platform;
- (b) through Jenkins, LeClair and Mix obtained proprietary software code specifications necessary for the operation of financial electronic payments and transaction management platforms;
- (c) through Jenkins, LeClair and Mix obtained proprietary information on how SWIFT codes were used in the operation of financial electronic payments and transaction management platforms;
- (d) LeClair was provided proprietary information on the interest of GMP and Virgin Gaming and the terms and conditions of their becoming clients and regarding the operation of a financial electronic payments and transaction management platform;
- (e) Sheridan and LeClair received a report on the technical requirements necessary to establish the Simplex Global Transaction Platform;
- (f) Sheridan and LeClair obtained the Feasibility & Solution Design Proposal from Simplex which set out the first stages of design to establish operation of financial electronic payments and transaction management platform;
- (g) LeClair received proprietary information from CMT on Carta Solutions and its interest in participating in the Simplex Global Transaction; and

- (h) the PEI Gaming Committee obtained assistance from Simplex in preparing for the World Gaming Conference.

192. The Government of Prince Edward Island breached the confidentiality provisions of the MOU in the following manner:

- (a) during the exclusivity period, Sheridan and LeClair approached various financial services corporations in Europe and disclosed the confidential information in an attempt to source another financial services corporation to provide the services being proposed by 7645686;
- (b) Sheridan and LeClair used the confidential information that they obtained from 7645686 in their proposal to Innovation PEI to provide the services by another group;
- (c) Mix used the confidential information in his representation at the World Gaming Conference in London in January of 2012;
- (d) in October of 2012, Mix, without CMT's consent or knowledge, wrote to many of the plaintiffs' clients and advised them that he would be attending SIBOS, in Osaka, Japan in late October of 2012. Mix represented to the clients that he was attending the show as a payments expert and recruited these companies to relocate to Prince Edward Island.

193. As a result of the breach of confidentiality, the plaintiff, 7645686, suffered the damages set out in ~~paragraphs 216 and 217~~ below.

MISFEASANCE IN PUBLIC OFFICE OF GOVERNMENT AGENTS

194. The plaintiffs state that the course of conduct of Sheridan, MacLean, Campbell, LeClair, ~~Mix and Paynter~~ Mix, Paynter, Dowling, Dow, MacEachern, Manago, Scales and Cutcliffe (herein collectively referred to as the “Government Agents”), as set out above, was deliberate and unlawful in the exercise of their public functions and that they knowingly acted for the improper purpose of denying the plaintiffs of the benefits of establishing the Simplex Global Transaction Platform in Prince Edward Island.

195. The plaintiffs state that the Government Agents knew that their conduct was unlawful and likely to injure the plaintiffs.

196. Without limiting the generality of the foregoing, particulars of these deliberate and unlawful acts are as follows:

- (a) Sheridan disclosed proprietary information that he received from CMT and 7645686 and disclosed that information to competitors of the plaintiffs contrary to the contractual obligations of the Government of Prince Edward Island not to disclose this information and knowing that it was undermining the interests of the plaintiffs;
- (b) Sheridan knowing that Simplex, CMT and 7645686 were associated, deliberately denied this knowledge to Dowling during the course of Dowling’s investigation;
- (c) Sheridan publicly denied that he knew the association among Maines, Simplex, CMT and 7645686 and, while he was Minister of Finance, made a statement to Teresa Wright, a reporter for the Charlottetown Guardian that CMT had nothing to

do with the work being conducted by Province of Prince Edward Island on e-gaming, which he knew at the time that he made statement was false and such statement he made by him with the intention of causing reputational damage to the plaintiffs;

- (d) MacLean recklessly encouraged the Superintendent of Securities to initiate an investigation against Maines and the plaintiffs when there were no reasonable grounds to do so;
- (e) MacLean obtained information from Dowling on the investigation being conducted by Dowling and shared this information with other parties, specifically, Campbell, Mix, Dow, MacEachern and Paynter which was disclosed contrary to s. 36 of the *Securities Act*.
- (f) MacLean, contrary s. 36 of the *Securities Act*, obtained information regarding the investigation being conducted by the Superintendent of Securities and prior to any proceedings being initiated by the Superintendent of Securities, communicated this information to various individuals within the business community for the purpose of discrediting Maines and the plaintiffs;
- (g) even though he had no responsibility for the MOU, MacLean instructed Paynter and Mix to refrain from taking any further steps on behalf of Innovation PEI to implement the MOU;
- (h) Campbell obtained information from Dowling on the investigation being conducted by Dowling and shared this information with other parties, including

