

Federal Court



Cour fédérale

Date: 20220422

Docket: T-1931-13

Citation: 2022 FC 587

Ottawa, Ontario, April 22, 2022

PRESENT: The Honourable Mr. Justice Phelan

CLASS PROCEEDING

BETWEEN:

JOHN DOE, SUZIE JONES AND PENNY KOZMENSKI

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON reviewing the judgment of the Honourable Mr. Justice Phelan of the Federal Court in this matter, issued July 27, 2015, and the judgment of the Honourable Mr. Justice Ryer of the Federal Court of Appeal in this matter, issued June 24, 2016;

THIS COURT ORDERS that:

1. This action is certified as a class proceeding;
2. John Doe, Suzie Jones and Penny Kozmenski are appointed as representative plaintiffs for the Class;

3. The Class (or Class Members) is defined as:

All persons who were sent a letter from Health Canada in November 2013 that had the phrase Marihuana Medical Access Program or Programme d'Accès à la Marihuana à des Fins Médicales visible on the front of the envelope.

4. The nature of the claim is:

- a. Negligence, and
- b. Breach of confidence.

5. The relief sought by the Class is:

- a. An aggregate or individual assessment of damages for negligence and breach of confidence,
- b. Aggravated damages,
- c. Punitive damages,
- d. Pre- and post-judgment interest, and
- e. Such further or other relief as this Honourable Court deems just.

6. The Common Questions are the following:

With respect to the alleged negligence

- a. Did Health Canada owe the Class Members a duty of care in its collection, use, retention and disclosure of the Personal Information?
- b. If yes, did Health Canada breach that duty of care when it sent the Envelope?

With respect to the alleged breach of confidence

- a. Did the Class Members communicate the Personal Information to Health Canada?
- b. If yes, did Health Canada misuse the Personal Information in its collection, use, retention or disclosure of the Personal Information?
- c. If yes, was such misuse of the Personal Information to the detriment of the Class Members?

- d. If yes, did Health Canada breach the confidence of the Class Members in its collection, retention or disclosure of the Personal Information?

With respect to Damages

- a. Is the Defendant liable to pay damages incurred by the Class Members for the causes of action?
 - b. Can the Class Members' damages be assessed in the aggregate pursuant to Rule 334.28(1)?
 - c. Does Health Canada's conduct justify an award of punitive damages?
 - d. Are the Class Members entitled to pre- and post-judgment interest pursuant to the *Crown Liability and Proceedings Act*, RSC c C-50?
7. The Litigation Plan attached as **Schedule "A"** is approved as a workable method of advancing the Action.
 8. Trilogy Class Action Services [Trilogy], an established class action administration services provider in Niagara, Ontario, is appointed as the opt-out administrator to receive written elections to opt-out of the class action.
 9. Class Members who wish to opt-out of this action must do so by sending a written election to opt-out to Trilogy Class Action Services on or before 90 days after the issuance of this Order.
 10. Any Class Member who has not validly opted-out of this action in accordance with paragraph 9 of this Order will be bound by any determinations made by the Court in this action.
 11. The Notice Plan included in the Litigation Plan is approved as a workable method of contacting the Class Members.
 12. The notice of certification of this action as a class proceeding [the Notice] shall be provided to Class Members in substantially the same form as attached as **Schedule "B"** to this Order.

13. The Notice shall be disseminated to Class Members within 30 days after the issuance of this Order in accordance with the Plan of Dissemination that is attached as **Schedule “C”** to this Order. The Court acknowledges that, in accordance with the *Cannabis Act*, the Defendant, the Federal Government and Health Canada, do not endorse or approve any individual/business/entity where online/social media notices or advertisements might be placed.
14. The Plaintiffs shall pay their costs to deliver the Notice in accordance with paragraph 1 of the Plan of Dissemination that is attached as **Schedule “C”** to this Order. The Defendant shall pay its cost of posting the Notice on the Health Canada website in accordance with paragraph 2 of the Plan of Dissemination that is attached as **Schedule “C”** to this Order. The Plaintiffs and the Defendant shall share the cost of the Plan of Dissemination in accordance with the January 18, 2021 proposal of Trilogy Class Action Services in accordance with paragraph 3 of the Plan of Dissemination that is attached as **Schedule “C”** to this Order.

"Michael L. Phelan"

Judge

SCHEDULE “A”

**Litigation Plan
Marihuana Medical Access Program Privacy Breach
as at December 3, 2021**

DEFINITIONS

1. Unless otherwise defined herein, capitalized terms have the same meaning as set out in the Fifth Amended Statement of Claim. In addition, the following terms are defined as follows:
 - (a) **“Action”** means the proposed class proceeding commenced on November 25, 2013 in the Court bearing action number T-1931-13,
 - (b) **“Administrator”** means the person appointed by the Court to carry out the functions described in this Plan,
 - (c) **“Administrator’s Decision”** means the Administrator’s written decision on a Claimant’s eligibility or entitlement in this Action,
 - (d) **“Arbitrator”** means a person appointed by the Court to review and adjudicate any appeals made of the Administrator’s Decisions pursuant to this Plan,
 - (e) **“Claimant”** means a person that alleges he/she is a member of the Class and provides a completed Claim Form to the Administrator in the manner stipulated in this Plan,
 - (f) **“Claim Form”** means a claim form, in a form approved by the Court, to be completed by Claimants and submitted to the Administrator in order to determine Claimants’ eligibility to participate in the procedure described herein,
 - (g) **“Claims Deadline”** means the date by which each Claimant must file Claim Form to be eligible for a remedy granted or approved by the Court,
 - (h) **“Class”** or **“Class Members”** means all persons who were sent a letter from Health Canada in November 2013 that had the phrase Marihuana Medical Access Program or similar French phrase visible on the front of the envelope,
 - (i) **“Class Counsel”** means the law firms of Branch MacMaster LLP, McInnes Cooper, Strosberg Sasso Sutts LLP, and Charney Lawyers PC,
 - (j) **“Class Counsel Fees”** means the fees, disbursements and taxes payable to Class Counsel as ordered by the Court,

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- (k) **“Class Counsel Representative”** means a person to represent the interests of the Class with respect to issues of general application relating to the damages assessment process,
- (l) **“Court”** means the Federal Court of Canada,
- (m) **“Health Canada List”** means Health Canada’s list of Class Members whose Personal Information was disclosed as alleged in the Action, which list will be delivered to Class Counsel,
- (n) **“Notice”** means notice to the Class of the certification of the Action as a class proceeding in the form set out in Appendix I to this Litigation Plan,
- (o) **“Notice of Appeal”** means written notice that a Claimant, the Defendant, or Class Counsel is appealing the Administrator’s Decision,
- (p) **“Notice Plan”** means the method of distributing the Notice described in paragraph 27(c) of this Plan,
- (q) **“Paper Claimant”** means a Claimant that is granted permission by the Administrator to communicate with the Administrator by non-electronic means including, but not limited to, submitting a hard copy of his/her Claim Form to the Administrator,
- (r) **“Personal Information”** means Class Members’ name, address, health condition and association with Health Canada’s Marihuana Medical Access Program,
- (s) **“Plan”** means this litigation plan,
- (t) **“Reply”** means a Claimant’s concise statement of material facts provided in reply to the Defendant’s Statement of Opposition,
- (u) **“Resolution Notice”** means the notice of resolution of the common issues and further directions about the claims process,
- (v) **“Statement of Opposition”** means a Defendant’s concise statement of material facts provided in response to a Claim Form,
- (w) **“Website”** means the website developed and maintained by Class Counsel at www.marijuanaaction.com, and
- (x) **“Website Claimant”** means a Claimant that submits a Claim Form through the secure section of the Website.

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CLASS COUNSEL

2. Class Counsel has the requisite knowledge, skill, experience, personnel and financial resources to prosecute this Action to conclusion.
3. Class Counsel intends to add other lawyers or other professionals to their complement if the majority of the Class Counsel decides they are necessary. Aside from experts intending to provide expert evidence to the Court, such lawyers or other professionals may be paid on a contingency basis. While not expected, should any conflict arise in the course of the litigation, Class Counsel will seek the Court's directions which may include the separate appointment of representatives for any subclass to be established by the Court.

CLASS DEFINITION

4. The Plaintiffs seek to represent a class as defined as follows:

All persons who were sent a letter from Health Canada in November 2013 that had the phrase Marijuana Medical Access Program or similar French phrase visible on the front of the envelope.

5. The Court should decide whether each person on the Health Canada List is a Class Member.

REPORTING TO AND COMMUNICATING WITH THE CLASS MEMBERS

6. According to information released publicly by the Government of Canada, there are approximately 40,000 Class Members across Canada.
7. Class Counsel have established a Website containing information about the status of the Action, explaining the operation of a class action, and providing links to key Court documents, decisions, notices and other information relating to the Action. The Website permits Class Counsel to keep all putative Class Members apprised of the status of the Action.
8. Class Counsel has established a secure registration system that permits putative Class Members to register utilizing a user ID and password. Putative Class Members are asked to particularize their damages resulting from the disclosure of their Personal Information. For example, a putative Class Member is asked to advise whether anyone discovered that the putative Class Member possesses or consumes marijuana as a result of Health Canada's actions, whether the putative Class Member has experienced a security breach since their Personal Information was released by Health Canada, whether the putative Class Member's employment was impacted by Health Canada's actions, etc.
9. The secure registration system permits the putative Class Members to update their information from time to time.

