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Ottawa

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(Court Seal)

JANE DOE

Plaintiff

and

BANK OF MONTREAL

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
161 Elgin Street, 2nd Floor
Ottawa ON K2P 2K1

TO: BANK OF MONTREAL
First Canadian Place
21st Floor, 100 King Street West
Toronto, ON M5X 1A1

CLAIM

1. The plaintiff claims on her own behalf and on behalf of the Proposed Class (as defined below):

- (a) an order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”) certifying this action as a class proceeding and appointing her as a representative plaintiff for the Proposed Class;
- (b) an aggregate assessment of damages in the amount of \$500 million for:
 - (i) negligence;
 - (ii) breach of contract;
 - (iii) engaging in unfair practices, contrary to Part III of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. “A” (the “*Consumer Protection Act*”) and equivalent provisions in Equivalent Consumer Protection Statutes (as defined below);
 - (iv) intrusion upon seclusion;
 - (v) breach of the *Privacy Act*, R.S.B.C. 1996, c. 373;
 - (vi) breach of *The Privacy Act*, C.C.S.M., c. P125;
 - (vii) breach of *The Privacy Act*, R.S.S. 1978, c. P-24;
 - (viii) breach of the *Privacy Act*, R.S.N.L. 1990, c. P-22; and

- - -

- (c) an order pursuant to s. 25 of the CPA directing individual hearings, inquiries and determinations for members of the Proposed Class who have suffered or may have suffered special damages as a result of unlawful conduct by third parties, including identity theft, which may have been occasioned by or attributable to the defendants' breaches as alleged, and all necessary directions relating to the procedures to be followed in conducting hearings, inquiries and determinations;
- (d) for Quebec residents, compensation in the amount of \$50 million pursuant to the *Charter of Human Rights and Freedoms*, CQLR c. C-12, breach of the *Civil Code of Quebec*, L.R.Q., c. C-1991, art. 35-40, and an *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1;
- (e) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) the costs of this proceeding, plus all applicable taxes; and
- (g) such further and other relief as this Honourable Court may deem just.

(1) THE NATURE OF THIS ACTION

2. This action arises as a result of a cybersecurity privacy breach affecting sensitive personal financial information of thousands of customers of Bank of Montreal (“BMO”).

3. This class proceeding claims damages and relief on behalf of all BMO customers affected by BMO’s privacy breaches.

(2) THE PARTIES

A. The Plaintiff

4. The plaintiff is an anonymous alias for an individual residing in Ottawa, Ontario who has a banking account with BMO and has been confirmed as having been impacted by the breach. The plaintiff wishes to use an alias from being further victimized as a result of publicly identifying herself as an affected person in this class proceeding.

5. The plaintiff seeks to represent the following class (“**Proposed Class**” or “**Class Members**”):

All current or former BMO customers whose personal information was exposed to appropriation by unauthorized persons (i.e. “hackers”, “fraudsters”) as a result of a security breach disclosed on May 28, 2018.

B. The Defendant

6. BMO is a Canadian corporation with its legal headquarters in Montreal, Quebec. BMO is a multinational banking and financial services corporation. It is the fourth-largest bank in Canada by market capitalization and assets.

(3) THE DATA BREACH

7. On Sunday, May 27, 2018, hackers contacted BMO, claiming they were in possession of certain personal and financial information of BMO customers. They sought payment of a ransom. The breach was disclosed by hackers. It was not previously discovered by BMO.

8. On May 28, 2018, BMO issued a press release, stating that “fraudsters contacted BMO claiming that they were in possession of certain personal and financial information for a limited number of customers. [...] We took steps immediately when the incident occurred and we are confident that exposures identified related to customer data have been closed off. [...] BMO has strong and robust processes in place to protect customer data and we take customer privacy very seriously. [...]” The press release indicated that BMO was proactively contacting customers who may have been impacted by the data breach.

9. On the same day, Simplii Financial (“**Simplii**”), a division of the Canadian Imperial Bank of Commerce (“**CIBC**”) also disclosed that it had been contacted by fraudsters on May 27th. The same group of hackers that targeted Simplii had also targeted BMO.

