

C A N A D A

(Class Action)
SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-000944-187

HUGO BEAUVAIS-LAMY, 



Applicant

v.

BANK OF MONTREAL, legal person
having its principal place of business at
129, Saint-Jacques street, Montréal
(Québec), H2Y 1L6, judicial district of
Montréal

Respondent

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE APPLICANT**

(Sections 571 C.C.P. and following)

**TO ONE OF THE HONOURABLE JUSTICES OF THE QUÉBEC SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE APPLICANT STATES AS
FOLLOWS :**

I. GENERAL PRESENTATION

A) THE CLASS ACTION

1. The Applicant wishes to institute a class action on behalf of the following Class of which he is a member :

SISKINDS, DESMEULES, AVOCATS
S.E.N.C.R.L.

"All current or former clients of BMO, residing in the province of Québec, whose personal information was breached in or as a result of the Data Breach*.

*Data Breach means unauthorized access to and disclosure of the Class members' personal information across and through the facilities of BMO's computer systems and networks, which was publicly disclosed by BMO on May 28, 2018."

(hereinafter referred to as "**Class Members**") or such other Class definition as may be approved by the Court;

2. This action arises from a cybersecurity privacy breach affecting sensitive and valuable personal information of thousands of clients of Bank of Montreal (hereinafter referred to as the "**Respondent**" or "**BMO**");
3. On May 28, 2018, Canadian media outlets and the Respondent disclosed the Data Breach;
4. By exploiting known or knowable significant cybersecurity vulnerabilities and deficiencies in the Respondent's computer systems and networks, unauthorized persons were able to breach the Respondent's computer systems and networks and stole the sensitive and valuable personal information of the Class Members who were banking clients of the Respondent;
5. The personal information stolen and compromised in the Data Breach essentially includes all of the information the Respondent collected and/or maintained on its client Class Members, namely : Class Members' names, dates of birth, social insurance numbers, bank account numbers, credit/debit card numbers, email addresses, mailing addresses and phone and/or fax numbers, as well as information regarding the Class Members' occupation, residence, citizenship and relationships, among other information;
6. The Respondent failed to diligently address IT vulnerabilities and deficiencies in accordance with and appropriate to the standards required of it;
7. Because the Respondent is entrusted with sensitive and valuable personal information of millions of people, including that of the Class Members, the Respondent is responsible contractually and by law to diligently collect, store and manage that information, and to safeguard it against unauthorized use, abuse or theft;
8. The Data Breach has and will have far reaching and significant impact and implications on the Class Members' social and personal lives and their financial affairs, the full extent of which has yet to be determined;

9. As a consequence of the foregoing, the Applicant and the Class Members suffered damages or will suffer damages for which they are entitled to receive compensation;

B) BMO

10. The Respondent is a Canadian chartered bank that provides personal and commercial banking and other diversified financial services to its clients through its various business divisions, subsidiaries and affiliates, the whole as it appears from the Registraire des entreprises du Québec, filed as **Exhibit P-1**;

11. The Respondent brands its member companies as BMO Financial Group;

12. The Respondent's head office is located in Montréal, Québec;

13. The Respondent provides banking services to its clients pursuant to its client agreements, which are executed and formed at the time a person or entity becomes a client;

14. The Respondent collects personal information on its clients through them and/or third parties as a requirement for the provisions of its services at the time it enters into a contract with the clients;

15. The Respondent also collects and creates personal information on its clients during, in the course of or as a consequence of its relationship with its clients, including : the number and nature of accounts held by each client, the value of those accounts and the changes in value of those accounts over time, the number and value of mortgages or loans held by BMO clients, the type and value of investment products held by clients and the numbers assigned to, or other means of identifying, each client's accounts;

16. The Respondent is jointly and severally liable for the actions and omissions of its subsidiaries, affiliates, partners, directors, officers and employees;

C. THE DATA BREACH

17. On May 28, 2018, media outlets reported that BMO had been the subject of the Data Breach;

18. Included in the compromised personal information was the Class Members' social insurance numbers, which is a critical piece of information about an individual that once is revealed, can put someone's at risk of fraud and identity theft;

19. On May 28, 2018, the Respondent issued a statement reporting that it had been the subject of the Data Breach :

“TORONTO, May 28, 2018 /CNW/ - On Sunday, May 27, fraudsters contacted BMO claiming that they were in possession of certain personal and financial information for a limited number of customers. We believe they originated the attack from outside the country. We took steps immediately when the incident occurred and we are confident that exposures identified related to customer data have been closed off. We have notified and are working with relevant authorities as we continue to assess the situation. We are proactively contacting those customers that may have been impacted and we will support and stand by them. BMO has strong and robust processes in place to protect customer data and we take customer privacy very seriously. Customers are recommended to monitor their accounts and notify BMO with any suspicious activity.”