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10. The secure registration system also permits Class Counsel to read, organize, profile, scan, manage and analyze thousands of documents.
11. The Website provides direct-dial contact information for Class Counsel through which the putative Class Members may contact Class Counsel directly.
12. Class Counsel may send email updates to the putative Class Members who provided email addresses reporting on the status of the Action. Class Counsel will also post such updates on the Website.
13. Further, for those the putative Class Members who do not have access to the internet and/or email, Class Counsel has established a secure list of the putative Class Members who wish to be contacted by Class Counsel by regular mail and their mailing addresses. Any updates to the putative Class Members will also be conveyed to regular mail to the putative Class Members who have requested the same.

THE NUMBER OF PUTATIVE CLASS MEMBERS WHO HAVE REGISTERED WITH CLASS COUNSEL

14. As of January 18, 2021, over 6,000 putative Class Members have registered with Class Counsel.
15. Class Counsel has and will, in some cases, contact the putative Class Members. In some instances, Class Counsel will ask for further information regarding their damages.

LITIGATION SCHEDULE

16. The Honourable Justice Phelan has been appointed to case manage this Action.
17. After this Action is certified as a class proceeding, Class Counsel will ask Justice Phelan to set a litigation schedule for:
 - (a) completion of pleadings,
 - (b) documentary production and delivery of affidavits of documents by the parties,
 - (c) examinations for discovery,
 - (d) delivery of experts' reports, and
 - (e) the trial of the common issues.
18. Class Counsel and counsel for the Defendant may request that the litigation schedule be amended from time to time.

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ACCESS TO AND PRESERVATION OF EVIDENCE

19. Class Counsel has written to the Defendant to request confirmation that all records, documents (electronic or otherwise) or other evidence relating to the within Action be preserved.

DOCUMENT EXCHANGE AND MANAGEMENT

20. The Defendant possesses most of the material documents relating to the common issues. Such documents will be produced to Class Counsel through the normal production, cross-examination and examination for discovery processes. The Plaintiffs will produce all material documents in their possession.

21. Class Counsel anticipate and are able to handle the intake and organization of the large number of documents that will likely be produced by the Defendant.

22. Class Counsel will utilize data management systems to organize, code, and manage documents whether produced by the Defendant or the Plaintiffs.

23. The documents may be maintained on a secure, password-protected website for the purposes of access by Class Counsel via the internet.

PLAINTIFFS' EXPERTS

24. The Plaintiffs may retain experts as the action proceeds.

DISPUTE RESOLUTION PROCESS

25. The Plaintiffs will participate in non-binding dispute resolution efforts if the Defendant is prepared to do so.

NOTICE OF CERTIFICATION OF THE ACTION AS A CLASS PROCEEDING

26. The Defendant is in possession of all of the contact information for the Class Members. Class Counsel have contact information for over 6,000 putative Class Members and this number is likely to increase as a result of the Notice Plan. Class Counsel will ask Health Canada to deliver the names and contact information of the Class Members after this Honourable Court makes an order certifying the Action as a class proceeding and the opt-out period has expired.

27. As part of the certification order, the Court will:

- (a) settle the form and content of the Notice,
- (b) set an opt-out deadline,
- (c) decide on particulars of the Notice Plan which may change during the certification motion. The Notice Plan will be as follows:

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- (i) Class Counsel will post the Notice on the Website, email the Notice to any person who registered with Class Counsel and provided an email address, and send the Notice by regular mail to any person who requested hard-copy correspondence from Class Counsel,
 - (ii) The Defendant will post the Notice on the Health Canada website until the expiry of the opt-out period, and
 - (iii) The Notice will be disseminated generally in accordance with the January 18, 2021 proposal of Trilogy Class Action Services annexed as Appendix II,
- (d) appoint Trilogy Class Action Services to receive the written elections to opt-out of the class action,
- (e) Class Members may opt-out of this Action by sending a written election to opt-out to Trilogy Class Action Services before the expiration of the opt-out period,
- (f) no Class Member may opt out of this Action after the expiration of the opt-out period,
- (g) within 30 days after the expiration of the opt-out period, Trilogy Class Action Services will deliver to the Court, under seal, and to the counsel for the Defendant an affidavit listing the names and addresses of all Class Members who opted-out of this Action, and
- (h) after the opt-out period expires and after Trilogy Class Action Services delivers the affidavit particularizing the opt-outs, the Defendant will provide to Class Counsel the list of Class Members who did not opt out of the Action together with their contact information.
28. Trilogy Class Action Services has repeatedly been appointed by class action counsel and the courts to fulfill these tasks in class actions.

EXAMINATIONS FOR DISCOVERY

29. Class Counsel will seek to examine for discovery at least one representative of Health Canada and, once known, the individual(s) responsible for conveying the letters from Health Canada in November 2013 that had the phrase Marijuana Medical Access Program or similar French phrase visible on the front of the envelope. Class Counsel estimate that these examinations will take 2 days.
30. Counsel for the Defendant may examine the representative plaintiffs. Class Counsel estimate that these examinations will take 2 days.
31. The Plaintiffs may seek an Order from this Honourable Court permitting them to examine additional representatives of the Defendant, if necessary.

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COMMON ISSUES AND AGGREGATE DAMAGES

32. The Plaintiffs will ask this Honourable Court to set a date in Vancouver for the trial of the common issues within six months after the completion of the examinations for discovery.

33. The Federal Court Rules, SOR/98-106 provide, in part, as follows:

334.26 (1) If a judge determines that there are questions of law or fact that apply only to certain individual class or subclass members, the judge shall set a time within which those members may make claims in respect of those questions and may

- (a) order that the individual questions be determined in further hearings;
- (b) appoint one or more persons to evaluate the individual questions and report back to the judge; or
- (c) direct the manner in which the individual questions will be determined.

(2) In those circumstances, the judge may give directions relating to the procedures to be followed.

(3) For the purposes of paragraph (1)(a), the judge who determined the common questions of law or fact, another judge or, in the case of a claim referred to in subsection 50(3), a prothonotary may preside over the hearings of the individual questions.

334.27 In the case of an action, if, after determining common questions of law or fact in favour of a class or subclass, a judge determines that the defendant's liability to individual class members cannot be determined without proof by those individual class members, rule 334.26 applies to the determination of the defendant's liability to those class members.

334.28 (1) A judge may make any order in respect of the assessment of monetary relief, including aggregate assessments, that is due to the class or subclass.

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(2) A judge may make any order in respect of the distribution of monetary relief, including an undistributed portion of an award that is due to a class or subclass or its members.

(3) For the purposes of this rule, a judge may order any special modes of proof.

34. At the trial of the common issues, this Honourable Court will be asked:

- (a) to assess damages for each of the representative plaintiffs,
- (b) to award damages in the aggregate, and
- (c) to establish grids for damages for Class Members or subclasses.

35. If such an aggregate award is made, this Honourable Court will be asked to approve a distribution protocol. The issue of payment to the Class Members will be decided by this Court after payment of Class Counsel Fees.

36. The findings of fact and conclusions on the common issues will permit the judge at the common issues trial to give directions, pursuant to Rule 334.26, to address any remaining individual issues.

AFTER THE RESOLUTION OF THE COMMON ISSUES

37. Assuming the common issues are resolved by judgment in favour of the Class, this Honourable Court will be required to establish and supervise a claims and assessment procedure. The precise structure of the assessment process will depend upon the conclusions reached by the judge at the common issues trial. The Class Members may participate in the process described in the following paragraphs if they submit a completed Claim Form before the Claims Deadline.

38. The representative Plaintiffs will ask this Honourable Court to:

- (a) appoint an Administrator. The Administrator will:
 - (i) hold any monies recovered at the common issues trial as aggregate damages in a segregated interest bearing trust account subject to an application to this Court to approve payment to the Class Members,
 - (ii) implement this Plan,
 - (iii) receive and evaluate Claim Forms from Claimants in accordance with this Plan and protocols approved by this Court,

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- (iv) decide whether or not a person is a Class Member when his/her name does not appear on the Health Canada List,
 - (v) decide how much compensation each Class Member will receive in accordance with the grids for damages established under paragraph 34(c),
- (b) appoint an Arbitrator to decide any appeals from the decisions of the Administrator and to decide any issues not determined at the common issues trial, including quantum of damages, and
- (c) appoint a Class Counsel Representative.
39. The cost of the Administrator, Arbitrator and Class Counsel Representative will be paid by the Defendant and the estimate of their costs shall be addressed at the time of their appointment.
40. The representative Plaintiffs will also ask this Honourable Court to:
- (a) settle the form and content of the Resolution Notice and the Claim Form,
 - (b) order that the Resolution Notice be disseminated substantially in accordance with the Notice Plan set out at paragraph 27(c), except that the Resolution Notice shall not be conveyed to any Class Member who validly opted-out in accordance with the procedure set out in the certification order,
 - (c) set a date for the Claims Deadline,
 - (d) set guidelines to clarify how a Class Member qualifies to be compensated for damages in the grids.

THE WEBSITE AND THE INFRASTRUCTURE

41. After resolution of the common issues, Class Counsel will transfer the Website (without privileged material) to the control of the Administrator. Thereafter, the Administrator will operate the Website. A section of the Website will remain public and will be accessible to all Class Members and the general public. Such section will be utilized to provide public updates regarding the Action to Class Members and the general public.
42. The Administrator will conduct the claims process electronically through the Website. With the exception of Paper Claimants, all submissions and communications will be made through the Website. At its discretion, the Administrator may assist or receive documents from a particular Claimant in paper form by regular mail.
43. The Website has a secure section which requires a username and password.