10. On May 27, 2018, an e-mail purportedly sent by the hackers to media organizations explained the common methods they used to hack Simplii and BMO’s systems to siphon customer information. In general and simplified terms, the e-mail explained that hackers used an algorithm to generate client card numbers. The sites improperly used “half-authenticated cookies.” A cookie is used by a web browser to authenticate the person accessing the page. Using half-authenticated cookies and the generated card numbers allowed hackers to inappropriately obtain sensitive customer information. The hackers automated the hacking process by using high speed scripts and computer proxies to pull massive amounts of customer data quickly.

11. In addition, the e-mail explained that BMO at one point detected the security breach when it noticed a large amount of data flowing from its systems. BMO’s response was to put a small patch online to limit the speed at which information could be downloaded. The hackers easily side-stepped the patch, allowing them to continue their efforts unabated. Once BMO knew what was

happening, it should have pulled the servers offline, not just limit the rate at which hackers could steal data.

12. On May 28, 2018, the purported hackers posted a file online that allegedly contained personal information of some 100 BMO customers whose personal information had been compromised. The list included:

Lead Account Number:

Card/credit card Number:

First Name:

Last Name:

Initial:

Date of Birth: YYYYMMDD

Social insurance number (SIN):

Email Address:

Full address:

Home Number:

Mobile Number:

Business Number:

Fax Number:

Air Miles Number:

Employment Status:

Occupation Code:

Occupation Description:

BMO Employee: True/False

Primary Relationship:

Number of Linked Accounts:

Primary Citizenship Country:

Secondary Citizenship Country:

13. The information of the proposed representative plaintiff was included in this online data dump.

14. The hackers threatened that unless a ransom was paid, the entire database consisting of information for thousands of BMO and Simplii banking customers would be disclosed.

15. Included in the compromised customer information was Social Insurance Number (“SIN”) information. A SIN is a critical piece of information about an individual. The Privacy Commissioner of Canada states that “the SIN is important to privacy protection. It can open the door to your personal information and can put you at risk of fraud and identity theft.” Service Canada states that one should “provide your SIN only when you know that it is legally required.”

16. The consequences of identity theft can be life-changing. Identity theft can destroy a person’s credit rating. Credit ratings are used to determine if a bank should loan money, grant a mortgage, or issue a credit card. Credit ratings are used by some employers. Landlords use credit

ratings to decide whether to rent an apartment. Telephone, utility companies and many other companies also conduct credit checks. Identity theft can ruin lives.

17. Due to the errors, omissions and negligence of BMO, as a result of the security breaches described in this claim, thousands of BMO customers are at risk for identity theft for the indefinite future.

18. BMO failed to properly safeguard sensitive customer information. Its public website was vulnerable to intrusions. It failed to implement best practices for IT security. It failed to adhere to best practices regarding the authentication of users and authorization to access sensitive data. It failed to properly test and secure its website to ensure vulnerabilities that gave hackers access to sensitive BMO customer information were detected and prevented. BMO failed to implement strong authentication technology commonly used by other websites that would have prevented the breaches. BMO's IT security was completely inadequate, falling well below the standard of care that Canadian banking customers are owed.

19. The hackers sought to attack the websites of all Canadian financial institutions. It was only able to penetrate the websites of two: Simplii and BMO. BMO failed to implement IT security that other Canadian financial institutions used to prevent the hacks.

(4) CAUSES OF ACTION

A. Negligence

20. The defendant owes Class Members a duty of care in the collection, retention, use, and disclosure of personal information, and a duty to safeguard the confidentiality of their personal information.

21. The defendant stresses the importance of customer privacy in its privacy policies. BMO's privacy policy states that it is "committed to respecting and protecting the privacy and confidentiality of the Personal Information" entrusted to it by customers.

