

Federal Court



Cour fédérale

**Date: 20180618**

**Docket: T-132-13**

**Ottawa, Ontario, June 18, 2018**

**PRESENT: The Honourable Madam Justice Gagné**

**BETWEEN:**

**GAELEN PATRICK CONDON  
REBECCA WALKER  
ANGELA PIGGOTT**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**JUDGMENT**

THIS judgment is made pursuant to the Court's Order and Reasons rendered on May 18, 2018 (*Condon v Canada*, 2018 FC 522), whereby it granted plaintiffs' motion for orders approving the Settlement Agreement, appointing the Administrator and Arbitrators, fixing the cost of Administration, fixing the amount of an honorarium for the representative plaintiffs and fixing Class Counsel's Fees.

ON READING the materials filed, including the following:

- (a) the affidavit of Luciana Brasil, sworn February 16, 2018;

- (b) the draft Judgment;
- (c) the affidavit of Jonathan Wallace, sworn February 13, 2018;
- (d) the affidavit of Sarkis Isaac, sworn February 14, 2018;
- (e) the affidavit of Gaelen Patrick Condon, sworn February 9, 2018;
- (f) the affidavit of Rebecca Walker, sworn February 8, 2018;
- (g) the affidavit of Angela Piggott, sworn February 6, 2018;
- (h) the letter from Crawford and Company (Canada) Inc. agreeing to be appointed as Administrator;
- (i) correspondence from the Ontario Public Guardian and Trustee;
- (j) this Court's order dated June 20, 2016, certifying this action as a class proceeding; and
- (k) this Court's order dated December 20, 2017, directing notice to the Class Members;

AND ON HEARING the submissions of Class Counsel and counsel for the Defendant, and being advised that the Ontario Public Guardian and Trustee takes no position on the Settlement Agreement or the form of this Judgment;

AND ON HEARING from the objectors who appeared in person by videoconference;

AND ON BEING ADVISED that no objectors appeared in person by videoconference at Edmonton, Calgary, or Halifax, despite videoconference facilities having been made available;

AND ON READING all the written objections delivered to the Court;

AND ON BEING ADVISED that all objections delivered to Sarkis Isaac have been delivered to the Court and that Mr. Isaac's affidavit has been sealed;

AND ON BEING FURTHER ADVISED that Ivan Whitehall, Q.C. and Reva Devins consent to their appointments as Arbitrators;

AND ON BEING FURTHER ADVISED that the Defendant takes no position on the issue of Class Counsel's Fees;

1. THIS COURT ORDERS that, for the purposes of this Judgment and Distribution Plan, the following definitions apply:

- (a) **“Action”** means this class action *Gaelen Patrick Condon et al. v. Her Majesty the Queen*, docket no. T-132-13;
- (b) **“Actual Loss”** means a proven loss by an Eligible **Class Member**, excluding exemplary and punitive damages, as determined by an **Arbitrator**, caused by the alleged privacy incident for which the **Eligible Class Member** has not been otherwise compensated, and the **Arbitrator** must be satisfied, on the balance of probabilities, that such loss could not have been prevented or limited by the credit protection services offered by the **Defendant**;
- (c) **“Administrator”** means Crawford and Company (Canada) Inc.;
- (d) **“Arbitrator”** or **“Arbitrators”** means Ivan Whitehall, Q.C. and Reva Devins;
- (e) **“Claim Form”** means the electronic claim form by which a putative **Class Member** may claim from the **Distribution Amount**;
- (f) **“Claims Bar Date”** means January 18, 2019;
- (g) **“Class”** or **“Class Members”** means:

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, and not including those persons who validly opted out pursuant to the certification order and did not exercise the right to opt-back into this Action;

- (h) **“Class Counsel”** means collectively, **Strosberg LLP**, Charney Lawyers, Branch MacMaster LLP and Bob Buckingham Law;