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44. Each Website Claimant must select a username and password to gain access to the secure section of the Website.
45. In the secure section of the Website, each Website Claimant may complete the Claim Form, upload documents and upload any Reply. The Defendant and Class Counsel may review these documents in "read only" mode, which will allow access to the documents but will not permit modification of the documents.
46. The Website Claimants' username and password will be disclosed only to the Administrator or, where a Notice of Appeal is filed, the appropriate Arbitrator.
47. Utilizing a username and password selected by the Defendant, the Defendant will also be able to access a separate secure section of the Website. In this secure section, the Defendant may deliver any Statements of Opposition and upload documents. The specific Claimant to which the Defendant's Statement of Opposition or documents pertain to may review the same in "read only" mode through their secure section of the Website.
48. The Defendant's username and password will be disclosed only to the Administrator.
49. The Administrator will communicate with Website Claimants and the Defendant in the secure section of the website.
50. The Class Counsel Representative will be entitled to review any documents in the secure sections of the Website in "read only" mode.
51. Where the Administrator receives documents from Paper Claimants, the Administrator will:
 - (a) create a profile for the particular Paper Claimant in the secure section of the Website, if the Paper Claimant has not already created one,
 - (b) upload the documents to the Paper Claimant's profile,
 - (c) upload any communications with the Paper Claimant to the Paper Claimant's profile, and
 - (d) ensure that all documents, Statements of Opposition, communications, Notices of Appeal and/or decisions pertaining to the Paper Claimant's profile are conveyed by regular mail to the Paper Claimant in a timely manner.

THE CLAIM PROCESS

52. Before the Claims Deadline, each Claimant must deliver to the Administrator a completed Claim Form with all supporting documents. Claimants will be strongly encouraged to deliver such documents electronically through the secure section of the Website. However, the Administrator may also receive paper copies of the documents.

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53. If a Claimant claims that he/she was not on the Health Canada List and alleges that his/her Personal Information was inappropriately disclosed, he/she must establish, on the balance of probabilities, that he/she is a Class Member. The Defendant may file a Notice of Opposition. The Administrator will make its decision in writing and post the decision in the secure section of the Website. Within 15 days of posting on the Website, the decision is final unless the Claimant elects to appeal the Administrator's decision in accordance with paragraph 60.
54. In the Claim Form, each Claimant must, among other things:
- (a) self-identify and prove he/she was on the Health Canada List by producing a copy of his/her driver's license or other government-issued form of identification,
 - (b) address any issues that are not determined at the common issues trial. For example, the Claim Form may require the Claimant to provide particulars of how his/her employment was impacted by being mailed the Envelope or particulars of his/her treatment for mental distress as a result of being mailed the Envelope,
 - (c) provide a schedule of out-of-pocket expenses with supporting documents, and
 - (d) explain how his/her claim is different from that of the "standard" Class Member.
55. The Defendant will have 30 days after the posting on the Website of the Claim Form and accompanying material (either by the Website Claimant, or, in the case of Paper Claimants, by the Administrator), to electronically submit a written Statement of Opposition (which cannot exceed 5 pages) and all relevant documents in its possession or control. The Statement of Opposition and accompanying documents will be treated as a Statement of Defence and Affidavit of Documents, and will address eligibility, if applicable, and any damages issues.
56. The Website will alert the Claimant (or the Administrator, if the Administrator posted hard copy documents on a Paper Claimant's behalf) of the posting of the Defendant's Statement of Opposition and other documents. Each Website Claimant must electronically submit his/her Reply (not to exceed 2 pages) on the Website within 10 days of the submission of the Statement of Opposition. Each Paper Claimant must submit his/her Reply (not to exceed 2 pages) by regular mail to the Administrator posted dated within 20 days of the date on which the Administrator conveyed the Statement of Opposition and other documents to the Paper Claimant.
57. The Website will alert the Defendant of the submission of a Reply.

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THE ADMINISTRATOR'S DECISIONS

58. Based on the documents delivered to the Administrator (and posted in the secure section of the Website), within 30 days of deadline to submit a Reply, the Administrator will provide a written decision as to whether the Claimant is a Class Member and applying the applicable grid or rules.
59. The Administrator's Decision in respect of each Claimant will be available on the secure section of the Website. In the case of Paper Claimants, the Administrator will convey the Administrator's Decision to the Claimant via regular mail.
60. Within 15 days of posting the Administrator's Decision on the Website or 30 days of the date on which the Administrator's Decision was conveyed to a Paper Claimant, the Claimant, the Defendant or the Class Counsel Representative may deliver a Notice of Appeal of the Administrator's Decision to the Arbitrator. If such is not done, the Administrator's Decision is final.

REVIEW OF ADMINISTRATOR'S DECISION BY THE ARBITRATOR

61. This Honourable Court will designate an Arbitrator(s) in each Province to adjudicate all Notices of Appeal. Unless the Arbitrator otherwise orders, such disputes will be adjudicated on the basis of a written record without oral evidence or oral argument. The Arbitrators will have access to the secure section of the Website in "read only" mode for the purpose of each Notice of Appeal.
62. Any appeal of the Administrator's Decision will proceed in the manner directed by the Arbitrator. The Arbitrator must post his/her decision in writing in the secure section of the Website. In the case of Paper Claimants only, the Administrator will convey a copy of the Arbitrator's decision to the Paper Claimant.
63. The Claimant, Class Member, Defendant or Class Counsel Representative may appeal the Arbitrator's Decision to a Prothonotary of this Honourable Court or this Court (where the claim exceeds the Prothonotary's monetary jurisdiction) by filing and serving a notice of appeal in Form 66 under the *Federal Court Rules*. In the case of a Website Claimant, such notice of appeal must be filed and served within 15 days of the Arbitrator's Decision being posted on the Website. In the case of a Paper Claimant, such notice of appeal must be filed and served within 30 days of the Arbitrator's Decision being posted on the Website.
64. The Arbitrator will have the power to award costs of adjudicating a Notice of Appeal to the successful party.

THE PROCEDURE FOR APPEALS FROM THE ARBITRATOR'S DECISION TO THE PROTHONOTARY

65. All appeals of an Arbitrator's Decision to a Prothonotary or this Honourable Court will be conducted in accordance with the *Federal Court Rules*.

CLASS COUNSEL'S ONGOING REPRESENTATION OF THE CLASS MEMBERS

66. Class Counsel, other than the Class Counsel Representative, may continue to act as the lawyer for a particular Class Member after the common issues are resolved if requested to do so by the Class Member. The Class Member will be required to pay fees, disbursements and taxes for this additional service which is not provided as part of Class Counsel's responsibility. If a Class Member retains other lawyers or representatives, the Class Member will be responsible for any fees, disbursements, taxes or other costs in the agreement between the Class Member and the lawyers or representatives.

INDIVIDUAL ISSUES

67. After determining the common issues, this Honourable Court will be asked to provide directions to determine any individual issues which are not resolved at the trial of the common issues.

68. Specifically, if some issues are not resolved at the trial of the common issues, this Honourable Court will be asked to authorize a hearing(s) before a Prothonotary or this Court where the claim exceed the Prothonotary's monetary jurisdiction during which the Class Members and the Defendant may present general and expert evidence relevant to some or all individual issues.

69. A Class Member may appear during the determination of his/her individual issues either in person or with counsel. The Class Member is responsible for the cost of such representation.

70. If individual hearings are required, this Honourable Court will be asked to approve protocols that:

- (a) establish the procedures to be followed,
- (b) prohibit examinations for discovery pursuant to Rule 334.22(1) of the *Federal Court Rules* for claims of less than \$25,000 exclusive of pre-judgment interest,
- (c) for claims in excess of \$25,000 but less than \$100,000 exclusive of prejudgment interest, limit examinations for discovery of:
 - (i) each Class Member to a maximum of 2 hours,
 - (ii) the Defendant to a maximum of 2 hours,
- (d) for claims in excess of \$100,000 exclusive of prejudgment interest, limit examinations for discovery of:
 - (i) each Class Member to a maximum of 7 hours,

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- (ii) the Defendant to a maximum of 7 hours, and
 - (e) direct that the time limits for examinations for discovery may only be exceeded by agreement of the parties or by order of this Honourable Court, and
 - (f) provide that the Prothonotary or this Honourable Court may make any order necessary for a fair determination of each hearing.
71. Following every hearing, the Prothonotary or Court (as the case may be) shall prepare written reasons for decision. The Prothonotary or Court will deliver the decision to the Class Member, the Defendant and the Administrator by uploading it to the secure section of the Website and filing it with the Court. In the case of Paper Claimants, the Administrator will convey the Prothonotary's or Court's decision to the Paper Claimant by mail.
72. The *Federal Court Rules* will govern any appeal from a decision of the Prothonotary or this Court.

CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

73. At the conclusion of the common issues trial, this Honourable Court will be asked to approve the agreement among the representative Plaintiffs and Class Counsel, and set Class Counsel Fees.
74. To the extent that the fees, disbursements and taxes for the Administrator, the Arbitrator and Class Counsel Representative were not addressed at the time of their appointment, any issues about such costs will be addressed at or before the Court discharges the Administrator in accordance with paragraph 75.