MacLean, Mix, Dow, MacEachern and Paynter which information was disclosed contrary to s. 36 of the *Securities Act*;

- (i) even though he had no responsibility for the MOU, Campbell instructed Paynter and Mix to refrain from taking any further steps on behalf of Innovation PEI to implement the MOU;
- (j) LeClair recklessly encouraged the Superintendent of Securities to initiate an investigation against Maines and the plaintiffs when there were no reasonable grounds to do so;
- (k) LeClair obtained information from Dowling on the investigation being conducted by Dowling and shared this information with other parties, specifically, Campbell, Mix, Dow, MacEachern and Paynter which was disclosed contrary to s. 36 of the *Securities Act*;
- (l) contrary to the terms of the Transaction Platform Report that had been provided to the PEI Gaming Committee and the express terms of the MOU, while the MOU was in effect Mix wrote to many of CMT's clients and advised them that he would be attending a major financial services trade show, SIBOS, that was being held in Japan in late October of 2012 and represented to CMT's clients that he was attending the show as a payments expert and recruited these companies to relocate to PEI;

- (m) Paynter used the information that she had wrongfully obtained from McLean and Campbell and wrongfully used this information as a reason to suspend the implementation of the MOU;
- (n) Dowling unlawfully carried on an investigation of CMT and 7645686 without authority and brought proceedings under the *Securities Act* without authorization of the Superintendent of Securities to investigate the plaintiffs as required by the *Securities Act*;
- (o) Dowling, with knowledge from MacLean that his investigation was delaying the implementation of the MOU, continued with the investigation of 7645686 even though he knew that no complaint had been made against 7645686 or that there was any evidence of any violation of the *Securities Act* by 7645686;
- (p) Dowling included information about the plaintiff, CMT, in his affidavit of February 14, 2013, that he either knew to be false or was reckless as to its validity, specifically with respect to information obtained from Blaine Edward Curran, Yousef Hashmi, Maines, John Trainor, Kellie Trainor, Mark Rodd and Kevin Murphy, knowing that the submission of the affidavit would cause substantial reputational damage to CMT;
- (q) Dowling filed a Notice of Motion for sanctions against the plaintiff, 7645686, knowing that he had not provided any evidence of conduct on the part of 7645686, through its director or officers, that contravened the provisions of the *Securities Act* or in support of the allegations made in the Notice of Motion knowing that the

commencement of such proceedings would cause substantial reputational damage to 7645686;

- (r) Without providing prior notice to Maines or the plaintiffs, and without authority to do so from the Office of the Superintendent, Dowling issued a press release to all of the major media outlets in Prince Edward Island and neighbouring provinces with the intention of causing substantial reputational damage to the plaintiffs;
- (s) Dowling obtained information on the plaintiffs purportedly in accordance with an investigation that he was conducting under the *Securities Act* and he unlawfully shared this information contrary to the provisions of s. 36 of the *Securities Act*, with other Government Agents, specifically, Campbell, MacLean, Dow, Paynter and MacEachern, for the purpose of discrediting the plaintiffs;
- (t) Dow received information that had been obtained from the plaintiffs that he knew was subject to the confidentiality provisions of the MOU and used this information to approach potential clients of the plaintiffs for the purpose of discrediting the plaintiffs and preventing the potential clients from contracting with the plaintiffs;
- (u) Contrary to s. 36 of the *Securities Act*, Dow unlawfully received information regarding the plaintiffs that he had obtained from an investigation purportedly conducted under the *Securities Act* and used this information for the purpose of discrediting the plaintiffs at meetings of potential clients and strategic partners of the plaintiffs, specifically HSBC and Holland College;

