

Federal Court



Cour fédérale

Date: 20160620

Docket: T-132-13

Ottawa, Ontario, June 20, 2016

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

**GAELEN PATRICK CONDON
REBECCA WALKER
ANGELA PIGGOTT**

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER
(Certification)

UPON reviewing the judgment of the Federal Court of Appeal in this matter, issued July 6, 2015;

THIS COURT ORDERS THAT:

1. This action is certified as a class proceeding;
2. The Plaintiffs are appointed as representatives of the Class;
3. The Class (or Class Members) is defined as:

All persons whose personal information was contained in an external hard drive in the control of Human Resources and Skills Development Canada (now known as Employment and Social 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.

4. The nature of the claims asserted on behalf of the Class and the relief sought by the Class are the following:

With respect to the alleged breach of contract and warranty

- a. A declaration that the Defendant failed to adhere to the standards for the protection of the Personal Information set out in the statutes that are expressly referred to in the Contracts;
- b. A declaration that the Defendant failed to adhere to the Minister's Policies, and in particular the Locked Container Policy, Encryption Policies and Clean Desk Policy;
- c. A declaration that the Defendant has not disclosed Personal Information in the manner required by the Contracts;
- d. A declaration that the Defendant has failed to destroy the Personal Information in the manner required by the Contracts;
- e. A declaration that the Defendant has retained the Personal Information for a period longer than allowed under the terms of the Contracts and for purposes not allowed by the Contracts;
- f. An award for nominal damages.

With respect to an alleged commission of the tort of intrusion upon seclusion

- g. A declaration that the Defendant has committed the tort of intrusion upon seclusion;

h. An award of nominal and/or punitive damages.

5. The Common Questions are the following:

With respect to the alleged breach of contract and warranty

- a. Did the Class Members enter into a Contract with the Defendant for the provision of student loans?
- b. Did the contract between the Defendant and the Class Members contain terms that the Defendant would:
 - i. Keep the Personal Information confidential?
 - ii. Not disclose the Personal Information except as provided by the Contract and by applicable statutes?
 - iii. Secure the Personal Information and ensure that it would not be lost and/or disclosed other than by the Contract or applicable statutes?
 - iv. Delete, destroy, or otherwise not retain the Personal Information once the Class Members had repaid their student loan in full?
 - v. Not disclose the Personal Information once the Class Members had repaid their student loan in full?
- c. As a result of its collection, retention, loss, or disclosure of the Personal Information, did the Defendant breach any of the terms particularized in sub-paragraph b? If yes, why?
- d. Did the Defendant warrant to Class Members that it would:
 - i. Keep the Personal Information confidential?
 - ii. Not disclose the Personal Information except as provided by the Contract and by applicable statutes?
 - iii. Secure the Personal Information and ensure that it would not be lost and/or disclosed other than by the Contract or applicable statutes?
 - iv. Delete, destroy, or otherwise not retain the Personal Information once the Class Members had repaid their student loan in full?

- v. Not disclose the Personal Information once the Class Members had repaid their student loan in full?
 - e. As a result of its collection, retention, loss, or disclosure of the Personal Information, did the Defendant breach any of the terms particularized in sub-paragraph d? If yes, why?
 - f. Is the Defendant liable to pay any damages incurred by Class Members for breach of contract and warranty, the commission of the tort of intrusion upon seclusion, negligence and/or breach of confidence?
 - g. Did the Defendant owe Class Members a duty of care in its collection, retention and disclosure of the Personal Information?
 - h. If the answer to issue (g) is yes, did the Defendant breach that duty of care in its collection, retention and disclosure of the Personal Information? If yes, why?
 - i. Did the Class Members communicate the Personal Information to the Defendant?
 - j. Did the Defendant misuse the Personal Information in its collection, retention, loss, or disclosure of the Personal Information, and was that misuse to the detriment of the Class Members?
 - k. If the answers to issues (i) and (j) are yes, did the Defendant breach the confidence of the Class Members in its collection, retention, loss or disclosure of the Personal Information? If yes, why?
6. The attached Litigation Plan is approved;
7. Sarkis Isaac (“Sarkis”), an accountant with the firm Howie & Partners in Windsor, Ontario, is appointed as the opt-out administrator to receive written elections to opt-out of the class action;
8. Class Members who wish to opt-out of this action must do so by sending a written election to opt-out to Sarkis on or before August 31, 2016;