FINAL REPORT

75. After the Administrator makes the final distribution to Class Members, the Administrator will make its final report to the Court in such a manner as the Court directs and the Court will be asked to make an order discharging the Administrator.

REVIEW OF THE LITIGATION PLAN

76. This Honourable Court may revise this Plan from time to time, as required.

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APPENDIX I TO THE LITIGATION PLAN

**Notice of Certification
Marihuana Medical Access Program Privacy Breach
as at December 3, 2021**

**MARIHUANA MEDICAL ACCESS PROGRAM PRIVACY BREACH
CLASS ACTION**

PLEASE READ THIS CAREFULLY - IT MAY AFFECT YOUR RIGHTS.

The Federal Court of Canada certified a class action lawsuit against Her Majesty the Queen ("Health Canada") concerning the mailing of approximately 40,000 letters to participants in the Marihuana Medical Access Program in November 2013 in envelopes referring explicitly to the "Marihuana Medical Access Program" or "Programme D'accès à la Marihuana à des Fins Médicales" (the "Letters").

WHAT IS THE LAWSUIT ABOUT?

Among other things, the plaintiffs allege that Health Canada breached class members' privacy when it sent the Letters.

The plaintiffs are asking the Court to order Health Canada to pay compensation for, among other things, the alleged breach of privacy.

Health Canada denies that it did anything wrong. A judge will decide who is right at a trial. The date for that trial has not yet been set.

WHO IS INCLUDED IN THE LAWSUIT?

The lawsuit is brought on behalf of all persons who were sent a letter from Health Canada in November 2013 that had the phrase Marihuana Medical Access Program or Programme D'accès à la Marihuana à des Fins Médicales visible on the front of the envelope.

If you meet the class definition, you are automatically included in the class action unless you opt out by **<DATE>**. If you want to opt out, see below under "What if I do not want to take part?".

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If you are a class member and you don't opt out, you won't be able to make your own claim against Health Canada for any specific individual damages you may have suffered. In the class action, damages will be sought for the class as a whole. The judge will decide how any such damages should be divided between class members.

WHAT IF I DO NOT WANT TO TAKE PART?

If you do not want to take part, you have to opt out or exclude yourself. If you opt out, the results of the lawsuit will not apply to you – good or bad. If you do opt out, you will never be entitled to receive any money through the lawsuit. If you still want to opt out, you must send your name, birthdate and a statement that you wish to opt-out in writing or by email to the following address:

Trilogy Class Actions Services,
117 Queen Street, P.O. Box 1000,
Niagara-on-the-Lake, ON L0S 1J0
Email: optout@trilogyclassactions.ca

Class members who want to opt out must submit their request by <DATE>. Class members who do not submit an opt out request by <DATE> will continue to be a part of the class action.

DO I NEED TO PAY ANYTHING TO PARTICIPATE IN THE LAWSUIT?

No. You do not need to pay anything out of your pocket to take part in the lawsuit. The lawyers appointed by the Court to represent the class will only be paid if the claims are successful. If that occurs, the lawyers will request a percentage of the total amount recovered for the class, and will ask to be reimbursed for their disbursements. This percentage will be no greater than 33.33%, and must be approved by the Court.

WHO ARE THE LAWYERS FOR THE CLASS?

The class is represented by:

BRANCH MACMASTER LLP
1410 – 777 Hornby Street
Vancouver, BC V6Z 1S4
Telephone : 604-654-2999
Fax : 604-684-3429

CHARNEY LAWYERS PC
151 Bloor Street West, Suite 602
Toronto, ON M5S 1P7
Telephone : 416-964-7950
Fax : 416-964-7416

STROSBERG SASSO SUTTS LLP
1561 Ouellette Avenue
Windsor, ON N8X 1K5
Telephone: 866-241-9914
Fax: 866-316-5308

MCINNES COOPER
1300-1969 Upper Water Street, P.O. Box 730
Halifax, NS B3J 2V1
Telephone : 902-425-6500
Fax : 902-425-6350

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I WANT MORE INFORMATION

More information on the case is available at www.marijuanaclassaction.com along with the Amended Statement of Claim, the Order certifying the action, and other Court documents.

You can also register on the website at www.marijuanaclassaction.com. If you register, you will receive periodic email updates regarding the action and advising you of any steps that you are required to take. If you visit the website, it will also advise you of any steps you are required to take (whether you are registered or not).

If you still have questions, you can contact any of the lawyers at the addresses above.

**SCHEDULE “B”
MARIHUANA MEDICAL ACCESS PROGRAM
PRIVACY BREACH CLASS ACTION**

PLEASE READ THIS CAREFULLY - IT MAY AFFECT YOUR RIGHTS.

The Federal Court of Canada certified a class action lawsuit against Her Majesty the Queen (“Health Canada”) concerning the mailing of approximately 40,000 letters to participants in the Marihuana Medical Access Program in November 2013, in envelopes referring explicitly to the “Marihuana Medical Access Program” or “Programme D’acces a la Marihuana a des Fins Medicales” (the “Letters”).

WHAT IS THE LAWSUIT ABOUT?

The plaintiffs allege that Health Canada breached the privacy of members of the Marihuana Medical Access Program when it sent the Letters.

The plaintiffs are asking the Court to order Health Canada to pay compensation to affected individuals for, among other things, the alleged breach of privacy.

Health Canada denies that it did anything wrong. A judge will decide if Health Canada is liable at a trial. The date for that trial has not yet been set.

WHO IS INCLUDED IN THE LAWSUIT?

The lawsuit is brought on behalf of all persons who were sent a letter from Health Canada in November 2013 that had the phrase Marihuana Medical Access Program on the envelope.

If you meet the class definition, you are automatically included in the class action unless you opt out by **<DATE>**. If you want to opt out, see below under “What if I do not want to take part?”.

If you are a class member and you don't opt out, you will be part of the class action and you won't be able to make your own claim against Health Canada for any specific individual damages you may have suffered. In the class action, damages will be sought for the class as a whole. If there is a judgment in favour of the class, or there is a settlement, the judge will decide how any money that is recovered should be divided among class members.

WHAT IF I DO NOT WANT TO TAKE PART?

If you do not want to take part in the class action, you must opt out. If you opt out, the results of the lawsuit will not apply to you, whether they are good or bad. If you do opt out, you will not be entitled to receive any money through the lawsuit. If you want to opt out, you must send your name, birthdate, and a statement that you wish to opt out in writing to the following address or email address:

Trilogy Class Actions Services,
117 Queen Street, P.O. Box 1000,
Niagara-on-the-Lake, ON L0S 1J0
Email: optout@trilogyclassactions.ca

Class members who want to opt out must submit their request by <DATE>. Class members who do not submit an opt-out request by <DATE> will continue to be a part of the class action.

DO I NEED TO PAY ANYTHING TO PARTICIPATE IN THE LAWSUIT?

No. You do not need to pay anything out of your pocket to take part in the lawsuit. The lawyers appointed by the Court to represent the class will only be paid if the claims are successful. If that occurs, the lawyers will request a percentage of the total amount recovered for the class and will ask to be reimbursed for their disbursements. This percentage will be no greater than 33.33%, and must be approved by the Court.

WHO ARE THE LAWYERS FOR THE CLASS?

The class is represented by:

BRANCH MACMASTER LLP
1410 – 777 Hornby Street
Vancouver, BC V6Z 1S4
Telephone : 604-654-2999
Fax : 604-684-3429

STROSBERG SASSO SUTTS LLP
1561 Ouellette Avenue
Windsor, ON N8X 1K5
Telephone: 866-241-9914
Fax: 866-316-5308

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Toronto, ON M5S 1S4
Telephone : 416-964-7950
Fax : 416-964-7416

MCINNES COOPER
P.O. Box 730
1300-1969 Upper Water Street
Halifax, NS B3J 2V1
Telephone : 902-425-6500
Fax : 902-425-6350

I WANT MORE INFORMATION

More information on the case is available at www.marijuanaaction.com along with the Amended Statement of Claim, the Order certifying the action, and other Court documents.

You can also register on the website at www.marijuanaaction.com. If you register, you will receive periodic email updates regarding the action and advising you of any steps that you are required to take. If you visit the website, it will also advise you of any steps you are required to take (whether you are registered or not).

If you still have questions, you can contact any of the lawyers at the addresses above.

THIS NOTICE HAS BEEN AUTHORIZED BY THE FEDERAL COURT OF CANADA

PROGRAMME D'ACCÈS À LA MARIHUANA À DES FINS MÉDICALES RECOURS COLLECTIF POUR ATTEINTE À LA VIE PRIVÉE

VEUILLEZ LIRE ATTENTIVEMENT CE DOCUMENT, CAR IL POURRAIT AVOIR UNE INCIDENCE SUR VOS DROITS.

La Cour fédérale du Canada a autorisé un recours collectif contre Sa Majesté la Reine (« Santé Canada ») relativement à l'envoi d'environ 40 000 lettres aux participants du Programme d'accès à la marihuana à des fins médicales en novembre 2013, dans des enveloppes faisant explicitement référence au « Programme d'accès à la marihuana à des fins médicales » ou au « Marihuana Medical Access Program » (les « lettres »).

QUEL EST L'OBJET DU RECOURS?

Les plaignants avancent qu'en envoyant les lettres, Santé Canada a porté atteinte à la vie privée des participants du Programme d'accès à la marihuana à des fins médicales.

Les plaignants sollicitent une ordonnance de la Cour obligeant Santé Canada à verser une indemnisation aux personnes concernées par la prétendue atteinte à la vie privée, entre autres.