22. The defendant breached the standard of care. Particulars include but are not limited to:

- (a) the defendant failed to take adequate steps to secure its website to protect sensitive personal information of its customers;
- (b) the defendant failed to detect the unauthorized breaches until they were notified by hackers, who by that point had already siphoned massive amounts of sensitive personal information from BMO's systems; and
- (c) the defendants failed to comply with the minimum standards provided in the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

23. As a result of the defendant's acts and omissions, Class Members suffered reasonably foreseeable damages and losses, for which the defendants are liable.

B. Breach of Contract

24. Class Members entered into agreements for use of the defendant's banking services. It was a term of Class Members' agreements that:

- (a) BMO would "respect and protect the privacy and confidentiality of the Personal Information [...] entrusted to us";

- (b) BMO had “strict policies and procedures governing how it dealt with Personal Information”;
- (c) customer information would be “protected by layers of security”;
- (d) “BMO has strong and robust processes in place to protect customer data”; and
- (e) BMO would use “physical, electronic and procedural safeguards to protect against unauthorized use, access, modification, destruction, disclosure, loss or theft of Personal Information.”

25. BMO breached its contracts with Class Members. It failed to respect and protect the privacy and confidentiality of its customers’ personal information entrusted to it. It failed to maintain and enforce strict policies and procedures regarding the protection of customers’ personal information. It failed to use adequate safeguards to protect against unauthorized accessing of customers’ personal information. It failed to adhere to best practices regarding the authentication of users and authorization to access sensitive data.

C. Breach of Consumer Protection Legislation

26. The defendant engaged in unfair practices by making false, misleading or deceptive representations to Class Members, contrary to the *Consumer Protection Act* and consumer protection statutes in other Canadian provinces, including: the *Business Practices and Consumer Protection Act*, SBC 2004, c 2; the *Fair Trading Act*, RSA 2000, c F-2; the *Consumer Protection Act*, SS 1996, c C-30.1; the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2; the *Business Practices Act*, CCSM, c B120; the *Consumer Protection Act*, CQLR, c P-40.1; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; the *Consumer Protection*

Act, RSNS 1989, c 92 and the *Business Practices Act*, RSPEI 1988, c B-7, all as amended (collectively, the “**Equivalent Consumer Protection Statutes**”).

27. The defendant represented to consumers that it maintained strict security safeguards when storing personal information in order to prevent unauthorized access, as described above. In fact, the defendant failed to maintain appropriate or adequate security measures in storing personal information. Contrary to the *Consumer Protection Act* and Equivalent Consumer Protection Statutes, the defendant made false, misleading or deceptive representations that its services had strict security standards that they did not have.

28. By making false, misleading or deceptive representations, the defendant engaged in unfair practices, contrary to the *Consumer Protection Act* and Equivalent Consumer Protection Statutes. Consumers affected by the Contractual Claims are entitled to rescind their contracts and/or an award of damages pursuant to the *Consumer Protection Act* and Equivalent Consumer Protection Statutes.

29. By this claim, Class Members hereby give notice pursuant to s. 18(3) of the *Consumer Protection Act* (and pursuant to any parallel provisions of the Equivalent Consumer Protection Statutes). In the alternative, it is not in the interests of justice to require that notice be given pursuant to section 18(15) of the *Consumer Protection Act* (and pursuant to any parallel provisions of the Equivalent Consumer Protection Statutes). The plaintiff requests an order waiving any such notice requirements.

D. Intrusion Upon Seclusion

30. The actions of the defendant constitute intentional or reckless intrusions upon seclusion that would be highly offensive to a reasonable person, for which the defendant is liable. The defendant failed to take appropriate steps to guard against unauthorized access to sensitive financial information involving the Class Members' private affairs or concerns. Its actions were highly offensive, causing distress and anguish to Class Members for which the defendant is liable and should pay damages. A significant award of damages should be made to mark the wrongs that have been done.

E. Breach of Provincial Privacy Statutes

31. Section 1 of the *Privacy Act*, R.S.B.C. 1996, c. 373 ("**BC Privacy Act**") provides:

- (1) It is a tort, actionable without proof of damage, for a person, willfully and without a claim of right, to violate the privacy of another.
- (2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.
- (3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.
- (4) Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

32. Section 2 of *The Privacy Act*, C.C.S.M., c. P125 ("**Manitoba Privacy Act**") provides:

- (1) A person who substantially, unreasonably, and without claim of right, violates the privacy of another person, commits a tort against that other person.
- (2) An action for violation of privacy may be brought without proof of damage.

