

## A Pyramid no Longer "in Motion"

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**On January 10th 2014, the Federal Court of Canada rendered a judgement by default in a class action suit brought against Business in Motion International Corporation (BIM) and its directing mind, Alan Kippax, for operating a pyramid selling scheme.**

Aggregate damages were awarded in the amount of \$6,650,000. This decision finally brings justice to thousands of Canadians who were victims of this illegal multi-level marketing scheme. It also serves as a warning to deter future illegal schemes from operating in Canada. Since as late as 2007, Alan Kippax had been in charge of BIM operations and was a key promoter of its corporate ladder. Through a series of seminars, he and other BIM presenters would offer potential investors the chance to participate in a "no-lose" business opportunity. Investors were encouraged to participate in BIM's corporate ladder program by becoming a distributor of their products. As a requirement for becoming a distributor, investors had to purchase a "Perpetual Motion Product" for \$3,200 and pay a distributor fee of \$80. Distributors were promised commission on their sale of BIM products, in addition to commission on sales of subsequently recruited distributors.

BIM had been operating for several years without intervention from the RCMP or the Competition Bureau, despite the discontent of many members. Class Members in the suit claimed that the products BIM sold to them for distribution were essentially valueless. The only viable way to make a sale would be to effectively pass on the buck by recruiting a new distributor who in turn was required to buy a product to participate. A CBC Marketplace investigation aired in 2009, revealing the faulty nature of the BIM scheme, and warning the public to be wary of the promises made by Kippax and his associates.

BIM faced heavy scrutiny from the public and was eventually forced to shut down in 2010. At that time, no outstanding commissions were paid, and products already purchased were not delivered. Many participants felt as though they were taken advantage of and sought justice in the form of a class action suit.

In his decision on the matter, Justice Rennie examined the BIM model and qualified it as an illegal pyramid selling scheme. Although BIM participants were told that their commissions were supposedly based off of sales, the Court determined that the sale of products was merely a veil

to disguise the true incentive of the program: to recruit new members. As per the judgement, “*In legitimate multi-level marketing schemes, commissions are paid upon the sale of products, not after the recruitment of others and the completion of a corporate ladder.*” Effectively, in the BIM scheme, commission for sales would only be paid if sufficient sales were made in a corporate ladder in a designated period of time. If the sale quota was not met, the ladder would be "crushed" and no commission would be paid, even for products that were already sold. The only viable way for members to be paid was to make quick sales through recruiting new members.

BIM violated several illegal practices relating to pyramid schemes denoted in the *Competition Act*: BIM sold distributors products as a condition of participation at a price significantly higher than their actual cost; it sold products to participants at an amount that is commercially unreasonable; it did not provide, nor inform its participants of a buy-back guarantee for its products; and it charged its members a fee to participate. Given the BIM scheme was in direct violation of the *Competition Act*, the Court ordered compensation for damages suffered by class-members.

In calculating damages, the court made a rough estimate that the number of victims was in the vicinity of 2000, each sustaining damages in the amount of \$3,280, the cost of one Perpetual Motion Product and the distributor fee. The precise number of victims and damages are unknown since the defendant Kippax was particularly uncooperative. In fact, the judgement was rendered by default and Kippax did not file a defense.

In total, \$6,650,000 was awarded to be distributed amongst class members, but it remains uncertain how much of this amount will actually be collected due to Kippax's financial status. In any case, this decision demonstrates that Canada is ready to crack down on illegal multi-level marketing schemes. Though criticized by some as being an incubator for illegal marketing schemes, Canada is now taking action to enforce its legislation and eliminate these illegal practices.