Santé Canada nie toute faute de sa part. Un juge décidera de la culpabilité de Santé Canada lors d'un procès. La date de l'audience n'a pas encore été fixée.

QUI FAIT PARTIE DU RECOURS?

La poursuite est intentée au nom de toutes les personnes qui ont reçu, en novembre 2013, une lettre de Santé Canada dont l'enveloppe portait la mention « Programme d'accès à la marihuana à des fins médicales ».

Si votre situation correspond à cette description, vous faites automatiquement partie du recours collectif, à moins que vous ne vous retiriez du groupe avant le <DATE>. Si vous souhaitez vous exclure, consulter la rubrique « Que faire si je ne veux pas participer? » ci-dessous.

Si vous êtes membre du groupe et que vous ne vous en retirez pas, vous ferez partie du recours collectif et ne pourrez pas présenter un recours distinct contre Santé Canada pour tout dommage personnel particulier que vous pourriez avoir subi. Dans le cadre du recours collectif, des dommages et intérêts seront réclamés pour l'ensemble du groupe. Si un jugement est rendu en faveur du groupe ou s'il y a un règlement, le juge décidera comment l'argent reçu sera divisé entre les membres du groupe.

QUE FAIRE SI JE NE VEUX PAS PARTICIPER?

Si vous ne souhaitez pas participer au recours collectif, vous devez vous en retirer. Si vous vous retirez, les résultats du procès ne s'appliqueront pas à vous, qu'ils soient favorables ou défavorables. En outre, vous n'aurez pas le droit de recevoir de l'argent dans le cadre du recours. Si vous souhaitez vous exclure, vous devez envoyer votre nom, votre date de naissance et une déclaration confirmant votre désir de vous exclure, par écrit, à l'adresse postale ou électronique suivante :

Trilogy Class Actions Services,
117, rue Queen, C.P. 1000,
Niagara-on-the-Lake (Ontario) L0S 1J0
Courriel : optout@trilogyclassactions.ca

Les membres du groupe qui souhaitent se retirer doivent présenter une demande avant le <DATE>. Les membres du groupe qui ne soumettent pas de demande d'exclusion avant le <DATE> continueront à faire partie du recours collectif.

DOIS-JE PAYER POUR PARTICIPER AU RECOURS?

Non. Vous n'avez rien à payer pour participer au recours. Les avocats désignés par le tribunal pour représenter le groupe seront rémunérés seulement s'il y a gain de cause. Dans ce cas, les avocats demanderont un pourcentage du montant total reçu par le groupe, ainsi que le remboursement de leurs débours. Ce pourcentage ne sera pas supérieur à 33,33 % et devra être approuvé par le tribunal.

QUI SONT LES AVOCATS DU GROUPE?

Le groupe est représenté par :

BRANCH MACMASTER LLP
777, rue Hornby, bureau 1410
Vancouver (Colombie-Britannique) V6Z 1S4
Téléphone : 604-654-2999
Télécopieur : 604-684-3429

STROSBERG SASSO SUTTS LLP
1561, avenue Ouellette
Windsor (Ontario) N8X 1K5
Téléphone : 866-241-9914
Télécopieur : 866-316-5308

CHARNEY LAWYERS PC
151, rue Bloor Ouest, bureau 602
Toronto (Ontario) M5S 1S4
Téléphone : 416-964-7950
Télécopieur : 416-964-7416

MCINNES COOPER
C.P. 730
1969, rue Upper Water, bureau 1300
Halifax (Nouvelle-Écosse) B3J 2V1
Téléphone : 902-425-6500
Télécopieur : 902-425-6350

JE SOUHAITE OBTENIR PLUS D'INFORMATION

De plus amples renseignements sur cette affaire sont disponibles sur le site www.marijuanaaction.com, tout comme la déclaration modifiée du recours, l'ordonnance d'autorisation du recours et d'autres documents judiciaires.

Vous pouvez également vous inscrire sur le site www.marijuanaaction.com. Si vous vous inscrivez, vous recevrez périodiquement par courriel des mises à jour sur le recours et de l'information sur toute mesure à prendre. Cette information sur les mesures à prendre figure également sur le site Web et vous pouvez la consulter que vous soyez inscrit ou non.

Si vous avez encore des questions, vous pouvez communiquer avec l'un des avocats aux adresses ci-dessus.

SCHEDULE "C"

PLAN OF DISSEMINATION

Notice of Certification in the Matter of Marihuana Medical Access Program Privacy Breach

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

Class Counsel means the law firms of Strosberg Sasso Sutts LLP, Charney Lawyers PC, McInnes Cooper and Branch MacMaster LLP.

Notice means notice to the Class of the certification of Federal Court Action No. T-1931-13 as a class proceeding.

The Notice shall be distributed in the following manner:

1. Class counsel will:
 - a. post the Notice on the website www.marijuanaaction.com,
 - b. email the Notice to any person who registered with Class Counsel and provided a valid email address, and
 - c. send the Notice by regular mail to any person who requested hard-copy correspondence from Class Counsel;
2. The Defendant will post the Notice on the Health Canada website until the expiry of the opt-out period;
3. The Notice will be disseminated in accordance with the January 18, 2021 proposal of Trilogy Class Actions Services (Appendix I); and
4. The Court acknowledges that, in accordance with the *Cannabis Act*, the Defendant, the Federal Government and Health Canada do not endorse or approve any individual/business/entity where online/social media notices or advertisements might be placed.

APPENDIX 1 TO SCHEDULE "C" - PLAN OF DISSEMINATION



January 18, 2021

SENT VIA EMAIL

Justin Smith and David Robins,
Strosberg Sasso Sutts,
1561 Ouellette Avenue,
Windsor, Ontario,
N8X 1K5

Re: **John Doe et al v. HMTQ**
Medical Marihuana Data Breach Class Action Notice Plan

David Robins and Justin Smith,

Please find enclosed a revised proposal to the one submitted on October 18, 2019. It is my understanding that the requirements for the proposed Notice Plan are subject to change due to current laws and regulations. This enclosed draft proposal is subject to further amendments once Trilogy Class Action Services conducts the required due diligence pertaining to current laws and regulations and cooperation from the marijuana industry.

I submit this proposal as President (and founder) of Trilogy Class Action Services ("**Trilogy**"), a class action administration, advertising, notification, and notice plan firm located in St. Catharines, Ontario, Canada. Trilogy Class Action Services was established in 2009 and is Canadian owned and operated. Our expertise is executing on class action claims administration and in the design and implementation of class action notice programs to reach Putative Class Members in class action litigation.

I submit this proposal in connection with the **John Doe et al v. HMTQ - Medical Marihuana Data Breach** Class Action litigation. This proposal may also be prepared in affidavit form for submission to the Court for approval.

The Representative Plaintiff proposes to retain Trilogy to implement the notice program to putative Class Members in this litigation and to administer the Opt Out and Objection Forms or other written documentation from Class Members.

The objective of this proposal is to outline the duties and responsibilities of Trilogy, if appointed by the Honourable Court, to implement the notice plan, objection, opt out and claims administration for this class action.

"We bring the Class Member into the Class Action."

Experience – Trilogy’s most recent notice plans and claims administrations (2018-2020):

- i. **Amaya (Securities):** largest securities settlement in Canadian history (\$30 million) Notice Provider and Claims Administrator (2020-2021);
- ii. **Flight Centre (Employment):** Notice provider and Claims Administrator (2020-2021);
- iii. **FSD Pharma, Inc. (Securities):** Notice Provider and Claims Administrator (2020-2021);
- iv. **RPC1 et al v. The Attorney General of Canada, The Commissioner(s) of Nunavut and Northwest Territories (Sex Abuse):** Notice Provider (2020);
- v. **Lenovo (Consumer):** Claims Administrator (2020);
- vi. **Namaste Technologies (Securities):** Notice Provider and Claims Administrator (2020);
- vii. **Concordia International Securities:** Claims Administrator (2019-2020);
- viii. **John Doe v. Newfoundland and Labrador: (Sex Abuse):** Certification Notice Provider (2019);
- ix. **Blythe Academy (Employment):** Settlement Notice Provider – email, text and mail (2019-2020);
- x. **TD Bank (Securities):** Certification Notice Provider (2019);
- xi. **Expedia Hotel Fee (Consumer):** Notice Provider – email notification program (2019);
- xii. **TD Coin Counter (Consumer):** Certification, Settlement Notice Provider, Administrator (2019);
- xiii. **Partners REIT: (Securities)** Certification, Settlement Notice Provider, Administrator (2019);
- xiv. **Allerject (Medical Device):** Certification, Settlement Notice Provider, Administrator (2019);
- xv. **Yaz & Yasmin: (Medical)** Certification Notice Provider (2018);
- xvi. **Detour Gold: (Securities)** Certification, Settlement Notice Provider, Administrator (2017-2018);
- xvii. **Megabyte (Consumer Fraud):** Competition Bureau - Notice and restitution payments (2018);
- xviii. **Oil Careers (Consumer Fraud):** Competition Bureau - Notice and restitution payments (2017);
- xix. **Alysena 28 (Medical):** Certification, Settlement Notice Provider, Administrator (2017-2018);

Trilogy is an approved notice provider and claims administrator for the Government of Canada. Trilogy has previously been appointed by the Canadian Superior Court(s) of Justice, Crown Prosecutors, Crown Corporations and Government Agencies such as The Competition Bureau. Trilogy also specializes in the implementation and dissemination of notice plans at all stages the criminal proceedings and proceeds of crime restitution administration and breaches under the Competition Act.