the whole as it appears from that statement, filed as **Exhibit P-2**;

20. The cybersecurity attacks that resulted in the Data Breach were carried out by foreign hackers;
21. On May 27, 2018, an e-mail purportedly sent by the hackers to media organizations explained the common methods they used to hack CIBC and BMO’s systems to siphon client information, the whole as it appears from a copy of that email, filed as **Exhibit P-3**;
22. In general and simplified terms, the e-mail explained that hackers were able to carry out the Data Breach using a known or knowable vulnerability in the Respondent’s computer systems which gave excessive permission to “half-authenticated” accounts. The hackers explained that they used an algorithm to generate client card numbers. Then, they used the vulnerability associated with the “half-authenticated” accounts to reset the Class Members’ security questions and, thereby, accessed the Class Members’ accounts. Through this method, the hackers accessed the Respondent’s systems and inappropriately stole the Class Members’ sensitive personal information. The hackers automated this process by using high speed scripts and computer proxies to pull massive amounts of customer data quickly;

23. Subsequently, an unidentified person posted a data dump on the website *Pastebin.com*, containing the stolen personal information of 100 BMO client Class Members;
24. The Data Breach has had an enormous and far reaching impact on Class Members, the full extent of which is still currently unknown;
25. Among other risks of abuse or misuse of their personal information, the Class Members are exposed to the risk of identity theft. The consequences of identity theft can be life-changing. Identity theft can ruin lives;
26. Given the nature and scale of the Class Members' personal information stolen in or as a result of the Data Breach, the Data Breach will continue to have a profound impact on the Class Members' lives and financial affairs;

D. CAUSE OF ACTION : THE RESPONDENT'S DUTIES TO SAFEGUARD THE PERSONAL INFORMATION

27. The Data Breach would not have happened but for the Respondent's breaches of its duties owed to the Class Members to securely and responsibly collect, store and manage their personal information, to prevent the Data Breach, and to timely detect and properly respond to the Data Breach;
28. The Respondent's duties, which it breached, were informed by its client agreements, its privacy policies, its internal policies and procedures, privacy laws of Canada and industry practices;
29. The Respondent's duties were included expressly or impliedly in its contracts with the Class Members;
30. Also, at all relevant times, the Respondent maintained a Privacy Code applicable to its clients, including the Class Members, which forms part of their contracts. This document purports to set out the Respondent's commitment to protect its clients' personal information, the whole as it appears from a copy of the Privacy Code, filed as **Exhibit P-4**;
31. Moreover, the Respondent's duties, which it breached, were informed by the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1, including its section 10;
32. Furthermore, the Respondent's duties and responsibilities, which it breached, were informed by industry practices;

SISKINDS, DESMEULES, AVOCATS
S.E.N.C.R.L.

33. At all material times, the Respondent knew that it was the target of significant cyberattacks which, if not prevented, detected in a timely fashion or properly responded to, would have far reaching implications on its clients. Despite its knowledge of those risks, the Respondent failed to act diligently in accordance with its duties and the standards required of it to prevent, timely detect and properly respond to the Data Breach;
34. The substantial risks arising from cybersecurity threats and the necessity for Canada's financial institutions to regularly review, update and adapt their defence systems to the significant and prevalent cybersecurity risks has been the subject of significant commentary in the past several years;
35. In light of the foregoing considerations and risks posed by cyber threats, Canadian banks have recognized their responsibility to enhance their defence systems against the increasingly widespread and prevalent cyberattacks. Accordingly, protection of clients' information against theft, misuse or abuse has been acknowledged as Canadian financial institutions' top priority;
36. As a financial institution that collected, managed and used sensitive personal information and banking information, *inter alia*, the Respondent was (and is) required by standards applicable to financial institutions to adopt and implement robust security measures reasonably available;
37. However, despite its promises and representations, the Respondent failed to protect the Class Members' personal information;
38. By its actions and omissions, and as a result of the breaches of its duties owed to the Class Members, the Respondent exposed the Class Members' sensitive personal information in the Data Breach;

E) DAMAGES

39. The circumstances give rise to serious and far reaching consequences on the Class Members' personal lives and financial affairs, the full extent of which has yet to be determined;
40. On behalf of himself and the Class Members, the Applicant claims damages and compensation with respect to:
 - (a) general damages to be assessed in the aggregate;
 - (b) intrusion upon seclusion;

SISKINDS, DESMEULES, AVOCATS
S.E.N.C.R.L.

- (c) loss of privacy;
 - (d) loss of valuable personal information;
 - (e) damage resulting from synthetic or fictitious identity fraud schemes;
 - (f) damage to credit ratings and perceived credit worthiness;
 - (g) damage to reputation;
 - (h) costs and expenses incurred or required to protect the Class Members against identity theft or other misuse or abuse of their personal information; and
 - (i) lost or wasted time and inconvenience in responding to the Data Breach.
41. Moreover, for and on behalf of each Class Member who has suffered further loss and/or damage as a result of the Data Breach, the Applicant claims corresponding compensatory damages to be determined;
42. Furthermore, on behalf of himself and the Class, the Applicant claims punitive damages due to the Respondent's conduct which was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contemptuous disregard of the rights of the Applicant and other Class Members;
43. As a result of the Respondent's conduct, Class Members have and will continue to suffer foreseeable losses and/or damages, for which the Respondent is liable;

II. FACTS GIVING RISE TO THE APPLICANT'S CLAIM

59. The Applicant, Hugo Beauvais-Lamy, has been a client of BMO for a dozen years;
60. His personal information was compromised in or as a result of the Data Breach;
61. On or around June 15, 2018, he received a letter from the Respondent who advised him of the Data Breach and that the Respondent believed that fraudsters accessed his personal information;
62. Subsequently, on or around June 27, 2018, he received a call from the Respondent's client care representatives, who advised him that because of the cybersecurity incident, they had to replace his debit card;
63. The Respondent's client care representatives did not provide the Applicant with further details regarding the Data Breach;
64. At this time, the Applicant is gravely concerned about his privacy;
65. In addition to the loss of his valuable personal information and the violation of his
SISKINDS, DESMEULES, AVOCATS
S.E.N.C.R.L.

privacy, he has and will spend many hours and has and will undergo great inconvenience and incur significant costs to address the Data Breach;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH CLASS MEMBER

66. The facts giving rise to the personal claim of each Class Member against the Respondent are as follows:
- a) Each Class Member is, or at the relevant time was, a banking client of the Respondent;
 - b) Each Class Member's personal information was stolen and compromised due to the Data Breach;
 - c) The Respondent owed duties to the Class Members to protect their personal information's integrity, and to safeguard that personal information against unauthorized access, use or theft;
 - d) The Respondent breached its duties to the Class Members;
 - e) All the damages suffered by the Class Members are a direct and proximate result of the Respondent's conduct and its breaches of duties;
 - f) In consequence of the foregoing, the Applicant and Class Members are justified in claiming the payment of all damages and losses they suffered and continue to suffer due to the Respondent's conduct;
67. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings, with respect to provision 575 (3) of the *Code of civil procedure*, for the following reasons :
- a) It is expected that there are numerous Class Members;
 - b) The names and addresses of people who can be part of the Group are unknown to the Applicant, but they are known to the Respondent;
 - c) The facts alleged in the foregoing paragraphs make it difficult, if not impossible, to contact each Class Member to obtain a warrant or to proceed by way of joinder.

68. The questions of fact and law raised by this action which are identical, similar or related and which relate to each Member of the Class to the Respondent and which the Applicant seeks to resolve by this class action are :

- a) Were the Class Members clients of the Respondent?
- b) Did the Respondent owe Class Members duties to :
 - Keep their personal information confidential?
 - Not disclose their personal information except as provided by applicable statutes?
 - Secure their personal information and ensure that it would not be lost and/or disclosed other than by applicable statutes?
 - Secure their personal information against unauthorized access, use or theft?
 - Timely detect the Data Breach?
 - Properly respond to the Data Breach?
- c) Did the Respondent breach any of its duties?
- d) Did the Respondent violate the Class Members' rights to respect for their names, reputation and/or privacy?
- e) Did the Respondent fail to abide by the rules of conduct incumbent upon it, according to the circumstances, usage or law, so as not to cause injury to the Class Members, thereby causing injuries to the Class Members as a result of its fault?
- f) Is the Respondent liable to pay any damages or compensation to the Class Members? If so, what are those damages?

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

69. The action that the Applicant wishes to institute for the benefit of the Class Members is an action in damages;

70. The conclusions that the Applicant wishes to introduce by way of an application to institute the proceedings are :

GRANT the present motion;

GRANT the Applicant's action on behalf of all the Class Members;

CONDEMN the Respondent to pay damages temporarily evaluated at \$50 million, to be enhanced;

CONDEMN the Respondent to pay punitive damages temporarily evaluated at \$2.5 million, to be enhanced;

CONDEMN the Respondent to pay the costs incurred for any investigation necessary to establish its liability in this case, including the extrajudicial fees of the lawyers and out-of-court disbursements;

ORDER the collective recovery of the claims of the Class Members;

CONDEMN the Respondent to pay to Class members the costs of distributing the funds to Class Members;

THE WHOLE with the legal interest and the additional indemnity provided under section 1619 of the *Civil Code of Quebec* and with legal costs, including publication fees to advise members and expert fees;

71. The Applicant, who seeks to obtain the status of representative, is able to adequately represent the Class Members, for the following reasons:

- a) He is a banking client of BMO and his personal information was compromised in or as a result of the Data Breach;
- b) He understands the nature of the action;
- c) He is available to dedicate the necessary time for an action and to collaborate with Class Members; and
- d) He does not have any conflict of interests with the other Class Members on the issues common to the Class Members;

72. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT :

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings

SISKINDS, DESMEULES, AVOCATS
S.E.N.C.R.L.

in damages;

ASCRIBE the Applicant the status of representative of the persons included in the Class herein described as:

"All current or former clients of BMO, residing in the province of Québec, whose personal information was breached in or as a result of the Data Breach*.

*Data Breach means unauthorized access to and disclosure of the Class members' personal information across and through the facilities of BMO's computer systems and networks, which was publicly disclosed by BMO on May 28, 2018."

(hereinafter referred to as "**Class members**") or such other Class definition as may be approved by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Were the Class Members clients of the Respondent?
- b) Did the Respondent owe Class Members duties to:
 - Keep their personal information confidential?
 - Not disclose their personal information except as provided by applicable statutes?
 - Secure their personal information and ensure that it would not be lost and/or disclosed other than by applicable statutes?
 - Secure their personal information against unauthorized access, use or theft?
 - Timely detect the Data Breach?
 - Properly respond to the Data Breach?
- c) Did the Respondent breach any of its duties?
- d) Did the Respondent violate the Class Members' rights to respect for their names, reputation and/or privacy?
- e) Did the Respondent fail to abide by the rules of conduct incumbent upon it, according to the circumstances, usage or law, so as not to cause injury to the Class Members, thereby causing injuries to the Class Members as a result of its fault?

- f) Is the Respondent liable to pay any damages or compensation to the Class Members? If so, what are those damages?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the present motion;

GRANT the Applicant's action on behalf of all the Class Members;

CONDEMN the Respondent to pay damages temporarily evaluated at \$50 million, to be enhanced;

CONDEMN the Respondent to pay punitive damages temporarily evaluated at \$2.5 million, to be enhanced;

CONDEMN the Respondent to pay the costs incurred for any investigation necessary to establish its liability in this case, including the extrajudicial fees of the lawyers and out-of-court disbursements;

ORDER the collective recovery of the claims of the Class Members;

CONDEMN the Respondent to pay to Class members the costs of distributing the funds to Class Members;

THE WHOLE with the legal interest and the additional indemnity provided under section 1619 of the *Civil Code of Quebec* and with legal costs, including publication fees to advise members and expert fees;

DECLARE that all Class Members that have not requested their exclusion from the Class in the prescribed delay will be bound by any judgement to be rendered on the Class action to be instituted;

FIX the delay of exclusion at 60 days from the date of the publication of the notice to Class members;

ORDER the publication of a notice to Class members pursuant to section 591 C.C.P.;

THE WHOLE with costs, including all publications fees.

Québec, September 26, 2018

SISKINDS, DESMEULES, AVOCATS
(Me Caroline Perrault)
caroline.perrault@siskindsdesmeules.com
Lawyers for the Applicant

43, Buade street, Suite 320
Québec (Québec) G1R 442
Phone : 418-694-2009
Fax : 418-694-0281
Notification :
notification@siskindsdesmeules.com

SUMMONS

(Sections 145 and following C.C.P.)

Filing of a judicial application

Take notice that the Applicant has filed this Application for authorization to institute a class action and to appoint the status of Representative Applicant in the office of the Superior Court in the judicial district of Montréal.

Respondent's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1, rue Notre-Dame Est, Montréal (Québec), H2Y 1B6, within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as an Applicant under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the Applicant 's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the Applicant intends to use the following exhibits:

- Exhibit P-1 :** Registraire des entreprises du Québec;
- Exhibit P-2 :** Copy of BMO's statement, dated May 28, 2018;
- Exhibit P-3 :** Copy of an email dated May 27, 2018;
- Exhibit P-4 :** Copy of BMO Privacy Code.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in section 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Québec, September 26, 2018

(s) SISKINDS, DESMEULES, AVOCATS

SISKINDS, DESMEULES, AVOCATS

(Me Caroline Perrault)

caroline.perrault@siskindsdesmeules.com

Lawyers for the Applicant

43, Buade street, Suite 320

Québec (Québec) G1R 442

Phone : 418-694-2009

Fax : 418-694-0281

Notification :

notification@siskindsdesmeules.com