9. Any Class Member who has not validly opted-out of this action in accordance with paragraph 7 of this order will be bound by any determinations made by the Court in this action;
10. The notice of certification of this action as a class proceeding (the “Notice”) shall be provided to Class Members in substantially the form attached as Schedule “A” to this order; and
11. The Notice shall be disseminated to Class Members within 8 weeks of the date of this order in accordance with the Plan of Dissemination that is attached as Schedule “B” to this order;
12. No costs are granted.

"Jocelyne Gagné"

Judge

Schedule "A"

STUDENT LOANS CLASS ACTION

PLEASE READ THIS CAREFULLY - IT MAY AFFECT YOUR RIGHTS.

To all persons whose personal information was contained in an external hard drive in the control of Human Resources and Skills Development Canada (now known as Employment and Social Development Canada) or the National Student Loan Services Centre which was lost or disclosed to others on or about November 5, 2012.

What is this lawsuit about?

A class action lawsuit has been started in the Federal Court of Canada claiming that Human Resources and Skills Development (now known as Employment and Social Development Canada) or the National Student Loans Service Centre lost an external hard drive containing the private details of some 583,000 Canadians. This case has now been certified as a class action by the Federal Court. The plaintiffs are seeking compensation for this alleged privacy breach.

What happens next?

The class action has two stages. In the first stage, a trial will be held to determine the common issues in the action. If these issues are determined in favour of the class members, there will be a second stage to determine what each person has to do to obtain compensation.

What do I have to do to participate?

There is nothing you have to do right now. If your personal information was on the lost hard drive, you are automatically included in the class. Unless you opt-out you will be bound by the result of the common issues trial. However, in order to make sure you are notified of any important developments in the action, we recommend you register on our website at www.studentloansclassaction.com.

What if I don't want to participate?

If you don't want to be part of the class action, you must send a copy of the opt-out form to Sarkis Isaac, an accountant at the firm Howie & Partners. A copy of the opt-out form can be found at www.studentloansclassaction.com. You must complete the form by no later than 5:00 p.m. EST on August 31, 2016.

Do I need to pay anything?

You will only need to pay legal fees if the action is successful and the class is awarded compensation. Those legal fees will be paid directly from that compensation. You will not need to pay any legal fees out of your own pocket. Any fee paid to the lawyers must be approved by the Court as being fair and reasonable. The fee agreements entered into by the representative plaintiffs allow the lawyers to be paid up to 1/3 of any amounts recovered or any benefit obtained from the class action. If and when this occurs, the lawyers will apply to the Court for approval of that percentage or some lesser amount. If the class action is unsuccessful at the common issues trial, you will not pay any legal fees.

Who are the lawyers for the class?

The lawyers for the class are:

BRANCH MACMASTER LLP
1410 – 777 Hornby Street
Vancouver, BC V6Z 1S4

CHARNEY LAWYERS
151 Bloor Street West, Suite 890
Toronto, ON M5S 1P7

SUTTS, STROSBERG LLP
600 - 251 Goyeau Street Windsor
Windsor, ON N9A 6V4

BOB BUCKINGHAM LAW
81 Bond Street
St. John's NL A1C 1T2

Where can I get more information?

You can always check the website for the class action at www.studentloansclassaction.com or contacting the lawyers at the addresses above.

RECOURS COLLECTIF RELATIF AUX PRÊTS ÉTUDIANTS

VEUILLEZ LIRE ATTENTIVEMENT CE DOCUMENT – IL PEUT CONCERNER VOS DROITS

À l'attention de toutes les personnes dont les renseignements personnels figuraient sur un disque dur externe sous la responsabilité de Ressources humaines et Développement des compétences Canada (maintenant appelé Emploi et Développement social Canada) ou du Centre de service national de prêts aux étudiants qui a été perdu ou dont le contenu a été communiqué à d'autres le ou vers le 5 novembre 2012.

En quoi consiste ce recours collectif?