Overall Strategy of the Notice Plan:

It is proposed that the Court appoint Trilogy to design and execute the notice plan pursuant to Section B. Dissemination, paragraph 16 of the Court Order and Reasons issued on March 14, 2018.

Trilogy recommends that we approach the Court to expand the Plan of Dissemination well beyond the approved social media, paragraph [16], to provide “decent reach”. As you will discern from the enclosed social media plan within this proposal, I believe utilizing social media platforms to disseminate notice is essential for the efficacy of

any Notice Plan. I agree with the Court's ruling that social media should be used over direct mail of the Notice due to the unique nature and underlying premise of this class action litigation.

Due to the unique nature of this class action litigation, I believe it creates an opportunity to directly target "Registered Patients" permitted to use cannabis for medical purposes and deliver the Notice directly to the approximately 40,000 Class Members without having their contact information at the risk of having a second episode of breach of confidentiality.

We recognize that the *Cannabis Act* and *Cannabis Regulations* prohibit certain types of communications (for example, the Regulations prohibit an insert or leaflet being included with or accompanying a cannabis product). The Notice Plan will ensure that communications to Class Members and the public do not contravene the Act and Regulations. In addition, we recognize that, other than expressly provided for under the *Cannabis Act* and *Cannabis Regulations*, the Government of Canada does not endorse or approve any person, business, company, website, or legal entity where Notice might be displayed as part of the Notice Plan and the Notice will not include any Government of Canada or Health Canada logo or symbol.

Registered Patients (Health Canada): individuals who have registered to obtain cannabis for medical purposes ("registered patients").

It may be possible and would be accretive to disseminate the Notice through cultivators, processors, and sellers that hold a licence issued by Health Canada under the *Cannabis Regulations* ("Authorized Licence holders") and, more specifically, holders of a licence for sale for medical purposes.

I have segmented this proposal into two sections and options.

- I. Plan of Dissemination pursuant to the Court Order dated March 14, 2018;
- II. An expanded Plan of Dissemination to compliment the Court Order dated March 14, 2019;

The purpose of dividing this proposal into two separate sections is to allow Class Counsel to negotiate with the Defendant what may be deemed "decent reach" and then potentially seek the Court's approval.

The Court has determined that a direct notice program with "the use of the mail is problematic". The problem of sending the Notice through regular mail is self-evident in that once a letter is posted, it is somewhat in the public domain and subject to interception and disclosure by unintended non-related third parties.

Furthermore, pursuant to the Court Order, "the list of people in the program has not been updated since 2014, and further updates are not possible". It is an absolute certainty that a percentage of Class Members have moved since 2014.

The Court Order accurately states the deficiencies in a direct notice program using regular mail.

Based on our experience with direct notice programs using both regular mail and email, email address are current versus mailing addresses. People are likely to keep their email address, and cell phone numbers, longer and even

after they move physical addresses. Unfortunately, we have been advised that email addresses are not available for Class Members (other than those who have registered with Plaintiffs' counsel)

1. Authorized Licence holders could provide a pop-up message of the Short-Form Notice during the Notice Period as Registered Patients log into the website portal. <https://www.spectrumtherapeutics.com/canada/en>
2. Some Authorized Licence holders licenced have news and blog sights on their websites. Post the Short-Form Notice or the Long-Form Notice on their website and/or a click-through to the Notice Page with the Long-Form Notice on the designated website managed by the Administrator. For example, Canopy's medical marijuana subsidiary Spectrum Therapeutics online store and website. <https://www.spectrumtherapeutics.com/canada/en/news>
3. Dissemination of the Notice by providing links to some of the industry's most experienced cannabis educators. These continuing medical education (CME) programs for healthcare professionals, as well as medical customer service at Canopy Growth, will help disseminate the Notice through the professional healthcare providers who advise and service Registered Patients.

This table lists all cultivators, processors and sellers that hold a licence issued by Health Canada under the Cannabis Regulations. <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/industry-licensees-applicants/licensed-cultivators-processors-sellers.html#wb-auto-5>

Notice Plan based on the Court Order dated March 14, 2018

- a) Trilogy shall publish the Certification Notice in digital format through online banner advertisements to the enclosed list of digital media and publications;
- b) Trilogy shall establish a Facebook page to post the Notice;
- c) Trilogy shall establish a Twitter account to post the Notice;
- d) Trilogy will implement strategy and adverts through Google search to targeted demographics;
- e) Trilogy shall establish a SEO website in French and English;
- f) Trilogy shall to post the Notice and make available in easy to download and fillable PDF format the Opt Out Form, Objection and Claim Forms;
- g) Trilogy shall design the Opt Out Form and Objection Forms in French and English;
- h) Put the procedures in place, pursuant to the Notice, to allow Class Members to mail, email or fax the Opt Out Form or Objection Form to Trilogy on or before xxxxx, xx, 2021;
- i) Trilogy shall receive and administer the Opt Out Forms and Objection Forms during the designated period and subsequently submit the "Opt Out List" and "Objection List" to the Court and/or Counsel and/or the Defendant within ten (10) days.
- j) Trilogy shall issue a press release, in French and English, through Business Newswire to news media and online audiences throughout Canada;
- k) Trilogy shall forward the press release directly to major media outlets in Canada;

1. Website and Notice Infrastructure

- a) To execute the notice program, Trilogy registered and secured the domain website www.medicalmarihuanaprivacyclassactioncanada.ca. (and similar domain names with .com etc so no one can “highjack” these domains and class action);
- b) Trilogy shall build and maintain a Search Engine Optimization (SEO) website at the domain address to facilitate the circulation of information to Class Members;
- c) Trilogy shall implement a strategy for Google search results allowing either Strosberg, Sasso and Sutts and/or the Medical Marihuana privacy breach class action designated website will be targeted;
- d) The website will be designed to be easy to navigate and the information and forms available will be easy to print or download in PDF fillable format. The website will provide Opt Out Forms, Objection and Claim Forms, relevant court documents, hearing dates, important deadlines, the Certification Notice, definitions, frequently asked questions, and contact information for both Trilogy and Class Counsel;
- e) Trilogy will continue to maintain the claims administration address located at: Medical Marihuana Privacy Breach Class Action, 117 Queen Street, P.O. Box 1000, Niagara-on-the-Lake, Ontario, LOS 1J0;
- f) Trilogy will continue to maintain designated fax service at 416-342-1761;
- g) Trilogy will continue to maintain designated toll free phone number at 416-342-1761;
- h) Trilogy shall operate the following e-mail addresses where class members may submit Opt Out Forms and Objection Forms and/or other documentation and/or direct questions about the class action:
 - inquiry@medicalmarijuanaactioncanada.ca,
 - optout@medicalmarijuanaactioncanada.ca,
 - objections@medicalmarijuanaactioncanada.ca,
 - claims@medicalmarijuanaactioncanada.ca;

2. Digital Media, Social Media, Google Search Engine Optimization (SEO), Twitter and Facebook:

There are “old” forms of media and advertising such as print (newspaper, magazine, and press release). Old media is often static and “one and done” – meaning once it is published it is fixed and never changes or evolves. It is not interactive.

“New” media is interactive and evolves 24 hours a day. Major platforms include Facebook, Linked In, twitter and digital banner display ads on news media and related websites.

More than 30% of all Canadians today access their primary news and information online. There are many paid and earned options within digital media, and these will need to be utilized in order to make this class action notice campaign more successful.

Thus, the Certification Notice should be disseminated through various methods of “old” and “new” media. Trilogy will utilize these various multi-media platforms that are highly integrated, targeted, and tiered. These mediums are important as they address Class Members’ demographics through print, digital, and social media.

The main goal of utilizing “new media” (Facebook, Twitter and digital display banner ads) is to expand the reach of the Notice beyond the reach of traditional “old media” (press release and newspapers). It is vital to get the correct target market based on the various demographics as per an objective analysis. Trilogy will employ “new media”

techniques to disseminate Notice to Class Members through a highly targeted multi-media platform to inform, engage and communicate with and identify Class Members.

Digital Media

Trilogy proposes working with Authorized Licence holders. Trilogy will determine which of these Authorized Licence holders are willing and able to disseminate Notice to putative Class Members. Trilogy will also negotiate with Authorized Licence holders if they will disseminate the Notice as “a public service announcement” or through paid banner advertisements with abbreviate content of the Notice. The latter is proposed in detail below.

This table lists all Authorized Licence holders under the *Cannabis Regulations*: <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/industry-licensees-applicants/licensed-cultivators-processors-sellers.html>

Digital or online media notice advertising consists of text and display banner advertisements - also known as “display” advertising. The banner ad contains a headline about the basics of the class action (awareness) that allow class members to click through to the landing page with the Certification Notice (engagement) and a link to connect directly with Trilogy or Class Counsel (conversion).



Trilogy will adjust the format or key messaging, if necessary, to retarget the sponsored programmatic advertising to increase efficiency and effectiveness of the notice program. Based on the information received, Trilogy will change either: graphics, (pictures, content, colour, font, etc); key words (headline, content); or location. Trilogy shall evolve the notice program as required based on the success rate of conversions from quantified data provided by the multiple platforms.

