

FEDERAL COURT  
PROPOSED CLASS PROCEEDING

BETWEEN:

GAELEN PATRICK CONDON, REBECCA WALKER and ANGELA PIGGOTT

PLAINTIFFS

FEDERAL COURT  
COURT FÉDÉRALE  
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HER MAJESTY THE QUEEN

DEFENDANT

Date 25-APR-2013  
Registrar  
Greffier

CONSOLIDATED STATEMENT OF CLAIM

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Court Rules*, serve it on the Plaintiffs' solicitor or, where the Plaintiffs do not have a solicitor, serve it on the Plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Vancouver, April 25, 2013

Issued by:

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(Registry Officer)

Address of Local Office: PO Box 10065  
701 West Georgia Street  
Vancouver, BC V7Y 1B6

TO: The Attorney General of Canada  
Attention: Mr. William F. Pentney, Deputy Attorney General of Canada

## CLAIM OF THE PLAINTIFFS

### RELIEF CLAIMED

1. The Plaintiffs claim on their own behalf and on behalf of the proposed Class Members (as defined below):
  - a. An Order pursuant to Rules 334.16(1) and 334.17 of the *Federal Court Rules* (the “Rules”) certifying this action as a class proceeding and providing any ancillary directions;
  - b. An Order pursuant to Rules 334.12(3), 334.16(1)(e) and 334.17(b) appointing the Plaintiffs as the representative plaintiffs for the Class;
  - c. An interim Order that the Defendant fund appropriate credit monitoring services for the Plaintiffs and all Class Members, and provide the Plaintiffs and all Class Members with new Social Insurance Numbers;
  - d. An Order that as a result of the Defendant’s breach of contract and warranty, any amounts owing by the Plaintiffs and the Class Members to the Defendant as a result of their student loans be set off in whole or in part;
  - e. Damages for breach of contract, breach of warranty, breach of confidence, reckless intrusion upon seclusion, and negligence, including damages for:
    - i. Costs incurred in preventing identity theft;
    - ii. Increased risk of future identity theft;
    - iii. Damage to credit reputation;
    - iv. Mental distress;
    - v. Out-of-pocket expenses;

- vi. Inconvenience, frustration and anxiety associated with taking precautionary steps to reduce the likelihood of identity theft or other improper use of credit information; and
  - vii. Time lost in precautionary communications with third parties such as credit card companies, credit agencies, creditors, utilities, cable and internet providers, and other parties to inform them of the potential that the Plaintiffs' and Class Members' credit information may be misappropriated;
- f. Moral and material damages for the breach of the Plaintiffs' and Class Members' privacy rights under the law of Quebec, including damages for :
- i. Costs incurred in preventing identity theft;
  - ii. Increased risk of future identity theft;
  - iii. Damage to credit reputation;
  - iv. Mental distress;
  - v. Out-of-pocket expenses;
  - vi. Inconvenience, frustration and anxiety associated with taking precautionary steps to reduce the likelihood of identity theft or other improper use of credit information; and
  - vii. Time lost in precautionary communications with third parties such as credit card companies, credit agencies, creditors, utilities, cable and internet providers, and other parties to inform them of the potential that the Plaintiffs' and Class Members' credit information may be misappropriated;
- g. Punitive damages, or alternatively, punitive damages under section 49 of the *Charter of Human Rights and Freedoms*, RSQ c C-12;
- h. An Order pursuant to Rule 334.28(1) and (2) for the aggregate assessment of monetary relief and distribution thereof to the Plaintiffs and Class Members;
- i. Pre- and post-judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, RSC 1985, c F-7, or such rate as defined in the Class Members' respective loan agreement, if the rate is higher than the rate set by the *Federal Courts Act*;
- j. Costs, if appropriate; and
- k. Such further and other relief as this Honourable Court deems just.

## **THE PARTIES**

2. The Plaintiff, Gaelen Patrick Condon, is a resident of St. John's, Newfoundland and Labrador, with an address for service care of Falconer Charney LLP, 8 Prince Arthur Ave., Toronto, Ontario, M5R 1A9.
3. The Plaintiff, Rebecca Walker, is a resident of Sydney, Nova Scotia, with an address for service care of Falconer Charney LLP, 8 Prince Arthur Ave., Toronto, Ontario, M5R 1A9.
4. The Plaintiff, Angela Piggott, is a resident of Toronto, Ontario, with an address for service care of Falconer Charney LLP, 8 Prince Arthur Ave., Toronto, Ontario, M5R 1A9.
5. The Plaintiffs bring this action on their own behalf and on behalf of members of a class (the "Class Members") defined as:

All persons whose personal information was contained in an external hard drive in the control of Human Resources and Skills Development Canada or the National Student Loan Services Centre which was lost or disclosed to others on or about November 5, 2012, but not including senior management of Human Resources and Skills Development Canada, the Canada Student Loans Program, or Ministers and Deputy Ministers of the Ministry of Human Resources and Skills Development.