- (i) “**Class Counsel’s Fees**” means the fees, disbursements, HST and other applicable charges to **Class Counsel** asserted in this **Action**;
- (j) “**Cost of Administration**” means the amount of fees, disbursements and taxes to be paid to the **Administrator**;
- (k) “**Court**” means the Federal Court;
- (l) “**Defendant**” means Her Majesty the Queen;
- (m) “**Distribution Amount**” is the amount to be distributed to the **Class Members** after paying **Class Counsel’s Fees**, the **Cost of Administration** and an honorarium to each of the representative plaintiffs;
- (n) “**Distribution Plan**” means the **Distribution Amount** divided among each of the **Eligible Class Members** to a maximum of \$60 and, if applicable, an electronic application for arbitration;
- (o) “**Eligible Class Member**” means each **Class Member** whose electronic **Claim Form** is approved by the **Administrator** before the **Claims Bar Date**;
- (p) “**ESDC**” means the federal Department of Employment and Social Development Canada, formerly known as the Department of Human Resources and Skills Development Canada;
- (q) “**Final Order**” means a **Judgment** that, after the expiry of the appeal period set out in Rule 334.31(2) has not been appealed or leave to appeal has not been sought, or if the **Judgment** has been appealed or leave to appeal has been sought, after the final determination of such appeal or leave application if the leave to appeal is dismissed;
- (r) “**Her Majesty the Queen**” means Her Majesty the Queen, and its employees, officers, directors, servants and agents;
- (s) “**Judgment**” means this judgment;
- (t) “**Municipal Addresses List**” means the list of each **Class Member’s** municipal addresses maintained by **ESDC**, as supplemented by **Class Counsel’s** information, but excluding each **Class Member** whose letter was returned by mail to **ESDC** after mailing the Notice of Certification in 2016;
- (u) “**Notice**” means the form of the **Notice** substantially in the form attached to the **Judgment** as Schedule “B;”
- (v) “**Notice Program**” means the method of giving **Notice** to the **Class Members**, particularized in paragraph 9 of this **Judgment**;

- (w) **“Released Claims”** means any and all manner of claims, demands, actions, suits and causes of action at common law or under Federal, Provincial or Territorial legislation alleged or which could have been asserted in this Class Action or in a province or territory or otherwise including *The Privacy Act*, C.C.S.M. c. P125; *Privacy Act*, R.S.C. 1985, c. P-21; *Privacy Act*, R.S.B.C. 1996, c. 373; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25; *The Privacy Act*, R.S.S. 1978, c. P-24; *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31; *Right to Information and Protection of Privacy Act*, S.N.B. 2009, c. R-10.6; *Freedom of Information and Protection of Privacy Act*, S.N.S. 1993, c. 5; *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, c. F-15.01; *Privacy Act*, R.S.N.L. 1990, c. P-22; *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5; *Department of Employment and Social Development Act*, S.C. 2005, c. 34; and *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11, ss. 7 and 8, whether direct or indirect action, class action, individual action, or otherwise in nature, whether personal action or subrogated, including for damages whenever incurred and liabilities of any nature whatsoever, including damages, aggravated damages, punitive damages, interest, costs, expenses, penalties and lawyer fees that the **Releasors**, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have against the **Releasee**, whether known or unknown, relating in any way to any act or omission by the **Releasee** prior to the execution of the **Settlement Agreement**;
- (x) **“Releasee”** means the **Defendant** Her Majesty the Queen in Right of Canada, the Attorney General of Canada, Her and their respective representatives, employees, agents, servants, predecessors, successors, executors, administrators, heirs and assigns;
- (y) **“Releasors”** means, jointly, jointly and severally, individually and collectively, the **Class Members** and their respective executors, administrators, and heirs but not including Opt-Outs and not including the individuals who are named plaintiffs in any other proceeding against the **Defendant** in respect of the same subject matter which has not been discontinued within the meaning of Rule 334.21(2);
- (z) **“Settlement Agreement”** means the **Settlement Agreement** made as of December 5, 2017 in the **Action**, attached as Schedule “A”;
- (aa) **“Settlement Amount”** means \$17,500,000 plus an unlimited amount to pay the amounts of any **Actual Loss**; and
- (bb) **“Strosberg LLP”** means the firm of Strosberg Sasso Sutts LLP.