Contextual targeting ensures that content of the digital banner adverts directly correlates to the content of the web page the user is viewing. It has been reported that adverts running on sites with related content were 61 percent more likely to be recalled than adverts running on sites with unrelated content.

Trilogy will design, publish and monitor digital banner adverts with a click-through function directly to the Notice page on the designated website.

Social Media, Search Engine Optimization (SEO) Google, Twitter and Facebook:

To simplify the overall strategy and plan outlined in detail below, we should accomplish the following:

1. *Reach the Class Member if they visit related websites;*
2. *Reach the Class Member if they have related apps on their mobile devices;*
3. *Reach the Class Member if they subscribe to a related service.*

We will accomplish this through the following measures:

1. *Geo-target Class Members across Canada;*
2. *Behavioural-target Class Members across Canada;*
3. *Demographically-target Class Members across Canada.*

Trilogy will evolve, through its three-testing principle, the notice program every two weeks based on the success rate of conversions from quantified data provided by the multiply platforms. Trilogy's media program monitors and quantifies reach and penetration in each component of the notice program during each phase of the notice plan based on performance data. Trilogy's three testing principles will apply to all new media components of the notice campaign - banner display adverts, Twitter, Facebook, or Google and niche websites.

Trilogy will change either:

- a) graphics, (pictures, content, colour, etc);
- b) key words (headline, content);
- c) location.

Programmatic Advertising will be executed using historical data and re-targeting strategies to serve web-based adverts to Canadians on their mobile, tablet and computer devices. Adverts will leverage website and in-app display networks to serve adverts with a clear call-to-action and respective link to Notice or claim information and/or Class Counsel.

The first week is reserved for learning and refining the targeted audience. The sponsored programmatic advertisements costs and strategy are adjusted weekly or monthly depending on the requirements of the notice program and claim administration. The adverts appear in-app and on websites visited by PC or mobile devices. Trilogy will help design in distinct formats. A typical campaign runs **1 - 4 weeks**.

These strategies are much more cost-efficient and effective than paid print media because we are able to discern if the notice or content was actually read and quantify the data to gauge reach and penetration of the notice program and to target higher probability Class Members or Representative Plaintiffs.



Objective Analysis

Programmatic Analytics will be conducted in tiers and adjusted accordingly to narrow the focus of the target market after we analysis and quantify the data pertaining to penetration rates based on click-through rates.

Contextual Targeting ensures that content of the digital banner adverts directly correlates to the content of the web page the user is viewing. It has been reported that adverts running on sites with related content were 61 percent more likely to be recalled than adverts running on sites with unrelated content.

Behavioural Targeting analyses a user's online behaviour and creates an online profile for that user. These anonymous profiles (no names, addresses, email addresses, or telephone numbers are stored) allow digital notice providers, like Trilogy, to identify the demographics and to link that information to an internet provider address to target specific demographic profiles.

Geo-targeting is a method of determining the geo-location of a particular internet user and/or with a particular app downloaded onto mobile device, smart phone or computer to provide the Notice based on that user's location or downloaded app. Similar to the information gathered via behavioural targeting, this information is also anonymous and linked to a particular internet provider address. For example, the Golf Channel app at a particular golf course for the Roundup class action or the WSJ app at King and Bay in Toronto for a securities related class action such as Concordia.

Channel Targeting

This is simple targeting through groups of sites publishing similar content in order to reach audiences interested in specific topics.

Search Engine Optimization (SEO)

Trilogy utilize sponsored programmatic advertising tools to serve advertisements relating to the Notice to residents of Canada through mobile, tablet and desktop devices. When class members are actively searching on the web or social media platforms, common words and terms related to "medical marijuana", "privacy breach", "Health Canada", "Strosbergs, Sasso, Sutts", etc will trigger a sponsored programmatic advert directing users to the designated website.

Landing Pages

Some marketing campaigns add support to your current law firm website – it can be designed to encourage potential Class Members and Representative Plaintiffs to take action. A standalone, responsive web page solves both of these challenges. Tailored to each phase of the notice campaign, landing pages are designed to turn views into Class Members and Representative Plaintiffs through strong calls to action and customized messaging - helps convert awareness into engagement and potentially conversion.



Trilogy’s highly targeted and tiered “new media” program monitors and quantifies reach and penetration in each component of the notice program during each phase of the notice plan based on performance data.

Trilogy implements advanced behavioural and demographic targeting to narrow the notice program at the intended class. Trilogy’s ability to quantify how many people click onto the notice, the average time Class Members visit the notice website, how many pages class members viewed, which pages they viewed, if they downloaded the Opt Out or Claim Form, etc.

Programmatic advertising can be executed using historical data and re-targeting strategies to serve web-based adverts to Canadians on their mobile, tablet, and computer devices. Adverts will leverage website and in-app display networks to serve adverts with a clear call-to-action and respective link to the Certification Notice, Opt Out or Opt In Forms or Trilogy or Class Counsel.

Retargeting will find and track users who have seen or clicked on the Notice, follow them and provide them another advert with the notice information or reminder about the opt out or opt in deadline. A landing page retargeting focuses upon users who have visited the website and shows them a display of the notice at a later date. It reminds them of important deadlines and keeps the class action 'top of mind'.

Look-a-Like Modeling builds a user model based on participants who have been successfully converted to target similar users.

Social Media

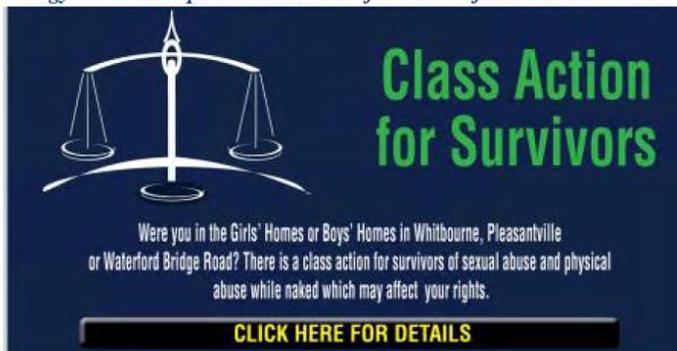
- a. Trilogy shall execute a highly targeted and tiered digital programmatic advertising and paid social media campaign to reach class members. I am recommending that the Notice Plan be executed through the related, pertinent and applicable social media vehicles.
- b. Based on this approach, I recommend that Trilogy establish an account on Facebook to provide targeted advertising of the Notice.
- c. Trilogy can utilize Facebook to serve sponsored posts within newsfeeds to include an image and respective link to the Notice and related information hosted on the designated website. Trilogy will identify other related and already established Facebook pages targeted towards seeking personal relationship pages or websites or forums.

Facebook

Studies regarding Facebook estimate that there are 15 million monthly active users in Canada, i.e., approximately half the population. Canadians spend an average of over 400 minutes on Facebook per month, and Canada has the highest average number of friends on Facebook at 190 per user.

Empirical data demonstrates the significance and relevance of these social media sites, as social media is increasingly being relied upon by people to be informed. According to a study of 26 countries conducted by the Reuters Institute for the Study of Journalism at Oxford University in 2016, 38% of Canadians were accessing their primary news and information through websites, social media, and mobile apps.¹

Trilogy's Facebook paid advertisement for the Newfoundland Sex Abuse Notice Program



Facebook Behavioural Targeting monitors the behaviour of the target demographic as they engage with Facebook and ensures they are targeted at the ideal time. For example, before the opt out or opt in deadline.

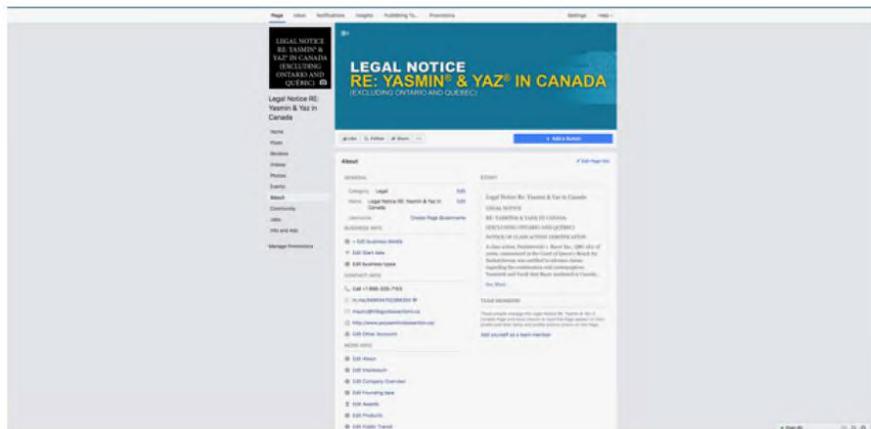
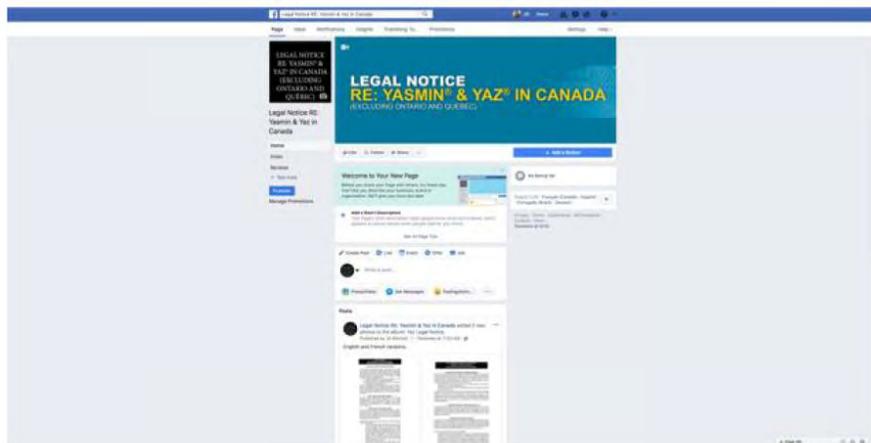
Success of the notice program is measured by:

- a. Impressions - the number of adverts that were actually displayed;
- b. Click Through Rate - the rate at which users exposed to the ad engage with it, expressed as a percentage (a successful rate is 0.1%);

¹ <http://www.digitalnewsreport.org/survey/2016/>

- c. Cost Per Click - the total amount spent to generate one engagement;
- d. Cost Per Lead - the total amount spent to generate one conversion (for example, to fill out an Opt Out Form or register as a class member); and
- e. Frequency - how often a unique user sees the notice, measured daily, weekly, monthly or throughout the lifetime of the notice program.

