



NO. S201733  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

████████████████████

PLAINTIFF

AND

**BANK OF MONTREAL**

DEFENDANT

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

**ORDER MADE AFTER APPLICATION**

BEFORE ) THE HONOURABLE MADAM JUSTICE SHERGILL ) MARCH 12, 2024  
) ) )

ON THE APPLICATION of the Plaintiff, ██████████ coming on for hearing at Vancouver, British Columbia, on September 12-16, 2022 and October 28, 2022, and on hearing Andrew Monkhouse and Alexandra Monkhouse, counsel for the Plaintiff, and Frank McLaughlin, Brandon Kain and Marco Fimiani, counsel for the Defendant, and judgment being reserved to this date;

THIS COURT ORDERS THAT:

1. On reading the further materials filed by the parties subsequent to the release of this Court's Reasons for Judgment dated July 28, 2023, the Plaintiff's amendments to paragraphs 10 and 34 of the Fresh as Amended Notice of Civil Claim in the form set out at paragraph 33 of the Court's Supplemental Reasons for Judgment dated March 12, 2024, are hereby approved. The Fresh As Amended Notice of Civil Claim is approved and attached as Appendix A to this Order.
2. On reading the further materials filed by the parties subsequent to the release of this Court's Reasons for Judgment dated July 28, 2023, this case be certified as a class proceeding under the *Class Proceedings Act*, RSBC 1996 c 50 (the "CPA").

3. On reading the further materials filed by the parties subsequent to the release of this Court's Reasons for Judgment dated July 28, 2023, the Plaintiff is approved as a representative plaintiff for the following class and the criteria under ss. 4(1)(b) and (e) of the *CPA* have been met:

All non-unionized Variable Compensation Employees who worked for Bank of Montreal since January 1, 2010 to December 31, 2018, and who are federally regulated in the roles of Private Wealth Consultants and Mortgage Specialists (the "Class" or "class members").


4. On reading the further materials filed by the parties subsequent to the release of this Court's Reasons for Judgment dated July 28, 2023, the following common issues are approved pursuant to s. 4(1)(c) of the *CPA*:

1. Were the requirements to pay Vacation Pay under Part III of the *Canada Labour Code* part of the employment contracts of the:
  - a. Mortgage Specialists for any of the years 2013 to 2018, inclusive; and
  - b. Private Wealth Consultants for any of the years 2010 to 2018, inclusive.
2. Were the requirements to pay Holiday Pay under Part III of the *Canada Labour Code* part of the employment contracts of the:
  - a. Mortgage Specialists for any of the years 2013 to 2018 inclusive; and
  - b. Private Wealth Consultants for the year 2011.
3. If the answer to common issue 1 is yes, was the manner in which BMO calculated Vacation Pay during the class period, in violation of the provisions contained in Part III of the *Canada Labour Code*?
4. If the answer to common issue 2 is yes, was the manner in which BMO calculated Holiday Pay during the class period, in violation of the provisions contained in Part III of the *Canada Labour Code*?

5. On reading the further materials filed by the parties subsequent to the release of this Court's Reasons for Judgment dated July 28, 2023, the Notice and Litigation Plan attached as Appendix B to this Order is approved.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

  
\_\_\_\_\_  
ALEXANDRA MONKHOUSE  
Counsel to the Plaintiff

  
\_\_\_\_\_  
MARCO FIMIANI  
Counsel to the Defendant

BY THE COURT

\_\_\_\_\_  
REGISTRAR



No. VLC-S-S-201733

Vancouver Registry

Original Notice of CIVIL CLAIM FILED ON 11-Feb-2020

Amended Notice of Civil Claim filed on 22-Feb-2022

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

[REDACTED]

PLAINTIFF

AND:

**BANK OF MONTREAL**

DEFENDANT

**FRESH AS AMENDED NOTICE OF CIVIL CLAIM**  
**Brought under the *Class Proceedings Act*, RSBC 1996, c 50**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL TO FILE the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or,
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## CLAIM OF THE PLAINTIFF

