

# Planner ignored client's wishes, judge says

## ORDERED TO PAY ALMOST \$300,000

### Couple suffered heavy losses after being overexposed to equities, court says

Entrusting your savings to a financial planner is an act of faith.

While it's unrealistic to expect guaranteed returns, you should be able to count on having your investment instructions followed and risk tolerance respected.

The courts take a dim view when that doesn't happen, as a planner from Gatineau learned the hard way last week.

In a 25-page ruling, Quebec Superior Court Judge Suzanne Ouellet ordered Emmanuel Marcotte of Planification Fi-

nancière Marcotte & Marcotte Inc. and an affiliated company he represented, Financière Partenaires Cartier Ltd., to pay almost \$300,000, plus interest since 2003 and costs, to Marthe Guénette Sirois for losses suffered in her account and the RRSP of her late husband between 1997 and 2002.

Marcotte's defence, that global stock markets plummeted at the end of that period, didn't wash with Judge Ouellet. She noted the clients shouldn't have been overexposed to equities in

the first place, given their age, resources and risk tolerance.

The clients, Jean Sirois and Marthe Guénette Sirois, transferred their complete nestegg to Marcotte & Marcotte after two meetings and preparation of a plan in 1997. Sirois, a retired doctor who had a triple-bypass and stroke in 1996, was then 70. His wife was 64.

"I was very clear about what my parents wanted. The capital couldn't be affected. My father was afraid of risk," testified daughter Geneviève, who accompanied her parents to the meeting.

Marcotte devised a portfolio of 10 mutual funds for Jean Sirois's RRSP that was 15-per-cent low risk, 47-per-cent medium risk and 38-per-cent high risk. The couple, who knew little about investments, accepted it because they had faith, Mrs.

Sirois told the court.

Over a three-year period, the portfolio shifted to 60-per-cent medium risk and 40-per-cent high-risk as Marcotte attempted to stem the decline by becoming more speculative.

The value of the RRSP, initially \$614,000, peaked at \$647,776 in July 1998, then retreated steadily to \$337,644 in June of 2002. Mrs. Sirois's RRSP and non-RRSP investments declined from \$76,000 to \$44,399 over the same period.

In the summer of 2002, they switched to money-market funds. In the fall, they moved their money elsewhere. Sirois died the following year.

In her ruling, Judge Ouellet notes that "poor returns or risky investments do not necessarily and automatically signal a misdeed on the part of a financial planner." But it is impera-

tive that he or she be guided by the stated investment objectives, financial situation and knowledge of clients, and their risk tolerance.

Marcotte had invested their money in mutual funds with medium to high risk for five years, "an approach that didn't

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JUDGE SUZANNE OUELLET

jibe with the objectives of the clients. ... He ignored their objectives and their financial situation."

Their situation didn't change from 1997 to 2002, even if conditions in the equity markets did,

Judge Ouellet noted.

She awarded Mrs. Sirois \$242,523 for excess losses in her husband's RRSP and \$47,180 for losses in her own accounts, amounts determined by an expert's tabulation of the difference between what truly conservative portfolios would have been worth in November 2002 and the actual value of the Sirois holdings.

Quebec City lawyer Serge Lévesque, whose firm specializes in investment issues and represented the plaintiffs in this case, said the message is clear: financial planners have the same obligation as brokers to know their clients and abide by their expressed wishes in making suitable investment choices.

pdelean@  
thegazette.canwest.com