Trilogy's Facebook page for the Yasmin & Yaz Notice Program



Paid Social Media

Empirical data demonstrates the significance and relevance of these social media sites, as social media is increasingly being relied upon by people to be informed. According to a study of 26 countries conducted by the Reuters Institute for the Study of Journalism at Oxford University in 2016, 38% of Canadians were accessing their

primary news and information through websites, social media, and mobile apps.² From an efficiency and effectiveness perspective, social media and new media create an opportunity to communicate with a large number of targeted users at comparatively minimal cost. There are many paid and earned options within the digital world, and some of these will need to be utilized in order to make this class action notice plan successful.

II. An expanded Plan of Dissemination to compliment the Court Order dated March 14, 2019;

I am going to start this section of the Plan of Dissemination proposal by addressing the following that was discussed in our conference call.

Reasons why a Registered Patient would not purchase from a local dispensary.

I physically visited provincially authorized cannabis retail locations. The purpose of these visits was twofold. To explore the possibility to display a post card of the short-form notice either at reception or another prominent area in the storefront location. For example, the front door or the counter.

Two, was to speak to staff (without disclosing the nature of the litigation) and ask them if they needed to get a message out to their client or patient base on an important matter and on a confidential basis, how would they go about it. The response confirmed that the dissemination of the Notice would be ineffective through these locations compared to the information discussed in the paragraphs above.

Press Release

Trilogy would distribute a national press release over Business News Wire. The press release will be issued broadly to over 1,000 media outlets, including newspapers, magazines, television, radio and online media across Canada.

Earned Media

Due to the high profile of this class action, Trilogy will forward the press release directly to major media outlets and properties in Canada. For example, CBC, CTV, Global News, Post Media, Star Media, etc. These news outlets are likely to provide news coverage of the Notice of Certification. All media inquiries received by Trilogy Class Action Services will be immediately forwarded to Class Counsel. (designated person to be determined)

Indirect Notice

Class Members may have been a participant in the Medical Marihuana Access Program in 2013 because they may have suffered from personal injuries, illnesses such as cancer, or have cognitive issues or psychology conditions such as anxiety disorder or OCD.

Therefore, we propose sending the Short-Form Notice and the Long-Form Notice to the following organizations to disseminate the Notice with by posting in on their website, emailing it to their client based, including in their newsletter or posting it within the office or facility.

- Canadian Cancer Society
- CAMH – The Centre for Addiction and Mental Health
- Arthritis Society

² <http://www.digitalnewsreport.org/survey/2016/>

- Medical Cannabis Canada
- Canadian AIDS Society
- SheCann
- Hope for Health
- Veterans Affairs Canada

Trilogy understands and respects the Defendant's position that these are independent organizations that have not been approved or offered any form of special designation by Health Canada nor are providing an endorsement of these groups for any purpose.

Define validated and authentic opt outs - Class Members who:

1. Verify that they understand the consequences of opting out;
2. Verify they understand the definition of opting out and what it means;

How would we validate?

As I mentioned, in one previous opt out administration, we actually contacted the Class Members who opted out to verify that they actually desired to opt out.

As I mentioned, this was put before the Court. We explained to the Court that we did this "out of an abundance of caution". I don't believe it would be "too expensive" for Trilogy to verify by email (documented) or phone to validate that the Class Member truly understands opting out.

To validate and authenticate the opt out would cost more than \$1,500 or \$2,000 of our time to validate opt outs. We charge \$990 for our opt out administrations – all things being equal.

Moreover, we can build language into the Court Order and/or into the Opt Out Form to protect the integrity of the opt out process – keep the number of opt outs to only validated and authentic opt outs.

Based on my experience, we can incorporate the following:

1. Add a signature for a witness. This impresses upon the Class Member that opting out is serious and that they cannot sign the form independently – it causes the Class Member to pause and strongly consider the execution of the opt out form;
2. Audits: At its sole discretion, the Opt Out Administrator can elect to audit any Opt Out Form as it sees fit to maintain the integrity of the Opt Out procedure. This includes contacting the Class Member who opted out. (we have this clause in some claims administrations)
3. I understand that by opting out, I am confirming that I forfeit my right to receive compensation from any potential judgement or settlement.
4. I understand that any action that I may have individually and not as part of the class proceeding must be commenced within a specified limitation period or it will be legally barred.
5. I understand that certification of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt-out of this class proceeding.
6. I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

7. Reason for Opting-Out: Please explain your reason(s) for opting-out. The Administrator may contact you to verify your statement.
8. Please be advise the Opt-Out Administrator may contact you directly to verify your understanding of Opting Out and validate your Opt-Out Form.

I have enclosed a few opt out forms we have designed for other administrations for your review.

Confidentiality

Trilogy will implement an opt out process in which Class Members will be identified by a Class Member Number only. There will be one master list of Opt Out's name and contact details that will be redacted when disseminated as required by Class Counsel or the Courts. All Opt Out's lists will be encrypted and password protected. We are currently looking into implementing a designated encrypted email platform for this class action.

I am, as owner of Trilogy Class Action Services, currently drafting a special Non-Disclosure Agreement for all staff to execute this week in relation to the Medical Marihuana Access Program notice program and opt out administration.

Any information provided by or regarding members of the Class, or otherwise obtained, shall be kept strictly confidential and shall not be disclosed except to appropriate persons to the extent necessary to process opt out forms or as required by law or the Court.

Trilogy shall institute and maintain strict procedures to protect the identity of all Class Members, and all information regarding this litigation. Trilogy shall provide access to Class Counsel, counsel for the Defendant, and Other Counsel shall have access to all information maintained by the Administrator.

Notice Plan Conclusion

Trilogy's data analysis will quantify results and programmatic adverts will modify the metrics and parameters to enhance reach and penetration to Class Members in a cost-efficiently, effectively and measurable. We leverage the data and targeting capabilities to reach class members through programmatic analytics.

One of the benefits of implementing a highly targeted multi-media platform is that we can adjust pricing as the notice program progresses. Moreover, we can stop the social media or digital component once we are successful in obtaining the desired results.

All communication will be available in French and English. Trilogy will translate the website, Notices, Opt-Out Form, Claim Form and other related documentation into French. Trilogy will graphically design and format the Short-Form Notice, graphically design the website, Twitter posts, Facebook page and adverts and banner adverts. Trilogy will graphically design the Opt-Out and Objection Form,

Within ten (10) business days after the Opt Out deadline, Trilogy will submit a report to Counsel regarding the implementation of the Notice Plan and the Opt Out and/or Opt In Administration.

Cost of Plan of Dissemination and Opt Out Administration

The estimated cost for both the notice program, opt-out and objection administrations is calculated between \$50,000 to \$75,000. We will confirm pricing with the organizations, license cultivators, processors and sellers and relevant media properties at the time of publication based on the Court approved Notice Plan.

The reason for the wide range is due to the unknown costs of banner advertisements of the Short-Form Notice with the above referenced organizations, Authorized Licence holders and media properties. In particular, if some of the above-mentioned companies are willing and able to disseminate the Notice as “public service announcement versus paid advertising. This will be confirmed at the time of publication and with consultation with Class Counsel and the Defendant’s Counsel.

Trilogy, as Administrator, shall certify the protection and encryption of all data received from the Defendant, follow documented technical security standards set by NIST Cybersecurity Framework guidelines (available at <https://www.nist.gov/cyberframework>), including controls such as system hardening, encryption, anti-virus, malware protection and a regular patching protocol.

The above is an aggregate of the costs inclusive of the following if less than 2,500 claims are received: Translation \$125 per hour; Senior Management \$275; IT Support \$135 per hour; Project Management \$125 per hour; Administrative Duties \$55 per hour.

Trilogy will pass-through all expenses at-cost incurred in support of the administration: long-distance phone charges, postage, courier, bank fees, travel expenses, P.O. Box, toll-free phone line, specially designed stationary and printing etc. Trilogy will work with Plaintiff’s Counsel and Defendant’s Counsel pertaining to any extraordinary cost that may be unforeseen at this point and time.

The prices quoted in this proposal are estimates and subject to revision once we have the opportunity to review the Court Order and the Court approved Notice.

Please feel free to contact me directly at 416-886-7752 or Paul@trilogyclassactions.ca if you have any questions, require further information or wish to discuss further.

Yours truly,

Paul Battaglia

Paul Battaglia,
President and Founder,
Trilogy Class Actions Services