Un recours collectif a été déposé en Cour fédérale du Canada à l'effet que Ressources humaines et Développement des compétences Canada (maintenant appelé Emploi et Développement social Canada) ou le Centre de service national de prêts aux étudiants a perdu un disque dur externe contenant les renseignements personnels de quelque 583 000 Canadiens. La Cour fédérale a maintenant autorisé cette action comme recours collectif. Les demandeurs veulent obtenir un dédommagement pour cette violation alléguée de leur vie privée.

Que se passe-t-il ensuite?

Le recours collectif comporte deux étapes. Dans un premier temps, il y aura un procès pour déterminer les questions communes du recours. Si l'on tranche en faveur des membres du groupe intentant ce recours collectif, on engagera la deuxième étape pour déterminer ce que doit faire chaque personne pour obtenir un dédommagement.

Que dois-je faire pour y participer?

Vous n'avez rien à faire pour le moment. Si vos renseignements personnels se trouvaient sur le disque dur perdu, vous êtes automatiquement inclus dans le recours collectif. À moins de vous retirer du recours collectif, vous serez liés par les résultats du procès relatif aux questions communes. Nous vous recommandons de vous inscrire sur notre site Web à www.studentloansclassaction.com pour être informé de tout événement important lié à l'action.

Et si je ne veux pas y participer?

Si vous ne voulez pas participer au recours collectif, envoyez une copie du formulaire de retrait à Sarkis Isaac, comptable à la firme Howie & Partners. Vous trouverez ce formulaire à www.studentloansclassaction.com. Vous devez soumettre le formulaire rempli au plus tard le 31 août, à 17 h HNE.

Y a-t-il des frais?

Vous devrez payer des frais juridiques seulement si le groupe gagne le recours collectif et qu'un dédommagement est accordé. Ces frais juridiques seront payés à même le montant du dédommagement. Vous n'aurez pas de frais juridiques à payer de votre poche. Les honoraires payés aux avocats doivent être approuvés comme honoraires justes et raisonnables par la Cour. Selon les conventions d'honoraires conclues par les représentants demandeurs, les avocats peuvent recevoir jusqu'au 1/3 des montants recouvrés ou de tout avantage découlant du recours collectif. Si cela se produit, les avocats demanderont à la Cour d'approuver ce pourcentage ou un montant inférieur. Si l'on ne gagne pas le recours collectif lors du procès relatif aux questions communes, vous n'aurez pas de frais juridiques à payer.

Qui sont les avocats chargés du recours collectif? Les avocats sont les suivants :

BRANCH MACMASTER LLP
777, rue Hornby, bureau 1410
Vancouver, C.-B. V6Z 1S4

CHARNEY LAWYERS
151, rue Bloor Ouest, bureau 890
Toronto, ON M5S 1P7

SUTTS, STROSBURG LLP
251, rue Goyeau, bureau 600
Windsor, ON N9A 6V4

BOB BUCKINGHAM LAW
81, rue Bond
St. John's, T.-N. A1C 1T2

Où puis-je trouver de plus amples renseignements?

Vous pouvez toujours vérifier le site Web relatif au recours collectif à www.studentloansclassaction.com ou communiquer avec les avocats aux adresses ci-dessus.

Schedule "B"

PLAN OF DISSEMINATION

**Notice of Certification in the Matter of
Canada Student Loans Class Action Litigation**

For the purposes of this Plan of Dissemination, the following definitions apply:

Class Counsel means the law firms of Sutts, Strosberg LLP, Charney Lawyers, Branch MacMaster LLP, and Bob Buckingham Law.

Notice means the notice to the Class of the certification of Federal Court Action No. T-132-13 as a class proceeding.

The Notice shall be distributed in the following manner:

1. Class Counsel will post the Notice on the website www.studentloansclassaction.com and email the Notice to any person who registered with Class Counsel and provided a valid email address.
2. The defendant will send the Notice to all Class Members whose name and address appear on its mailing list compiled in or around January 2013 by regular mail, in addition to the emails sent in accordance with paragraph 1.
3. The defendant will post the Notice on the Human Resources and Skills Development Canada (now known as Employment and Social Development Canada) website and on the equivalent section of the Canada.ca website and the Notice will remain posted until the expiry of the opt-out period.