6. The Defendant, Her Majesty the Queen, is named as a representative of the Federal Government of Canada and the Minister of Human Resources and Skills Development, the Minister responsible for Human Resources and Skills Development Canada ("HRSDC").

## **BACKGROUND**

7. The Plaintiffs and the Class Members applied for a student loan through the Canada Student Loans Program, which is administered by HRSDC.
8. On or about November 5, 2012, the HRSDC discovered that it was missing an external hard drive containing unencrypted confidential personal information of approximately 583,000 Canadians who had received loans through the Canada Student Loans Program. The confidential information consists of the names, dates of birth, Social Insurance Numbers, addresses, and student loan balances (the "Personal Information") of the Plaintiffs and the Class Members.
9. The external hard drive was lost in Gatineau, Quebec, by an employee of HRSDC who was responsible for the possession and care of it on behalf of HRSDC.
10. The Defendant failed to notify the HRSDC's security officer of the loss of the Personal Information until November 28, 2012, and failed to notify the Privacy

Commissioner of Canada of the loss of the Personal Information until December 14, 2012.

11. The Defendant failed to disclose the loss of Personal Information to the Canadian public or to the Plaintiffs and Class Members until January 11, 2013.
12. To date, the Defendant has been unable to locate the external hard drive on which the Personal Information was stored. The Defendant has been unable to determine when or how the hard drive was lost, who is in possession of the hard drive, or any details regarding whether the Personal Information stored on the hard drive has been accessed, disseminated, copied, published, read, or used, by whom, and for what purpose.
13. In January 2013, the Plaintiffs each contacted a telephone hotline established by HRSDC to inquire whether their Personal Information was contained on the lost external hard drive. HRSDC confirmed that each of the Plaintiffs' Personal Information had been lost.
14. The Plaintiffs were advised by HSRDC that they could:
  - a. consider subscribing to a credit monitoring service at the cost of \$14 per month;
  - b. request a copy of their credit reports from Equifax or TransUnion; and
  - c. file a complaint with the Privacy Commissioner of Canada.
15. HSRDC also advised the Plaintiffs that if they suspected their Personal Information was being used fraudulently, they should:
  - a. report irregularities by mail delivery to Canada Post;
  - b. file a police complaint;
  - c. visit a Service Canada Centre and bring necessary documentation to show a fraudulent use of their Social Insurance Number; and
  - d. visit a Service Canada website regarding Social Insurance Number protection that repeats the information set out above.

#### **BREACH OF CONTRACT AND WARRANTY**

16. The Plaintiffs and the Class Members entered into agreements with HRSDC which were similar or identical with respect to the collection, retention, and disclosure of the Personal Information. As part of the agreement, each Class Member was required to complete an application to obtain their student loans which required that the Plaintiffs and each Class Member provide the Personal

Information to the Defendant. The terms of the loan and the application together form the agreement (the "Contract").

17. The Contract contained the following express or implied terms:
  - a. That HRSDC would comply with all relevant statutory obligations regarding the collection, retention, and disclosure of the Plaintiffs' and Class Members' Personal Information, including the obligations set out in:
    - i. The *Privacy Act*, RSC 1985, c P-21;
    - ii. The *Canada Student Financial Assistance Act*, SC 1994, c 28;
    - iii. The *Canada Student Financial Assistance Regulations*, SOR 95-329; and
    - iv. The *Department of Human Resources and Skills Development Act*, SC 2005, c 34;(collectively, the "Statutes");
  - b. That HRSDC would not collect, retain, or disclose the Personal Information except in the manner and for the purposes expressly authorized by the Contract or the Statutes;
  - c. That HRSDC would keep the Personal Information of the Plaintiffs and the Class Members secure and confidential;
  - d. That HRSDC would take steps to prevent the Personal Information from being lost, disseminated, or disclosed to unauthorized persons; and
  - e. That HRSDC would delete, destroy, or not retain the Personal Information after the Plaintiffs and Class Members repaid their loans in full, and would not disclose the Personal Information after the Plaintiffs and Class Members repaid their loans in full.
18. The Contract offered peace of mind to the Plaintiffs and Class Members that in exchange for a student loan which would assist with Class Members' education, the Personal Information would be used by the Defendant for limited purposes and would otherwise be kept secure and would not be lost, disseminated, or disclosed to unauthorized persons.
19. The Defendant warranted that it would keep the Personal Information secure and confidential, comply with the obligations set out in the Statutes, and would take steps to prevent the Personal Information from being lost, disseminated, or disclosed to unauthorized persons.

20. The Defendant breached the express or implied terms of the Contract and warranty by improperly losing, disseminating, or disclosing the Personal Information of the Plaintiffs and the Class Members, failing to comply with the obligations set out in the Statutes, and by retaining the Personal Information of Class Members who had repaid their loans in full.