- (v) MacEachern, in conjunction with Sheridan and LeClair, and knowing that the Government of Prince Edward Island was subject to an exclusionary clause with the plaintiff 7645686 under the MOU, enabled a competitor of the plaintiffs to obtain the business opportunity contemplated by the MOU;
- (w) Manago, while managing the Loyalty Card Program for Innovation PEI, unlawfully required Simplex to invoice its services through Internetworks Inc. to disguise the fact that the work contemplated to be carried out by the plaintiffs under the MOU was being carried out by the plaintiffs' strategic partner;
- (x) Scales, while under retainer to provide management services on behalf of the Government of Prince Edward Island to the PEI Gaming Committee, unlawfully misled Simplex, whom he knew was being funded by CMT, into providing consulting services and inducing them to invoice the Government of Prince Edward Island;
- (y) Scales, while he was retained to provide management services to the PEI Gaming Committee unlawfully made promises of payment to Simplex on their invoices at a time when he knew that all of the funding that had been allocated to the PEI Gaming Committee had been fully dispersed to his law firm, McInnis Cooper;
- (z) Scales, while he and Sheridan were negotiating with another competitor to 7645686 under the MOU, contacted and met with Walsh for what he represented to Walsh was for the purpose of discussing strategies with Sheridan to move forward with the MOU, but in fact was used to illicit confidential information from Walsh

that he used to undermine the completion of the MOU in contravention of the terms of the MOU;

(aa) Cutcliffe, while contractually bound to provide government services advice to both the Government of Prince Edward Island and the plaintiffs, unlawfully obtained information about the plaintiffs from the investigation under the *Securities Act* and contrary to s. 36 of the *Securities Act* conveyed this information to other Government Agents knowing that dissemination of this information would be detrimental to the plaintiffs;

197. The defendants, Sheridan, LeClair, MacLean, Campbell, Mix ~~and Paynter~~ Paynter, Dowling, Dow, MacEachern, Scales and Cutcliffe all knew that their conduct would injure the plaintiffs and prevent the plaintiffs, through 7645686, from establishing the Simplex Global Transaction Platform in PEI and delaying or preventing the plaintiffs from establishing the Simplex Global Transaction Platform in another jurisdictions.

198. The Government Agents engaged in this unlawful conduct for the purpose of preventing the plaintiffs from being able to establish the Simplex Global Transaction Platform in Prince Edward Island or any other jurisdiction.

199. Further, the Government Agents engaged in this unlawful conduct to wrongfully terminate the MOU and enable another provider to establish a financial transactions platform for a contemplated Crown agency or commission that would have personally benefited one or more of them as managers or employees of the agency or commission.

200. As a result of the deliberate and wrongful acts of the Government Agents, the plaintiffs suffered the damages set out ~~in paragraphs 216 and 217~~ below.

SPOLIATION

200A. Section 7 of the *Records and Archives Act* provides that no record under the control of a public body shall be destroyed or disposed of except in accordance with the *Records and Archives Act*.

200B. In accordance with the *Records and Archives Act*, the Public Archives and Records Office has, by regulation and policies, established a Record Information Management policy that provides for the retention, management and destruction of records that are under control of public bodies.

200C. Stewart was the Deputy Minister of Workforce and Advanced Learning in the Government of Prince Edward Island.

200D. On or about October 19, 2011, Ghiz, without the authority to do so under the provisions of the *Records and Archives Act*, ordered the destruction of the emails of LeClair, who had been Ghiz's Chief of Staff up to October 11, 2011.

200E. On or about September 4, 2012, Ghiz, without the authority to do so under the provisions of the *Records and Archives Act*, ordered the destruction of the emails of Beck, while the MOU with the plaintiff, 7645686, was still in effect.

200F. On or about October 21, 2013, Stewart, without the authority to do so under the provisions of the *Records and Archive Act*, ordered the destruction of the emails of MacEachern.

200G. The destruction orders of Ghiz and Stewart were purportedly carried out and the emails that had been stored by LeClair, Beck and MacEachern were deleted.

200H. At the time that they ordered the destruction of the emails Ghiz and Stewart knew that the emails of MacEachern, LeClair, Beck and Mix were important public records that were relevant to current issues of public interest such as the PEI e-gaming initiative and the efforts by the plaintiffs to establish a financial transactions platform in Prince Edward Island.