2. THIS COURT ORDERS AND DECLARES that the Settlement Agreement (Schedule “A”), Notice (Schedule “B”), Claim Form and Distribution Plan are fair, reasonable and are in the best interest of the Class and are hereby approved.
3. THIS COURT ORDERS AND DECLARES that the Claims Bar Date is January 18, 2019, at 5:00 pm EDT, by which date each Class Member must submit their Claim Form and, if applicable, an electronic application for arbitration for an Actual Loss, and thereafter, no Claim Form and no application for arbitration will be accepted by the Administrator after January 18, 2019, at 5:00 pm EDT.
4. THIS COURT DECLARES that Her Majesty the Queen will deliver \$17,500,000 to Strosberg LLP, in trust, within seven days of this Judgment becoming a Final Order, after which post-judgment interest will be payable at the rate of 4.0% per annum.
5. THIS COURT ORDERS that the Administrator is appointed with the duties and responsibilities set out in the Distribution Plan, the Settlement Agreement and under this Judgment on the terms outlined in the letter of engagement attached as Schedule “C”.
6. THIS COURT ORDERS the Defendant to provide the Administrator with its Class Member list electronically, including personal identifying information, so that the Administrator can validate Claims Forms.
7. THIS COURT ORDERS that the Arbitrators are appointed with the duties and responsibilities under the Distribution Plan, the Settlement Agreement, and under this Judgment, and the costs of the Arbitrators shall be paid directly by the Defendant in accordance with O.

Reg. 161/08, *Remuneration of Deputy Judges*, under the *Courts of Justice Act*, R.S.O. 1990, c. C.43, from the date hereof until the Arbitrators complete their mandate.

8. THIS COURT ORDERS that, for the purpose of aiding in the delivery of Notice to the Class Members and for the administration of this settlement, Class Counsel shall deliver an electronic list of self-identified Class Members who have registered with Class Counsel and their contact information to the Administrator and the Defendant.

9. THIS COURT ORDERS AND DECLARES that, on or before July 31, 2018, the Class Members must be given Notice of this Judgment in the following manner:

- (a) the Defendant, or its appointee, will mail the Notice to the Class Members whose names appear on the Municipal Addresses List;
- (b) Class Counsel shall post the Notice on the website [www.studentloansclassaction.com](http://www.studentloansclassaction.com) and on any other websites maintained by Class Counsel dedicated to this Action;
- (c) the Administrator shall email the Notice to any person who registered with Class Counsel and provided a valid email address;
- (d) the Defendant shall post the Notice on the ESDC website and on the Canada.ca website;
- (e) Class Counsel shall send the Notice by email to the Ontario Public Guardian and Trustee;
- (f) Class Counsel, the Defendant or the Administrator will deliver the Notice to any person who requests this Notice from any one of them; and
- (g) Class Counsel, the Administrator and the Defendant will report to the Court on their activities articulated in this paragraph by August 7, 2018.

10. THIS COURT ORDERS AND DECLARES that the Defendant will pay the cost of sending the Notice to the Municipal Addresses List, described in paragraph 9(a), in addition to the Settlement Amount and the costs of the arbitration process associated with the Actual Loss process.

11. THIS COURT DECLARES that the Notice Program, described in paragraph 9, satisfies the requirements of Rule 334.33.

12. THIS COURT ORDERS AND DECLARES that each Class Member who intends to participate in the Distribution Plan, must submit to the Administrator a Claim Form and, if applicable, an application for arbitration, before the Claims Bar Date, in accordance with the Distribution Plan.

13. THIS COURT ORDERS that each Class Member who asserts an Actual Loss must, in addition to the Claim Form, submit their electronic application for arbitration to the Administrator on or before the Claims Bar Date.

14. THIS COURT ORDERS AND DECLARES that, if a Class Member does not submit a Claim Form and/or an electronic application for arbitration to the Administrator on or before the Claims Bar Date, that the Class Member, and each of their respective heirs, executors and assigns shall be forever barred from participating in the Distribution Plan but shall, in all other respects, be bound by the terms of this Judgment.

15. THIS COURT ORDERS AND DECLARES that each Class Member, and each of their respective heirs, executors, administrators, estate trustees and assigns:

- (a) forever and absolutely release, acquit and discharge the Releasee from the Released Claims;
- (b) shall not commence or continue against the Releasee any action or take any proceeding relating in any way to or arising from the Released Claims; and
- (c) shall not commence or continue against any person, any action or take any proceeding relating in any way to or arising from the Released Claims, who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, cross-claim, claim over or any claim for contribution, indemnity or any other relief, against the Releasee.

16. THIS COURT ORDERS AND DECLARES that any Class Member who previously opted out of this Class Action, or any named plaintiff in any other outstanding class action or putative class action in the Federal Court or any Provincial Court or Territorial Court, which has not been discontinued or dismissed, may opt back in to this Class Action, by submitting a Claim Form to the Administrator on or before the Claims Bar Date.