33. Section 2 of *The Privacy Act*, R.S.S. 1978, c. P-24 (“**Saskatchewan Privacy Act**”) provides:

It is a tort, actionable without proof of damage, for a person wilfully and without claim of right, to violate the privacy of another person.

34. Section 3 of the *Privacy Act*, R.S.N.L. 1990, c. P-22 (“**Newfoundland and Labrador Privacy Act**”) provides:

(1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of an individual.

(2) The nature and degree of privacy to which an individual is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, regard being given to the lawful interests of others; and in determining whether the act or conduct of a person constitutes a violation of the privacy of an individual, regard shall be given to the nature, incidence, and occasion of the act or conduct and to the relationship, whether domestic or other, between the parties.

35. Articles 35 and 37 of the *Civil Code of Quebec*, L.R.Q., c. C-1991 (“**Quebec Civil Code**”) provide:

35. Every person has a right to the respect of his reputation and privacy.

The privacy of a person may not be invaded without the consent of the person or without the invasion being authorized by law.

37. Every person who establishes a file on another person shall have a serious and legitimate reason for doing so. He may gather only information which is relevant to the stated objective of the file, and may not, without the consent of the person concerned or authorization by law, communicate such information to third persons or use it for purposes that are inconsistent with the purposes for which the file was established. In addition, he may not, when establishing or using the file, otherwise invade the privacy or injure the reputation of the person concerned.

36. Section 10 of *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1 (“**ARPPIP**”) provides:

10. A person carrying on an enterprise must take the security measures necessary to ensure the protection of the personal information collected, used, communicated, kept or destroyed and that are reasonable given the sensitivity of the information, the purposes for which it is to be used, the quantity and distribution of the information and the medium on which it is stored.

37. As described above, the actions of the defendant constitute intentional or reckless intrusions upon seclusion that would be highly offensive to a reasonable person, for which the defendant is liable. The defendant failed to take appropriate steps to guard against unauthorized access to sensitive financial information involving the Class Members’ private affairs or concerns. As a result, the defendant is liable pursuant to the B.C. Privacy Act, the Manitoba Privacy Act, the Saskatchewan Privacy Act, the Newfoundland and Labrador Privacy Act the Quebec Civil Code and the ARPPIP.

(5) DAMAGES

A. Damages for Breach of Privacy

38. As a result of BMO’s wrongful acts and omissions and the effect of the wrongs on the Class Members, BMO should pay a substantial award of symbolic or moral damages to class members.

39. Despite earning billions of dollars in net income, BMO failed to devote sufficient or adequate resources to ensuring the basic security of its customer information. Criminal hackers used basic methods to penetrate a major Canadian bank’s security, putting thousands of its

customers at risk for identity theft for the indefinite future. BMO's IT security was completely inadequate in the circumstances.

40. The breaches should never have occurred. BMO should be required to pay a substantial award of damages to Class Members to send a signal to other corporations holding sensitive personal information that if they also do not treat IT security seriously, they too will be subject to investigation in civil proceedings and liable to pay significant financial damages.

41. The defendant is liable to repay all account fees paid by Class Members.

42. In addition, as a result of the defendant's actions, Class Members have suffered and will continue to suffer damages, including:

- (a) damage resulting from unauthorized transfers from their bank accounts;
- (b) damage resulting from synthetic or fictitious identity fraud schemes;
- (c) damage to credit ratings and perceived credit worthiness;
- (d) damage to reputation;
- (e) costs incurred to remedy and prevent identity theft;
- (f) out of pocket-expenses;
- (g) general damages to be assessed in the aggregate; and
- (h) special damages caused by unlawful conduct by third parties, including identity theft, occasioned by or attributable to the defendant's breaches as alleged herein.

- 1 / -

(Date of issue)

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Plaintiff

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BANK OF MONTREAL
Defendant

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