200I. Ghiz and Stewart ordered the destruction of the emails to prevent their scrutiny in the future.

200J. Subsequent to their destruction, some emails of MacEachern and LeClair have been produced pursuant to *Freedom of Information and Protection of Privacy Act* applications seeking emails from other government agents who were corresponding with MacEachern and LeClair.

200K. The emails that have been produced as a result of the *Freedom of Information and Protection of Privacy Act* applications, provide evidentiary support to claims made by the plaintiffs in this action.

200L. On or about June 2, 2014, in response to a request by an agent of the plaintiffs under the *Freedom of Information and Protection of Privacy Act* for copies of emails of Mix and Jenkins between January 1, 2011 and September 30, 2012, Stewart responded that no records had been retrieved. Subsequent to the response by Stewart, several emails between Mix and Jenkins have been obtained by the plaintiffs which emails provide evidentiary support to claims made by the plaintiffs in this action.

200M. The unlawful and wilful destruction of the emails of LeClair, Beck, MacEachern and Mix has resulted in delay, and may prevent, the plaintiff from proving the allegations made above.

BREACH OF FIDUCIARY DUTY BY JENKINS

201. Jenkins was paid by CMT to act on its behalf in negotiating with the Government of Prince Edward Island.
202. 7628382 was incorporated under the *Canada Business Corporations Act* on August 19, 2010, with a registered head office listed as 1 Bardin Crescent, Charlottetown, PE, which was a business address of Jenkins.
203. The sole director of 7628382 ~~at all material times~~ commencing as of October 3, 2011 was Jenkins.
204. Jessop was contacted by James Travers (“Travers”), a partner in Stewart McKelvey, in which Travers advised that Jenkins was unaware that he was a director of ~~7628382~~ 7645686.
205. When Jessop was advised by Travers that Jenkins was tendering his resignation as director of 7645686, Jessop advised Jenkins, through Travers, that, as CMT could not appoint another director while there was an ongoing investigation by the Superintendent of Securities, in the view of CMT, it was necessary for Jenkins to continue to be a director of ~~CMT~~ 7645686 until another director could be appointed.
206. Jenkins was in a position of particular trust of the plaintiffs CMT and 7645686 in their negotiations with Innovation PEI, in particular:
- (a) he insisted that he control 7645686;
 - (b) he undertook to CMT to be responsible for negotiating with Innovation PEI on behalf of CMT and 7645686;

- (c) his travel and out-of-pocket expenses were paid for by CMT while he was negotiating with Innovation PEI;
- (d) he travelled to Ottawa to meet with the directors of CMT to organize the application for funding to Innovation PEI;
- (e) he participated in the branding of 7645686 as Financial Markets Technologies or FMT;
- (f) he worked with ~~Jessop~~ CMT in preparing the documents necessary to obtain the investment required by CMT;
- (g) he requested and was provided by CMT with proprietary information on how SWIFT codes were used in the operation of Simplex Global Transaction Platform;
- (h) he provided a business office for 7645686 in Prince Edward Island;
- (i) he used business cards representing himself as an officer of FMT;
- (j) from September 10, 2010 to October 5, 2012, he was the sole director of 7645686;
- (k) he was in charge of the registered business office of 7645686;
- (l) he made recommendations to the plaintiffs with respect to various funding options provided by Prince Edward Island;
- (m) he undertook to source potential locations within Prince Edward Island for the establishment and operation of Simplex;
- (n) he represented himself as the President of 7645686;

- (o) at the CMT annual board meeting in October of 2010 he was introduced as President of FMT;
- (p) he rendered accounts to CMT for consulting services; and
- (q) he undertook to act as the conduit between CMT and the PEI Gaming Committee with respect to all communication regarding the establishment of the Simplex Global Transaction Platform.

207. Jenkins had a duty and obligation to act in the best interests of 7645686 and CMT while it was negotiating with Innovation PEI and the government of Prince Edward Island.

