

Federal Court



Cour fédérale

Date: 20171220

Docket: T-132-13

Ottawa, Ontario, December 20, 2017

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

**GAELEN PATRICK CONDON
REBECCA WALKER
ANGELA PIGGOTT**

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER

(MOTION TO APPROVE NOTICE OF PROPOSED SETTLEMENT)

THIS MOTION FOR DIRECTIONS, made by the Plaintiffs, was heard by the Honourable Madame Justice Gagné on December 8, 2017;

ON BEING ADVISED that the parties have entered into Minutes of Settlement dated December 5, 2017, subject to court approval;

AND ON READING the materials filed, including the affidavit of Tina Yang sworn December 5, 2017, and the notice of proposed settlement attached as Schedule “A” to this order [Notice];

1. THIS COURT ORDERS THAT it will conduct a hearing to consider whether or not to approve the proposed settlement; to fix the fees, disbursements and applicable taxes for Class Counsel; and to appoint the Administrator and Arbitrator and fix their fees, disbursements and taxes, on February 22, 2018, beginning at 1:00 p.m. EST at the Court House in Ottawa [the Approval Hearing].

2. THIS COURT ORDERS THAT the Class Members shall be given notice of the Approval Hearing substantially in the form of the Notice.

3. THIS COURT ORDERS THAT on or before December 20, 2017:

(a) Class Counsel shall post the Notice on the website

www.studentloansclassaction.com;

(b) Class Counsel or a Canadian company retained by Class Counsel shall email the Notice to any person who registered with Class Counsel and provided a valid email address;

(c) The Defendant shall post the Notice on the Employment and Social Development Canada website and on the equivalent section of the Canada.ca website, which will remain posted until the commencement of the Fairness Hearing; and

- (d) Class Counsel shall arrange for an online media campaign to commence publicizing the Notice, consisting of:
- a. Targeted advertising on Facebook & Instagram of all Canadian users self-reported as being enrolled in post-secondary education between 2000 and 2006;
 - b. Google display ads and direct display ads on selected web properties which receive high traffic from college-educated Canadians between the ages of 28 and 45; and
 - c. Direct display ads on the websites of the Globe & Mail, National Post, Toronto Star, and CBC.

4. THIS COURT ORDERS THAT the cost of disseminating the Notice in accordance with paragraph 2(d) and the costs of Sarkis Isaac for services rendered in accordance with paragraph 6 shall be paid out of the funds set aside for Administration Expenses in the Settlement Agreement, and if the settlement is not approved, then such costs shall be borne by the Defendant.

5. THIS COURT ORDERS THAT on or before the Approval Hearing, Class Counsel and the Defendant shall each serve and file an affidavit with the Court confirming that they have complied with paragraphs 2 and 3.

6. THIS COURT ORDERS THAT Sarkis Isaac be and is hereby appointed to receive any written objections from the Class Members.

7. THIS COURT ORDERS THAT Class Members must submit their objections in writing by mail, fax or email, which must be received by Sarkis Isaac no later than 5:00 p.m. EST on February 12, 2018:

By mail to: Student Loans Class Action
Attention Sarkis Isaac, Howie & Partners
3063 Walker Rd., Windsor ON N8W 3R4

Or by fax: 519-250-1929

Or by email: classaction@howieandpartners.com

8. THIS COURT ORDERS THAT any written objections to the proposed settlement must include the following:

- (a) The Class Member's name, address, phone number and email address;
- (b) If the Class Member is deceased or otherwise incapable of making his or her own objection, the contact information of the person acting on behalf of the Class Member, together with a copy of the power of attorney or court order or other authorization to permit such person to represent the Class Member;
- (c) A brief statement of the nature and reason for the objection; and
- (d) Whether the Class Member intends to appear at the Approval Hearing in person, or by counsel, and the contact information for counsel if applicable.

9. THIS COURT ORDERS THAT if the settlement is approved, Class Counsel shall notify any individual (using the contact information provided when they opted out), who previously delivered an election to opt out of this class action and/or who delivered an election to opt out of this class action after the opt-out deadline expired, or who delivered an incomplete election to

opt out, within 10 days of the Approval Hearing, to advise that they may participate in the benefits of the approved settlement by submitting a claim form prior to the claims bar date to be set at the Approval Hearing.