17. THIS COURT ORDERS AND DECLARES that any Class Member who opts back into this Class Action pursuant to paragraph 16 above shall be bound by all terms and conditions of the Settlement Agreement and this Judgment and that any named plaintiff in any other outstanding class action or putative class action in the Federal Court or any Provincial Court or Territorial Court, which has not been discontinued or dismissed, and who opts back into this Class Action shall agree to dismiss or discontinue such claim.

18. THIS COURT ORDERS AND DECLARES that unless a Class Member successfully opted out of the Action, in accordance with the certification order of Justice Gagné made on June 20, 2016, and did not opt-back in to this Action, this Judgment and the Distribution Plan is binding upon each of the Class Members and each of their respective heirs, executors, administrators and assigns including those who are minors, unborn persons and persons under a disability.

19. THIS COURT ORDERS AND DECLARES that Gaelen Patrick Condon, Rebecca Walker, and Angela Piggott shall each be paid an honorarium in the amount of \$5,000.

20. THIS COURT ORDERS AND DECLARES that:

- (a) on December 20, 2017, this Court appointed Sarkis Isaac to receive any written objections from Class Members and report to the Court;

- (b) Mr. Isaac reported to the Court and his fees plus HST is \$5,650 and this amount is fair, reasonable and is hereby approved;
- (c) on December 20, 2017, this Court ordered an online media campaign to notify the Class of this proposed settlement and of this hearing date and Class Counsel paid \$22,600 for this online media campaign and this amount is fair, reasonable and is hereby approved;
- (d) Class Counsel arranged for Terida Systems Inc. to send notices of this motion to 57,771 putative Class Members at a cost of \$3,946.53 (fee \$3,492.50 plus HST \$454.03) which amount is fair, reasonable and is hereby approved;
- (e) Class Counsel agreed to pay \$282,829.96 to Terida Systems Inc. for a registration system instituted on February 1, 2013 and running to the present. This amount is fair, reasonable and is hereby approved.

21. THIS COURT ORDERS AND DECLARES that the terms of the contingency fee agreements between the Representative Plaintiffs and Class Counsel at 30% plus HST plus reasonable disbursements are fair and reasonable and in the best interests of the Class and these terms are approved.

22. THIS COURT ORDERS AND DECLARES THAT Class Counsel's Fees are calculated as follows:

ITEM	AMOUNT
30% of \$17,500,000	\$5,250,000.00
HST (13%)	682,500.00
Online media campaign	22,600.00
Cost of Class Counsel email notice to 57,771 putative Class Members	3,946.53
Cost of registration system	282,829.96
Cost of Sarkis Isaac for collection of objections	5,650.00
Cost of Class Counsel disbursements, including taxes	134,329.26
Honorariums - \$5,000 each	15,000.00
Total	\$6,396,855.75

23. THIS COURT ORDERS that Strosberg LLP, from the trust money received from the Defendant in this Action:

- (a) must pay the Administrator in accordance with paragraph 5;
- (b) must pay Sarkis Isaac \$5,650.00 for administering Class Member objections;
- (c) must pay Terida Systems Inc. the amount of \$3,946.53 for distributing the notice of this hearing;
- (d) must pay Terida Systems Inc. \$282,829.96 for the registration system;
- (e) must pay each representative plaintiff \$5,000 as an honorarium;
- (f) is authorized and directed to pay to Class Counsel \$6,396,855.75 for the balance of Class Counsel's Fees; and
- (g) is authorized to invest the balance of the Settlement Amount until payment to the Class Members.

24. THIS COURT ORDERS AND DECLARES that Class Counsel's Fees constitute a first charge against the Settlement Amount in favour of Class Counsel.

25. THIS COURT ORDERS that Class Counsel, the Defendant, the Administrator and/or the Arbitrators may make a motion to the Court for directions and Class Counsel may submit any further disbursements to the Court for approval.

26. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceeding against the Arbitrators or Administrator or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Judgment or the administration of the Settlement Agreement, except with leave of this Court.

27. THIS COURT ORDERS that the Administrator, after completing this administration, including the Actual Loss process, may apply for a discharge as Administrator, giving at least 7 days' notice to Class Counsel and the Defendant.

28. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Action be and is hereby dismissed, with prejudice and without further costs.

29. THIS COURT ORDERS that Class Counsel shall serve by email a copy of this Judgment upon the Ontario Public Guardian and Trustee.

“Jocelyne Gagné”

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Judge