208. Jenkins breached his fiduciary to the plaintiffs in that he:

- (a) disclosed proprietary software code specifications necessary for the operation of financial electronic payments and transaction management platforms;
- (b) disclosed proprietary information on how SWIFT codes were used in the operation of financial electronic payments and transaction management platforms;
- (c) disclosed the proprietary information of the plaintiffs regarding GMP and Virgin Gaming and the terms and conditions of their becoming clients of a operation of financial electronic payments and transaction management platform;
- (d) he made several untrue or misleading statements to Dowling during the course of his investigation, specifically,

- (i) he said that he had first met Maines at Maines' home, when he had first met Maines in Charlottetown at a meeting that had been arranged by his cousin, Garth Jenkins;
 - (ii) that he had been approached by Maines to invest in CMT when the investment opportunity was introduced to him by Garth Jenkins;
 - (iii) he did not disclose to Dowling his involvement in the strategic planning for CMT;
 - (iv) he did not disclose to Dowling that he was involved in the incorporation of 7645686 and knew that he had been appointed the first director;
 - (v) he stated that he did not know how he came to be a director of 7645686;
 - (vi) he said that he had no knowledge of any business activities carried out by 7645686;
 - (vii) he said that he had no involvement in the company's operations;
 - (viii) he said he had no knowledge of the MOU, and
- (e) incorporated and controlled the defendant, 7628382 for the purpose of diverting the prospective business of 7645686 to 7628382, a company that he solely controlled.

209. As a result of the breach of fiduciary duty by Jenkins, the plaintiffs were prevented from establishing the Simplex Global Transaction Platform in accordance with the MOU and suffered the damages set out in paragraphs 216 and 217 below.

210. The plaintiffs state that Jenkins is the sole controlling director of 7628382 and that 7628382 should be liable to the plaintiffs for any benefit obtained by 7628382 through the breach of fiduciary duties of Jenkins.

DAMAGES

211. The financial projections of the revenue that would be generated to CMT and 7645686 had the Simplex Global Transaction Platform been implemented in Prince Edward Island were substantial and were estimated to be \$60 million per annum in a report prepared by PriceWaterhouseCooper.

212. As a result of the breach of contract, 7645686 suffered damages as follows:

- (a) the lost opportunity costs of having an established Simplex Global Transaction Platform operating in Prince Edward Island, including lost potential profits that would have resulted, and
- (b) the reputational damage and the loss of opportunity costs of establishing the Simplex in other jurisdiction in North America and the loss of the goodwill associated with the exclusive licence with Simplex to establish their platform in other jurisdictions in North America.

STATUTORY PROVISIONS

213. The plaintiffs rely upon the provisions of the *Archives and Records Act*, R.S.P.E.I. 1988, c. A-19.1.

214. The plaintiffs state that all of Sheridan, MacLean, Campbell, LeClair, Mix and Paynter, Paynter, Dowling, Dow, MacEachern, Ghiz and Stewart were officers or agents of the Government of Prince Edward Island, and therefore, pursuant to s. 4(1)(a) of the *Crown Proceedings Act*, R.S.P.E.I. 1988, c. C-32, the Defendant, Government of Prince Edward Island, is liable for the tortious acts of these Defendants.

215. The plaintiffs rely upon the provisions of the *Contributory Negligence Act*, R.S.P.E.I. 1988, c. C-21.

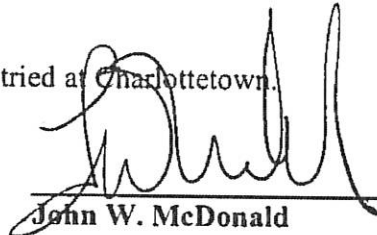
216. The plaintiffs rely upon section 36 of the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, c. F-15.01

217. The plaintiffs rely upon section 25 and 36(1) of the *Securities Act*, R.S.P.E.I. 1988, c. S-3.1

PLACE OF TRIAL

218. The Plaintiffs propose that this action be tried at ~~Charlottetown.~~

~~March 29, 2017~~
~~July 25, 2017~~
June 14, 2018



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Plaintiffs

-and- HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
PRINCE EDWARD ISLAND et al.
Defendants

Court File No. S1-GS-27636

SUPREME COURT OF PRINCE EDWARD ISLAND
(GENERAL SECTION)

PROCEEDING COMMENCED AT
CHARLOTTETOWN

AMENDED STATEMENT OF CLAIM

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