## **NEGLIGENCE**

21. The Defendant owed the Plaintiffs and Class Members a duty of care in the collection, retention, and disclosure of the Personal Information and the Defendants' fulfillment of the terms of the Contract.
22. The Defendant had statutory duties regarding the handling of the Plaintiffs' and Class Members' Personal Information, including the following:
  - a. Pursuant to section 8(1) of the *Privacy Act*, RSC 1985, c P-21, the Personal Information was not to be disclosed without the consent of the individual to which the information relates; and
  - b. Pursuant to section 32 of the *Department of Human Resources and Skills Development Act*, SC 2005, c 34, the Personal Information is privileged and is not to be made available except as authorized by that Act.
23. The Defendant was negligent and/or reckless, and performed the Contract negligently by:
  - a. failing to meet its statutory duties in the collection, retention, and disclosure of the Personal Information;
  - b. failing to create or adhere to policies for the collection, retention, and disclosure of the Personal Information;
  - c. failing to take reasonable steps to ensure the Personal Information was not lost, disseminated, or disclosed;
  - d. retaining the Personal Information for a period beyond which it was required and for a period beyond that permitted by the Contract;
  - e. failing to take reasonable steps to prevent unauthorized access to the Personal Information, including failing to encrypt the external hard drive on which the Personal Information was stored;
  - f. failing to disclose the loss of the Personal Information to its own security personnel and to the affected Plaintiffs and Class Members in a timely manner;
  - g. other such particulars as counsel may advise.

## **BREACH OF PRIVACY, BREACH OF CONFIDENCE, AND INTRUSION UPON SECLUSION**

24. The Defendant's breach of contract and the particulars of negligence set out above constitute:
- a. a breach of confidence, as the Plaintiffs and Class Members communicated their Personal Information to the Defendant, and the Defendant misused that Personal Information to the detriment of the Plaintiffs and Class Members; and
  - b. a breach of privacy and a reckless intrusion upon the seclusion of the Plaintiffs and the Class Members in their private affairs, in a manner that would be highly offensive to a reasonable person.

## **BREACH OF PRIVACY RIGHTS UNDER THE LAW OF QUEBEC**

25. In the alternative, the Plaintiffs and Class Members have claims for moral and material damages under the laws of Quebec because the civil wrong occurred in the City of Gatineau, Quebec, where the employee of HRSDC lost the external hard drive.
26. The Defendant, through its employees, failed to abide by the rules of conduct which lay upon it so as not to cause injury to the Plaintiffs and the Class Members contrary to articles 1457 and 1463-1464 of the *Civil Code of Quebec*, SQ 1991 ("CCQ") and as a result are liable to the Plaintiffs and the Class Members for moral and material damages.
27. As a result of the Defendant's acts and omissions particularized above, the Defendant:
- a. failed to respect the reputation and privacy of the Plaintiffs and Class Members by communicating the Personal Information to third persons without authorization under law or the consent of the Plaintiffs and Class Members, contrary to articles 3, 35, and 37 of the CCQ; and
  - b. used the Personal Information for purposes that are inconsistent with the purposes for which the file on the Plaintiffs and Class Members was established by retaining the Personal Information of the Plaintiffs and Class Members for a period beyond which it was required and for a period beyond that permitted by the Contract, contrary to article 37 of the CCQ.
28. The Defendant, through the acts and omissions particularized above, unlawfully interfered with the Plaintiffs' and Class Members' right to respect for private life and their right to non-disclosure of confidential information as protected by sections 5 and 9 of the *Charter of Human Rights and Freedoms*, RSQ c C-12 (the "*Quebec Charter*").



29. As a result of the Defendant's unlawful interference with the Plaintiffs' and Class Members' rights as protected by the *Quebec Charter*, the Defendant is liable to the Plaintiffs and the Class for moral, material and punitive damages pursuant to section 49 of the *Quebec Charter*.

## **DAMAGES**

30. As a result of the Defendant's breach of contract, breach of warranty, breach of confidence, reckless intrusion upon seclusion, and negligence, or alternatively, the Defendant's unlawful breach of privacy rights under the law of Quebec, the Plaintiffs and Class Members have suffered damages including:
- a. Costs incurred in preventing identity theft;
  - b. Increased risk of future identity theft;
  - c. Damage to credit reputation;
  - d. Mental distress;
  - e. Out-of-pocket expenses;
  - f. Inconvenience, frustration and anxiety associated with taking precautionary steps to reduce the likelihood of identity theft or other improper use of the Personal Information; and
  - g. Time lost in precautionary communications with third parties such as credit card companies, credit agencies, creditors, utilities, cable and internet providers, and other parties to inform them of the potential that the Plaintiffs' and Class Members' Personal Information may be misappropriated.
31. The Defendant's conduct as particularized above was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, and in complete disregard for the rights of the Plaintiffs and Class Members, and as such renders the Defendant liable to pay punitive damages.
32. Alternatively, the Defendant's conduct as particularized above was an unlawful and intentional breach of the Plaintiffs' and Class Members' privacy rights under Quebec law and as such renders the Defendant liable to pay punitive damages under section 49 of the *Quebec Charter*.

**GENERAL**

33. The Plaintiffs propose that this action be tried at Toronto, Ontario, Canada.

Date: April 25, 2013

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