### Part 1: STATEMENT OF FACTS

1. The Plaintiff, [REDACTED] (“[REDACTED]” or the “**Plaintiff**”), is an individual residing in the City of Vancouver, in the Province of British Columbia and was, at all material times, employed by the Defendant.
2. The Defendant, the Bank of Montreal (“**BMO**” or the “**Defendant**”), is a federally incorporated and federally regulated company. It is one of Canada’s largest banks and employs approximately 45,000 employees across Canada.
3. On or around May 22, 2012, [REDACTED] transferred to the position of Private Wealth Consultant with the Defendant. He stopped working July 19, 2017.
4. At all times while [REDACTED] was employed by BMO as a Private Wealth Consultant, he was paid a base salary of about \$45,000 per year, plus variable compensation that in some years exceeded \$200,000. Variable compensation paid to [REDACTED] included compensation based on both commissions and bonuses.
5. Variable compensation for BMO employees may include, but is not limited to, commission, individual performance bonuses, referral fees, volume bonuses, incentive pay, and equity awards (“**variable compensation**”). BMO Employees in the roles of Private Wealth Consultants and Mortgage Specialists earned all or a significant portion of their wages in the form of variable compensation (“**Variable Compensation Employees**”).

6. The Variable Compensation Employees were systemically underpaid their vacation and holiday pay. The number of Variable Compensation employees is unknown to the Plaintiff but is estimated to be in the hundreds or thousands.

7. ██████████ raised the issues addressed by this litigation to BMO in November of 2017. However, his claim against BMO was only discoverable on February 26, 2018, when BMO made it clear that it had no intention of paying ██████████ his outstanding vacation pay.

### ***Pay Policies***

8. At all material times BMO has maintained pay policies for Variable Compensation Employees across Canada ("**Pay Policies**"). The Pay Policies govern, among other things, the calculation and payment of compensation each Variable Compensation Employee is entitled to receive in connection with contractually and statutorily owed vacation pay ("**Vacation Pay**"). Since on or around 2009, BMO has indicated to its Variable Compensation Employees through the Pay Policies that their compensation is inclusive of Vacation Pay, statutory holiday pay ("**Holiday Pay**") and overtime.

9. The requirements to pay Vacation Pay and Holiday Pay under the *Canada Labour Code*, RSC 1985, c L-2 (the "**CLC**") are part of the employment contracts of Variable Compensation Employees. BMO issues a new Pay Policies each year. In some years, the Pay Policies included a statement that BMO is committed to ensuring that employees receive their entitlements to vacation pay under the *CLC*.

10. **The overarching principle in the communications sent from time to time by BMO to its employees was that BMO promised that it would pay what was required by the CLC. An email sent to Private Wealth Consultant employees on August 30, 2017, reiterated that BMO had contractually agreed from 2009 onwards that it would abide by the requirements of the CLC in relation to vacation pay.**

11. The Pay Policy for Mortgage Specialists regularly stated that “BMO FG is committed to ensuring that employees receive no less than their minimum entitlement to vacation pay under the Canada Labour Code” and that “BMO FG is committed to ensuring that employees in the MS role receive their entitlement to statutory holiday pay under the Canada Labour Code.”

12. Since on or around 2009 until on or around 2011, the Pay Policy for Private Wealth Consultants stated that “your total cash compensation consisting of Base pay, Commission and BHPB Year-end Performance Bonus includes the statutory holiday pay, overtime pay and vacation pay to which you may be entitled for that period.” Following 2011, the Pay Policy makes no mention of Vacation or Holiday Pay.

13. The Pay Policy for Mortgage Specialists regularly stated that Vacation Pay and Holiday Pay are “included in the payout for base pay and the variable incentives” paid to Mortgage Specialists.

#### ***Holiday Pay***

14. Prior to 2016, BMO treated the variable compensation of Variable Compensation Employees as inclusive of Holiday Pay.

15. In or around August 2016, for the first time, BMO started specifically identifying and paying Holiday Pay earned as a result of variable compensation on the pay statements of Private Wealth Consultants, as is now and was required by the *CLC* at all material times.

16. Until 2016, BMO treated the compensation of Mortgage Specialists as inclusive of holiday pay and designated 4% of their commissions as "holiday pay". This was instead of paying for a given holiday the equivalent of the wages the employee would have earned at their regular rate of wages for their normal working day. To the extent that Holiday Pay was paid to Mortgage Specialists, it was by returning to the workers 4% of their wages which had been unlawfully deducted.

17. In 2016, BMO implemented a new pay formula for Holiday Pay for those employees who earned commission, including Private Wealth Consultants and Mortgage Specialists.

18. Despite this change, BMO did not pay Holiday Pay in full for Variable Compensation Employees in accordance with its minimum obligations under the *CLC*.

19. BMO was required to pay [REDACTED] and the other Variable Compensation Employees Holiday Pay based on their total compensation, including commissions, bonuses, and any other variable compensation. During all material times of [REDACTED] [REDACTED] and the other Variable Compensation Employees' employment with the Defendant, as a result of BMO creating and implementing the aspects of the Pay Policies



governing Holiday Pay, these employees and former employees have been deprived of significant compensation.

### ***Vacation Pay***

20. BMO has treated and continues to treat the variable compensation of Private Wealth Consultants and Mortgage Specialists as inclusive of vacation pay.

21. Variable Compensation Employees are paid on a bi-monthly basis and receive a pay statement each time they are paid ("**Pay Statement**").

22. At all material times, the Pay Statements provided by BMO to Private Wealth Consultants did not show that Vacation Pay was computed on the variable compensation portion of their pay. BMO treated variable compensation as inclusive of Vacation Pay for Private Wealth Consultants and paid vacation pay only on their base pay.

23. At all material times, BMO treated the commission earned by Mortgage Specialists as inclusive of Vacation Pay. The Pay Statements provided by BMO to Mortgage Specialists designated 6% of commissions earned as "vacation pay".

24. To the extent that Vacation Pay was paid to Mortgage Specialists, it was by returning to workers 6% of their wages which had been unlawfully deducted.

25. In effect, at all material times, no Vacation Pay was actually paid in connection with the variable compensation of the Variable Compensation Employees.

26. Despite the 2016 change to the Pay Policies concerning Holiday Pay, Vacation Pay for Private Wealth Consultants continued to be calculated on their base salary and not on their total compensation.

27. Despite the 2016 change to the Pay Policies concerning Holiday Pay, Vacation Pay for Mortgage Specialists continued to be treated by BMO as a percentage of commission, as opposed to being paid on top of commission earned.

28. At all relevant times, BMO's policy regarding the Vacation Pay of Variable Compensation Employees was to treat variable compensation as inclusive of Vacation Pay. At most, they would receive Vacation Pay at the same rate as their base salary.

29. At all relevant times, BMO's policy regarding the Vacation Pay of Mortgage Specialists was to designate that 6% of commission earned was Vacation Pay. There is no indication that this changed when the *CLC* was amended in 2018 to mandate that vacation should be 8% of wages for employees with at least 10 consecutive years of employment.

30. There is similarly no indication that the commissions for Private Wealth Consultants were adjusted upwards after five or ten consecutive years of employment to reflect their entitlement to greater vacation pay under the *CLC*.

31. At all relevant times, when Variable Compensation Employees were on vacation and did not sell any investment products, they earned no commissions or bonuses. As a result, in any given year of employment with the Defendant, the variable compensation

of a Variable Compensation Employee was lower if he or she decided to take the vacation days to which he or she was entitled instead of working during his or her vacation.

32. ██████████ was only paid Vacation Pay in relation to his base salary and never in relation to his variable compensation.

33. BMO was required to pay ██████████ and the other Variable Compensation Employees Vacation Pay based on their total compensation, including commissions, bonuses, and any other variable compensation. During all material times of ██████████ ██████████ and the other Variable Compensation Employees' employment with the Defendant, as a result of BMO creating and implementing the aspects of the Pay Policies governing Vacation Pay, these employees and former employees have been deprived of significant compensation.

34. **BMO contracted with the Variable Compensation Employees to comply with the CLC requirements for vacation pay and holiday pay. BMO from time to time issued statements in its Pay Policies that asserted or re-affirmed its commitment to ensuring compliance with its statutory obligations under the CLC. BMO asserted that the calculations it made for statutory holiday pay and vacation pay were correct, such that BMO had complied with the contractual obligations that it had agreed to fulfill, and the employees were entitled to rely on the assertions by their employer who was a large and respected financial institution and had access to legal resources to understand the correct calculations. When BMO made the assertion that it had correctly calculated the employees' pay, it knew or ought to**

**have known that the calculations were incorrect, and therefore was not acting in good faith when it made those assertions.**

35. The Plaintiff is not aware of the total damages but estimates that the damages, collectively, are in the millions of dollars.

36. At all material times, BMO has maintained and implements an implied or explicit policy of not paying the full statutorily required Vacation Pay to Private Wealth Consultants and Mortgage Specialists, despite a contractual commitment to do so.

37. At all material times, in connection with [REDACTED] and the other Variable Compensation Employees, BMO failed to keep any records showing that it paid Vacation Pay with respect to variable compensation for the number of weeks of vacation to which the employee was entitled under section 184 of the *CLC*, as required under section 24 of the *Canada Labour Standards Regulations*, CRC, c 986 ("***CLC Regulations***").

38. At all material times, BMO hid its non-compliance with the *CLC* and contracts of employment and stated to employees that the calculations were correct, and thus the issue was not discoverable.

39. [REDACTED] seeks to be a representative Plaintiff for all Variable Compensation Employees denied such compensation while working for the Defendant.

**Part 2: RELIEF SOUGHT**

40. The Plaintiff claims the following on his behalf, and on behalf of members of all non-unionized Variable Compensation Employees of BMO within Canada who are federally regulated in the roles of Private Wealth Consultants and Mortgage Specialists (the "**Proposed Class**"):

- a An order certifying this action as a class proceeding and appointing the Plaintiff as representative Plaintiff;
- b A declaration that the members of the Proposed Class are owed Vacation Pay above and beyond the compensation they were paid;
- c A declaration that the members of the Proposed Class were owed Holiday Pay above and beyond the compensation they were paid;
- d A declaration that BMO violated its duty of good faith to the members of the Proposed Class by failing to properly calculate their Vacation Pay, or their Holiday Pay;
- e A declaration that BMO breached the contract of employment with the members of the Proposed Class;
- f That damages be paid to each Proposed Class member equal to the Vacation Pay that they ought to have received during their employment with the Defendant;

- g That damages be paid to each Proposed Class member equal to the Holiday Pay that they ought to have received during their employment with the Defendant;
- h Pre-judgement interest and post-judgement interest according to the *Courts Order Interest Act*, RSBC 1996, c. 79;
- i Costs;
- j Such further and other relief this Honourable Court may deem just and equitable in all of the circumstances.

**Part 3: LEGAL BASIS**

**BMO Systematically does not pay Vacation Pay and Holiday Pay on Variable Compensation**

41. Pursuant to section 184.01 of the CLC, employees must be paid additional Vacation Pay above and beyond their regular pay. The Pay Policies violate this requirement.

42. Pursuant to section 196 of the CLC, employees must be paid additional Holiday Pay above and beyond their regular pay. Until at least 2016, if not later, the Pay Policies violated this requirement.

43. No employee may opt out of a benefit of the CLC unless the employee receives greater benefit, pursuant to section 168(1) of the CLC.

44. Furthermore, the requirements to pay Vacation Pay and Holiday Pay under the *Canada Labour Code*, form part of the employment contracts of the Variable Compensation Employees.

### **The Class**

45. Those members of the Proposed Class who were underpaid Vacation Pay under section 184.01 of the *CLC* or Holiday Pay under section 196 of the *CLC* would be owed damages.

46. [REDACTED] seeks to have the class time period run from January 1, 2010 until when the notice of class action is sent out to class members with the opt-out forms on the basis that BMO hid its non-compliance with the *CLC* and contracts of employment and misrepresented to employees that the calculations were correct, and thus the issue was not discoverable.

### **Costs and Interest**

47. Costs are payable pursuant to the *Supreme Court Civil Rules*, BC Reg 168/2009.

48. Interest is payable pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79.

Plaintiff's address for service:

**Monkhouse Law**  
c/o 403-860 Homer St.  
Vancouver, BC  
V6B 2W5  
**Attn.: Andrew Monkhouse**

Fax number address for service: 888-501-7235

Place of trial:

Vancouver, British Columbia

The address of the Registry is:

800 Smithe Street

Vancouver, British Columbia

V6Z 2E1

Date: ~~February, 2020~~ July 14, 2021

**March 25, 2024**



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Signature of lawyer for the Plaintiff

Andrew Monkhouse

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the ending of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.



## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A claim for damages for breach of contract.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning:  an employment relationship

### Part 3: THIS CLAIM INVOLVES

a class action

### Part 4:

*Canada Labour Code*, RSC 1985, c L-2

*Class Proceedings Act*, RSBC 1996, c 50

IN THE SUPREME COURT OF BRITISH COLUMBIA

B E T W E E N:

[REDACTED]

Plaintiff

– and –

BANK OF MONTREAL

Defendant

Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c 50

LITIGATION PLAN

Pursuant to section 4(1)(e)(ii) of the *Class Proceedings Act*, RSBC 1996, c 50 (“*CPA*”), the Plaintiff proposes that this Litigation Plan be followed with respect to these proceedings, subject to the Court’s approval:

**STAGE 1: PRE-CERTIFICATION INQUIRIES**

1. The Plaintiff proposes the following class definition:

“

All non-unionized Variable Compensation Employees who worked for Bank of Montreal since January 1, 2010 to December 31, 2018, and who are federally regulated in the roles of Private Wealth Consultants and Mortgage Specialists (the “Class” or “class members”).”

**Communicating with the Class**

2. Monkhouse Law has experience communicating with class members in large scale class proceedings. In combination with the required court ordered notices, class counsel has established a website page and an email address to facilitate communication with class members.

3. Monkhouse Law has taken the initiative of creating a website page that offers details and updates on the progress of the litigation (<https://www.monkhouselaw.com/bmo-vacation-and-holiday-pay-class-action/>). Potential class members can locate website through an internet search or through links established on Monkhouse Law's website. Through this website, class members who may become aware of this action are kept informed of the progress the litigation. Email contact information is also available on the website to allow interested parties to contact Monkhouse Law with inquiries.

## **STAGE 2: NOTICE OF CERTIFICATION AND OPT OUT**

4. Following certification of this action as a class proceeding, notice of certification will be delivered pursuant to section 19 of the *CPA*, in a form and manner approved by this Court.

### **Draft Notice**

5. A draft of Notice of Certification ("**Draft Notice**") is attached hereto as **Schedule "A"** and is subject to the Court's approval. Upon certification of this proceeding and court approval of the Draft Notice, the Notice of Certification ("**Approved Notice**") will be disseminated.

6. The Draft Notice provides the website page address established this class action (<https://www.monkhouselaw.com/bmo-vacation-and-holiday-pay-class-action/>), a contact email address, and Monkhouse Law's mailing address and phone number to allow for newly identified class members to make any inquiries regarding the class action.

### **Notice Program**

7. The Plaintiff requests that the Approved Notice be disseminated at the Defendant's expense.

8. To minimize expense to the Defendant and to maximize notice exposure, the Plaintiff proposes that the Approved Notice will be distributed using the internal communication channels of Bank of Montreal (referred to as "**the Company**") as well as external communication tools. The Plaintiff requests that the Court order that the following specific methods of distribution of the Approved Notice be implemented within 30 days of the certification order, or by a date to be determined by the Court:

- a. Using the records of the Defendant, the Approved Notice shall be sent by regular mail to the address of all currently employed class members;
- b. Using the records of the Defendant, the Approved Notice shall be sent by e-mail to the last known e-mail address of all currently employed class members;
- c. Using the records of the Defendant, the Approved Notice shall be sent by regular mail to the last known address of formerly employed class members;
- d. Using the records of the Defendant, the Approved Notice shall be sent by e-mail to the last known e-mail address of formerly employed class members;
- e. Using internal communication channels of the Company that are currently in use to communicate with currently employed class members, including internal e-mail lists, workplace newsletters, and workplace bulletin boards, the Approved Notice will be sent and/or posted through those internal communication channels;
- f. The Approved Notice shall be sent by e-mail or mail to any person who may request it;
- g. The Approved Notice shall be posted on the BMO class action website page already created by Monkhouse Law (<https://www.monkhouselaw.com/bmo-vacation-and-holiday-pay-class-action/>);
- h. The Approved Notice shall be posted on the Defendant's website in a conspicuous location; and,
- i. The Approved Notice shall be published in the Vancouver and Toronto Sun, the National Post, the Globe and Mail, and other Canadian national and regional newspapers, in an amount and frequency to be determined.

9. Monkhouse Law will continue to update the BMO class action webpage following certification and will respond to individual inquiries. The phone numbers and e-mail address for inquiries provided on the website will continue to operate until the class action is finally resolved.

## **Opt-out**

10. The Plaintiff submits that the Court should agree to set an opt-out deadline of 120 days after the Approved Notice is disseminated by regular mail, electronic mail, and publication as described in paragraph 8 above.

11. The Draft Notice outlines the significance of opting out and explains that those members of the class who choose to opt out within stipulated deadline will not recover any monies in this action. Further, the Draft Notice makes clear that affected persons who do not opt out will be considered class members and will be bound by the Court's judgment or the terms of any settlement.

12. The Opt Out Form (a draft of which is attached as **Schedule "B"**), if approved by the Court, will be made available by Monkhouse Law upon request and will be posted on the BMO class action website page (<https://www.monkhouselaw.com/bmo-vacation-and-holiday-pay-class-action/>).

13. Class members who wish to opt out of the class action as certified must complete and return the Opt Out Form to Monkhouse Law by no later than 120 days after dissemination of the Approved Notice as described paragraph 10. The Opt Out Form can be returned by mail, fax, or e-mail.

14. Monkhouse Law will serve an affidavit listing those who opt-ed out within 30 days of the opt-out deadline.

## **STAGE 3: PLEADINGS AND DOCUMENTARY DISCOVERY**

15. If the application is certified as a class proceeding, the Court will be asked to order the Defendant to deliver their Response to Civil Claim no later than 60 days following the date on which the Court issues the certification order. The Plaintiff will have a following 30 days following service of the Response to Civil Claim to serve a Reply, if any.

16. All pleadings in the action shall be served and filed within 90 days following the issuance of the certification order.

17. Within 120 days following certification, it is proposed that the parties meet and agree upon a timeline and methods for discovery in accordance with Rule 7-1 of the *Supreme Court Civil Rules*. This would include establishing a procedure for the production of documents, for e-discovery, and any necessary “meet and confer” meetings.

18. A case conference will be sought to be heard within 30 days following certification to establish a litigation timetable for the remaining litigation steps leading to trial.

#### **STAGE 4: EXAMINATION FOR DISCOVERY**

19. Examinations for discovery will commence pursuant to an agreed upon discovery timeline.

20. Subject to refusals and undertakings, the Plaintiff anticipates that the examinations for discovery of Defendant’s representatives will take approximately five to ten days, which would occur over the course of three to four months, subject to the parties’ availability.

#### **STAGE 5: EXCHANGE OF EXPERT OPINIONS**

21. The exchange of expert reports, if necessary, shall be governed by the timetable agreed to between the parties and ordered by the Court.

#### **STAGE 6: COMMON ISSUE TRIAL**

22. The trial of the certified common issues will take place on a timeline agreed to by the parties or as ordered by the Court and shall be set after the conclusion of discoveries and all preliminary applications.

23. A full list of the witnesses the parties intend to call will be provided in accordance with a trial management timetable agreed to between the parties.

24. As per para 279 of the Reasons for certification, ██████████ v Bank of Montreal, 2023 BCSC 1319, circumstances may emerge for the Court to reconsider the certification of aggregate damages.

25. If the common issues pertaining to liability are resolved to the Plaintiff’s benefit, the Plaintiff will request that the Court make an order under section 29 of the *CPA* awarding the

amount of aggregate damages determined by the Court to class members and ask that a common determination of class members' hours per day and days per week be made.

#### **STAGE 7: NOTICE OF RESOLUTION AND DISTRIBUTION**

26. After the common issues are determined, the process for determinations of any individual issues has been approved, if necessary (see Stage 8 below), the Plaintiff will request that the Court approve the form and content of a notice program giving class members notice of the resolution of the common issues, and/or of the method for determining any individual issues (“**Notice of Resolution**”).

27. The Notice of Resolution will require eligible class members to file their claim on an approved claim form (“**Claim Form**”) by a fixed date, with the agreed upon Class Action Administrator. This form will allow the class members to establish their membership in the class and could be checked against the current and historical employment records of the Defendant.

28. The Notice of Resolution and Claim Form will be disseminated in the same manner as the Approved Notice set out above in paragraph 8.

#### **STAGE 8: INDIVIDUAL ISSUES DETERMINATIONS – IF NECESSARY**

29. If the Court does not order an award under section 29 of the *CPA* and/or determines that individual issue determinations are necessary, then the Plaintiff will attempt to come to an agreement with the Defendant to reach a mutually acceptable method for determining individual issues (which may include liability and damages).

30. Alternatively, the Plaintiff will request that the common issues judge approve a procedure to resolve individual issues pursuant to section 27 of the *CPA*. The approved procedure will be disseminated to the class in the Notice of Resolution.

31. Given the information the Defendant possesses relating to each class member, including their names and contact information, their length of active service with the Defendant, and the

amounts paid by the Defendant to the class members in commissions, there is a limited number individual issues that might be required to be determined on an individual basis.

32. Given the nature of individual issues that may need to be addressed and the quantum of each class members' claim, a simplified process for individual issues determinations is proposed. The Plaintiff proposes the following process:

33. A Claim Form will be drafted and approved, the structure and content of which will depend upon the findings made at the common issues trial.

34. A mutually agreed upon administrator will be approved by the Court ("**Class Action Administrator**").

35. The Defendant shall be required to provide the Class Action Administrator the following information for each class member:

- a. Name and last known contact information;
- b. Date of hire;
- c. Date of termination or date of deemed termination due to inactivity for each class member; and,
- d. Amounts paid by the Defendant, including dates of payment.

36. Class members will be required to submit the following information in the Claim Form:

- a. