

# **DISTRIBUTION PROTOCOL**

## **IN THE MATTER OF BMO DATA BREACH CLASS ACTION**

### **INDEX**

	<b>Page No.</b>
<b>PART I - DEFINITIONS .....</b>	<b>2</b>
<b>PART II - GENERAL PRINCIPLES OF THE ADMINISTRATION.....</b>	<b>7</b>
<b>PART III - ADMINISTRATION OF THE NET SETTLEMENT FUNDS – FIXED.....</b>	<b>7</b>
<b>PART IV - ADMINISTRATION OF THE NET SETTLEMENT FUNDS – CLAIMABLE</b>	<b>9</b>
<b>A. CLAIMS PROCESS FOR THE NET SETTLEMENT FUNDS - CLAIMABLE .....</b>	<b>9</b>
<b>B. DISTRIBUTION OF THE NET SETTLEMENT FUNDS – CLAIMABLE .....</b>	<b>12</b>
<b>C. CONCLUSION OF ADMINISTRATION .....</b>	<b>13</b>
<b>PART V - CLASS COUNSEL .....</b>	<b>14</b>
<b>PART VI - RESOLUTION OF DISPUTES .....</b>	<b>14</b>
<b>PART VII - CONFIDENTIALITY .....</b>	<b>14</b>

## PART I - DEFINITIONS

1. For the purpose of this Distribution Protocol, the following definitions will apply:
  - (a) “**Actions**” means the Ontario Action and the Québec Action, as defined in the Settlement Agreement.
  - (b) “**Administration**” has the meaning set out in paragraph 2 of this Distribution Protocol.
  - (c) “**BMO**” means the Defendant, Bank of Montreal, as defined in the Settlement Agreement.
  - (d) “**Claimant**” means each member of the Class for the purposes of receiving compensation from the Net Settlement Funds. Claimant also means each member of a Claimant Group, as defined below.
  - (e) “**Claimant Group**” means any or each of the following groups:
    - (i) “**Group 1 Claimants**” are those Class Members whose Personal Information was accessed by unauthorized individuals and posted to the Internet. According to BMO, this group comprises 3,195 members;
    - (ii) “**Group 2 Claimants**” are those Class Members whose Personal Information including date of birth and SIN was accessed by unauthorized individuals. According to BMO, this group comprises 59,750 members;
    - (iii) “**Group 3 Claimants**” are those Class Members whose Personal Information not including date of birth and SIN was accessed by unauthorized individuals. According to BMO, this group comprises 50,206 members; and
    - (iv) “**Group 4 Claimants**” are those Class Members whose BMO accounts recorded an unauthorized transaction attributable to the Data Breach, each

of whom is also a Group 1 Claimant, Group 2 Claimant or Group 3 Claimant. According to BMO, this group comprises 3,566 members.

- (f) “**Claim Form**” means the form developed for the administration of the Net Settlement Funds - Claimable that a Class Member must complete and submit by the Filing Deadline, as defined below.
- (g) “**Claim Expiry Date**” means the date six months after the date of distribution of the Net Settlement Fund – Claimable cheques under s.12(f) of this Protocol.
- (h) “**Claims Administrator**” means Epiq, the firm appointed by the Courts to administer the Settlement Agreement and the Distribution Protocol in accordance with their provisions, as approved by the Courts, and any employees of this firm.
- (i) “**Class**” or “**Class Members**” means any person who is a current or former client of BMO whose Personal Information was impacted as a result of the Data Breach, excluding an Opt-Out Member. All Class Members are also Claimants.
- (j) “**Class Counsel**” means Siskinds LLP, Siskinds, Desmeules, Avocats, Sotos LLP and JSS Barristers, as defined in the Settlement Agreement.
- (k) “**Class Counsel Disbursements**” bears the meaning ascribed to it in the Settlement Agreement.
- (l) “**Class Counsel Fees**”, including “**Class Counsel Fees – Claimable**” and “**Class Counsel Fees – Fixed**” as applicable, bears the meaning ascribed to them in the Settlement Agreement.
- (m) “**Costs of Administration**” means all costs associated with the Administration, including but not limited to the costs of giving notice, including notice of the Settlement Agreement and the claims process, collecting and reporting on the Opt-Outs, distributing the Net Settlement Funds and otherwise administering the Settlement Agreement.

- (n) “**Court**” means, as the context requires, the Ontario Court or the Québec Court (together herein, the “**Courts**”), as defined in the Settlement Agreement.
- (o) “**Distribution Protocol**” means this plan for distributing the Net Settlement Funds.
- (p) “**Effective Date**” means the later of the dates upon which the Orders of each Court approving both the Settlement Agreement and the Distribution Protocol become Final Orders.
- (q) “**Filing Deadline**” means the date by which Claim Forms must be electronically or in paper form received in order for Class Members to be considered for settlement benefits under the Distribution Protocol, which date shall be three (3) months after the first publication of the notice advising Class Members of the Administration.
- (r) “**Final Order(s)**” means the later of the dates upon which each Court grants Orders approving both the Settlement Agreement and this Distribution Protocol, and the time to appeal each Order has expired without any appeal being taken, or if an appeal is taken, all appeals and any time period for a further appeal has concluded.
- (s) “**Net Settlement Funds**” means the Net Settlement Funds –Fixed and the Net Settlement Funds – Claimable, as defined in the Settlement Agreement.
- (t) “**Net Settlement Funds – Claimable**” means the Net Settlement Funds – Claimable, as defined in the Settlement Agreement.
- (u) “**Net Settlement Funds – Fixed**” means the Net Settlement Funds – Fixed, as defined in the Settlement Agreement.
- (v) “**Notice**” has the meaning set out in paragraph **Erreur ! Source du renvoi introuvable.** of this Distribution Protocol.
- (w) “**Ontario Action**” means *Melissa Mallette v Bank of Montreal*, commenced in the Ontario Court at Ottawa bearing the Court File No. CV-18-00076745-00CP, as defined in the Settlement Agreement.

- (x) “**Ontario Court**” means the Ontario Superior Court of Justice, as defined in the Settlement Agreement.
- (y) “**Opt-Out**” or “**Opt-Out Member**” or “**Opt-Outs**” means a person or persons who validly and timely opted out of the Actions or, for Québec residents, a person who is deemed to have opted out under article 580 of the *Code od Civil Procedure*.
- (z) “**Parties**” means the Plaintiffs and BMO.
- (aa) “**Personal Information**” means information about an identifiable individual, as defined in the Settlement Agreement.
- (bb) “**Plaintiffs**” means Melissa Mallette and Hugo Beauvais-Lamy.
- (cc) “**Québec Action**” means *Beauvais-Lamy v Bank of Montreal*, commenced in the Québec Court at Montreal bearing the Court File No. 500-06-000944-187, as defined in the Settlement Agreement.
- (dd) “**Québec Court**” means the Superior Court of Québec, as defined in the Settlement Agreement.
- (ee) “**Settlement**” or “**Settlement Agreement**” means the settlement agreement entered into by the Plaintiffs and BMO dated October 3, 2020, and any Addendum thereafter.
- (ff) “**Settlement Administration Expenses**” means Settlement Administration Expenses, as defined in the Settlement Agreement.
- (gg) “**Settlement Administration Expenses Fund**” means the sum of \$250,000.00 to be allocated by BMO to fund Settlement Administration Expenses, which amount is separate from and in addition to the Settlement Benefits, as defined in the Settlement Agreement.

(hh) “**Settlement Benefits**” means the sum of the Settlement Funds – Claimable and the Settlement Funds – Fixed, which are calculated as follows before netting out approved Class Counsel Fees and Class Counsel Disbursements:

<b>Claimant Group</b>	<b>Settlement Funds - Fixed per Claimant</b>	<b>Settlement Funds - Claimable per Claimant</b>
Group 1	\$1,000 – to compensate the first 20 hours spent at \$18/hr and a \$640 inconvenience amount.	Up to 3.5 additional hours at \$18/hr for those who certify they spent in excess of 20 hours addressing issues arising from the Data Breach.
Group 2	\$144 – to compensate the first 8 hours spent at \$18/hr	Up to 3.5 additional hours at \$18/hr for those who certify they spent in excess of 8 hours addressing issues arising from the Data Breach.
Group 3		Up to 5 hours at \$18/hr for those who certify they spent time addressing issues arising from the Data Breach.
Group 4	\$270	

(ii) “**Settlement Funds – Claimable**” means that portion of the Settlement Benefits that is payable by BMO subject to claims made by Class Members, inclusive of Class Counsel Fees, Class Counsel Disbursements, Settlement Administration Expenses, fees, costs and expenses in the maximum all-inclusive sum of \$8,465,535.00.

(jj) “**Settlement Funds – Fixed**” means that portion of the Settlement Benefits that is payable by BMO to the Class Members directly, without any requirement for claims made, inclusive of Class Counsel Fees, Class Counsel Disbursements, Settlement Administration Expenses, fees, costs and expenses in the all-inclusive sum of \$12,757,540.00.

## **PART II - GENERAL PRINCIPLES OF THE ADMINISTRATION**

2. This Distribution Protocol is intended to govern the administration process to distribute the Net Settlement Funds recovered in the Actions pursuant to the Settlement Agreement (the “**Administration**”).
3. The Administration shall:
  - (a) implement and conform to the Settlement Agreement, orders of the Courts and this Distribution Protocol;
  - (b) employ secure, paperless, web-based systems with electronic record-keeping;
  - (c) rely on BMO’s assurances that it has diligently and in good faith identified in which Claimant Group or Groups each Claimant falls, and that it has a reasonable belief in the accuracy of those Claimant Groups; and
  - (d) where practicable, draw on methods of communication already available between BMO and the Class Members who are or were its clients.
4. As soon as practicable after the Execution Date, BMO shall appoint a Claims Administrator.
5. Within seven (7) business days of the Courts’ granting the Settlement Approval Motions, BMO shall establish a Trust Account containing the Settlement Funds – Fixed.

## **PART III - ADMINISTRATION OF THE NET SETTLEMENT FUNDS – FIXED**

6. Within forty-five (45) days of the Effective Date or the Fees and Disbursement Approval Date (whichever is later), BMO shall calculate the compensation owing to each Settlement Class member from the Settlement Funds - Fixed by dividing the Net Settlement Funds – Fixed in accordance with the per Claimant amounts and number of Affected Persons in each Claimant Group (the “**Compensation Calculation**”). BMO shall provide Class Counsel with the compensation amounts resulting from the Compensation Calculation.

7. Within ten (10) days of receipt of the compensation amounts from BMO, Class Counsel shall approve the result of the Compensation Calculation or raise an objection.
8. Counsel for BMO and Class Counsel shall reasonably cooperate to resolve any objection within ten (10) days.
9. After receiving Class Counsel's approval of the Compensation Calculation or any objection is resolved under paragraph 8, BMO shall distribute the Net Settlement Funds - Fixed to the Claimants as soon as reasonably practicable, according to the following process:
  - (a) BMO shall pay Class Counsel Fees – Fixed and Class Counsel Disbursements as awarded by the Courts;
  - (b) Where the Claimant is a current client of BMO, BMO shall pay the Net Settlement Funds - Fixed directly to the Group 1, 2 and 4 Claimants by mailing a cheque for each Claimant's share of the Net Settlement Funds - Fixed directly to that Claimant, without the need for any application by those Claimants;
  - (c) Where the Claimant is not a current client of BMO, BMO shall send a cheque in the amount of the Claimant's share of the Net Settlement Funds - Fixed to such Claimant at the last known mailing address in BMO's records, unless newer and better information has been received for the Claimant, in which case the newer and better information shall be used; and
  - (d) In the event a Claimant is no longer a client of BMO, and BMO has no last known mailing address in its records for that Claimant, BMO shall provide its best information about that Claimant to Class Counsel, as authorized by the Orders of the Courts, to facilitate Class Counsel making additional efforts to locate the Claimant.
10. Within two (2) months after all cheques are sent in accordance with paragraphs 9(a)-(c), BMO shall report to Class Counsel the total number of letters returned as undeliverable or returned to sender or analogous designation, as well as the particulars of the contact information used, to facilitate Class Counsel making additional efforts to locate the Claimant. Class Counsel shall have

one (1) month to make efforts to locate the Claimant, and BMO will mail cheques to any additional Claimants located.

#### **PART IV - ADMINISTRATION OF THE NET SETTLEMENT FUNDS – CLAIMABLE**

11. Within seventy (70) days of the Effective Date, BMO shall initiate a “**Claims Process**” for Settlement Class Members to make claims in respect of the Settlement Funds – Claimable. The Net Settlement Funds – Claimable shall be distributed among the Group 1, 2, and 3 Claimants following the receipt of their valid Claim Forms before the Filing Deadline.

12. Generally, the Administration of the Net Settlement Funds – Claimable will be as follows:

##### **A. CLAIMS PROCESS FOR THE NET SETTLEMENT FUNDS - CLAIMABLE**

###### **(a) Step 1: Creation of a bilingual website portal to accommodate the Administration and creation of the Claim Form**

The Claims Administrator will create an information page and webpage form that Class Members can access in order to file a Claim Form, as specified in Exhibits “A”, “B”, and “C”.

Class Members can contact the Claims Administrator, in French or English, at no charge, with questions about how to complete the Claim Form.

###### **(b) Step 2: Notice of the Claims Process**

(i) The Parties will prepare a form of notice, as approved by the Courts (the “**Claims Notice**”), which describes: (i) the Class Member’s membership in the Class; (ii) the approval of the Settlement Agreement by the Courts; (iii) the process by which the Net Settlement Funds – Fixed will be allocated and distributed; (iv) the process by which the Net Settlement Funds – Claimable will be claimed, allocated and distributed; (v) the process to complete and file the Claim Form; and (vi) the Filing Deadline for the Claim Form.

(ii) The Claims Notice shall be mailed directly to Class Members by BMO.

- (iii) Class Counsel shall post the Claims Notice to their websites and social media channels including Twitter, Facebook and such other channels as are regularly used by the Class Counsel firms.
- (iv) Class Counsel shall provide a copy of the Claims Notice to any person who has contacted them in respect of the Actions.
- (v) All Claims Notices mailed by BMO shall have the appearance and format of communication regularly distributed by BMO such that it will be identifiable by Class Members as having originated with BMO.
- (vi) All Claims Notices mailed by BMO shall be in the language in which BMO customarily communicates or communicated with the Class Member as a client.
- (vii) Class Counsel should post the Claims Notice to the Registre des actions collectives of the Superior Court of Québec.

(c) **Step 3: Filing of a Claim Form**

- (i) Subject to further Courts orders, all Claim Forms must be received on or before the Filing Deadline and Claim Forms submitted after the Filing Deadline shall be rejected.
- (ii) All Claim Forms submitted through the online claims portal shall be deemed to have been received upon transmission.
- (iii) All Claim Forms submitted by mail shall be accepted if the postmark date pre-dates the Filing Deadline. If the postmark is illegible, any Claim Form received by mail within four (4) business days after the Filing Deadline will be accepted, subject to verification by the Claims Administrator.
- (iv) All Claim Forms submitted by courier shall be accepted if the package was marked as received by the courier prior to the Filing Deadline. If the marking is illegible, any Claim Form received by courier within two (2)

business days after the Filing Deadline will be accepted, subject to verification by the Claims Administrator.

(d) **Step 4: Deficiency and Error Correction**

If the Claims Administrator finds that deficiencies exist in a Claim Form, so long as the Claimant is a Class Member, BMO or the Claims Administrator shall forthwith notify the Claimant of the deficiencies. The Claimant will have ten (10) days after being informed of a deficiency to correct the deficiency. Within ten (10) days after the Claimant submits corrected information, the Claims Administrator shall, acting in good faith, determine in its sole discretion whether the deficiency has been corrected adequately. The Claims Administrator's determination shall be final, and there shall be no right of appeal or review.

(e) **Step 5: Calculation of the Settlement Funds - Claimable**

- (i) Based on the valid Claim Forms received before the Filing Deadline or otherwise accepted, BMO will calculate the Settlement Funds – Claimable per Claimant. BMO will tally the total Settlement Funds – Claimable per Claimant of all Claimants in order to determine the total Settlement Funds – Claimable.
- (ii) The results of BMO's calculations under paragraph 122(e)(i) will be presented to Class Counsel for confirmation in Microsoft Excel, or such other format as agreed to by the Parties. Where Class Counsel disputes BMO's calculation, and the Parties cannot agree on a correct calculation, the Plaintiff shall bring a motion before the Courts for determination of the matters that remain in dispute after all calculations have been completed.
- (iii) Within thirty (30) days after the calculation of the Settlement Funds - Claimable has been agreed by the Parties or fixed by the Courts, BMO shall deposit the required sum to the Trust Account.

**(f) Step 6: Calculation of the Net Settlement Funds – Claimable**

- (i) After the calculation of the Settlement Funds – Claimable has been completed, the sum of the Class Counsel Fees – Claimable shall be determined, according to the Orders of the Courts.
- (ii) BMO shall pay to Class Counsel, from the Settlement Funds – Claimable, the Class Counsel Fees – Claimable and Class Counsel Disbursements (if applicable), as awarded by the Courts.
- (iii) At the same date, the sum of the Class Counsel Fees – Fixed shall be adjusted, each according to the Orders of the Courts. BMO and Class Counsel shall then make such payments or return of funds as necessary to match the sum of Class Counsel Fees – Fixed.
- (iv) The amount remaining of the Settlement Funds – Claimable after the payments set out in paragraph 122(f)(i) above shall form the Net Settlement Funds – Claimable.
- (v) BMO shall be responsible for all Settlement Administration Expenses, including costs of notices, even if such expenses exceed the Settlement Administration Expenses Fund.

**B. DISTRIBUTION OF THE NET SETTLEMENT FUNDS – CLAIMABLE**

**(g) Step 7: Distribution of the Net Settlement Funds – Claimable to Class Members with BMO banking accounts**

BMO shall make a distribution of the Net Settlement Funds – Claimable among the Group 1, 2 and 3 Claimants by mailing a cheque in the amount of each Claimant's share of the Net Settlement Funds – Claimable to the Claimant's address.

(h) **Step 8: Distribution of the Net Settlement Funds – Claimable to Class Members without BMO banking accounts**

- (i) In the event a Claimant is no longer a BMO client, BMO or the Claims Administrator shall mail a cheque in the amount of the Claimant's share of the Net Settlement Funds – Claimable to such Claimant at the address provided in the Claim Form.
- (ii) In the event of such payments pursuant to paragraph 122(h)(i), two (2) months after all cheques are sent, BMO shall report to Class Counsel the total number cheques returned as undeliverable or returned to sender or analogous designation as well as the particulars of the contact information used to facilitate Class Counsel making additional efforts to locate the Claimant. Class Counsel shall have one (1) month to make efforts to locate the Claimant, and BMO will mail cheques to any additional Claimants located.

**C. CONCLUSION OF ADMINISTRATION**

(i) **Step 9: Final Calculation of Class Counsel Fees**

After the Claims Expiry Date, If the total dollar value of cheques cashed from Net Settlement Funds – Fixed is 95% or more of the Net Settlement Funds – Fixed, the balance retained in trust by the Claims Administrator and not attributable to Québec members shall be paid to BMO within thirty (30) days thereafter. In the event that part of the balance is attributable to Québec members, that part of the balance shall be distributed *cy-près* to such organization proposed by BMO and approved by the Québec Court or as the Québec Court may order, subject to the percentage payable to the Fonds d'aide aux actions collectives under the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives.

(j) **Step 10: Payments via *cy-près* and to the Fonds d'aide aux actions collectives**

- (i) After the Claims Expiry Date, if the total value of cheques cashed from Net Settlement Funds – Fixed is less than 95% of the Net Settlement Funds – Fixed, the balance of funds not paid to Claimants shall be distributed by *cy-près* to an organization approved by the Courts, subject to the percentage payable to the Fonds d’aide aux actions collectives under the Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives on the part of the balance attributable to Québec members.

#### **PART V - CLASS COUNSEL**

13. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Distribution Protocol and the Claims Process.
14. During the Claims Process, the Claims Administrator will provide periodic updates to Class Counsel, every two (2) weeks or sooner upon material developments in the distribution process.
15. Class Counsel shall prepare a French translation of the Distribution Protocol, the cost of which shall be a Class Counsel Disbursement. In the event of any dispute as to the interpretation or application of this Distribution Protocol, only the English version shall govern.

#### **PART VI - RESOLUTION OF DISPUTES**

16. Notwithstanding the foregoing, if Class Counsel have reasonable and material concerns about the Claims Process or Administration, they shall raise these concerns with BMO. If the Parties fail to resolve these concerns, either Party may move to the Courts further directions with respect to the distribution of the Settlement Benefits.

#### **PART VII - CONFIDENTIALITY**

17. All information received from BMO or the Class Members is collected, used, and retained by the Claims Administrator and/or Class Counsel pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 for the purposes of administering their claims.