"Jocelyne Gagné"

Judge

Schedule "A"

**CANADA STUDENT LOANS PRIVACY BREACH CLASS ACTION
NOTICE OF PROPOSED SETTLEMENT**

PURPOSE OF THIS NOTICE

This notice is directed to all persons whose personal information was contained on an external hard drive in the control of Human Resources and Skills Development Canada ("HRSDC", now known as Employment and Social Development Canada) or the National Student Loan Services Centre which was allegedly lost November 5, 2012 and who did not opt out of the class action ("Class" or "Class Members").

The parties have reached a settlement which they will ask the Federal Court to approve.

THE PROPOSED SETTLEMENT

If the Federal Court approves the settlement, the defendant will pay \$17,500,000 ("Settlement Amount") plus an unlimited amount for Actual Losses to settle the claims of the Class Members, Class Counsel fees, disbursements, taxes and administration costs, in return for a release and a dismissal of the class action.

The defendant does not admit wrongdoing or liability. This settlement is a compromise of disputed claims.

CLASS MEMBERS WHO SUFFERED INCONVENIENCE

Class Members will receive \$60 on account of the inconvenience associated with the loss of their personal information (the "Payment"). In the event that the total amount of the approved Payments for all Class Members who apply for compensation exceeds the available Settlement Amount, the Payments shall be reduced proportionally.

The \$60 is intended to compensate Class Members for time spent responding to the potential privacy breach estimated to be on average about four hours less legal fees and the costs of administration.

UNLIMITED FUND FOR ACTUAL LOSSES

Class Members may also claim additional amounts for any actual losses that they suffered as a result of the loss of their personal information and for which they have not been otherwise compensated ("Actual Losses"). An arbitrator will determine whether Class Members suffered Actual Losses and assess their individual damages. If there is a surplus in the Settlement Amount after payments for inconvenience have been made, approved Actual Losses shall be paid out of that surplus. If there is no surplus or the surplus is exhausted, approved Actual Losses shall be paid directly by the defendant.

ADMINISTRATION COSTS AND LEGAL FEES

The Court will be asked to approve the payment of the following costs out of the Settlement Amount:

- (a) The costs of administration of the settlement and advertising; and
- (b) Class Counsel fees of \$5,250,000 plus disbursements of approximately _____ plus taxes thereon.

THE FAIRNESS HEARING

The Federal Court will hold a hearing at [LOCATION] on [DATE] at [TIME] to consider whether the proposed settlement is fair, reasonable and in the best interests of the Class and whether to approve Class Counsel fees. Class Members who do not oppose the proposed settlement do not need to appear at the hearing or take any other action at this time to indicate their intention to participate in the proposed settlement. If the settlement is approved, there will be a further detailed notice to Class Members providing instructions about making a claim for compensation.

IF YOU OBJECT TO THE PROPOSED SETTLEMENT

Class Members' objections to the proposed settlement must be submitted in writing no later than 5:00 pm ET on INSERT DATE, 2018. The judge will consider their written objections to the proposed settlement at the fairness hearing. Class members who object may, but are not required to, attend the approval hearing. Written objections must be sent by mail, fax or email to:

Mail: Student Loans Class Action fax: 519.250.1929 email: classaction@howieandpartners.com
Sarkis Isaac/Howie & Partners
3063 Walker Rd,
Windsor ON N8W 3R4

Written objections must include the following information:

- (a) Class Member's name, address, phone number and email address;
- (b) A brief statement of the nature and reasons for the objection;
- (c) Confirmation that the objector is a Class Member or their relationship to a Class Member; and
- (d) Whether the objector intends to appear at the hearing in person or if they will be represented by counsel.

Any questions regarding this notice or the proposed settlement should be directed to:

BRANCH MACMASTER LLP
1410 – 777 Hornby Street, Vancouver, BC V6S 1S4
insert phone / email

CHARNEY LAWYERS
602-151 Bloor Street W, Toronto, ON M5S 1S4
insert phone / email

STROSBURG SASSO SUTTS LLP
1561 Ouellette Avenue, Windsor, ON N8X 1K5
insert phone / email

BOB BUCKINGHAM LAW
81 Bond Street, St. John's, NL A1C 1T2
insert phone / email

PLEASE REGISTER WITH CLASS COUNSEL

Please register at www.studentloansclassaction.com to stay up-to-date on the most recent developments. If the settlement is approved, all registrants who provided a valid email address will receive an email with further instructions about how to make a claim for compensation. That information will also be posted on the website.

INTERPRETATION

This Notice has been approved by the Court and is a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this Notice and the terms of the Settlement Agreement, the Settlement Agreement prevails. The complete executed Settlement Agreement can be viewed at www.studentloansclassaction.com.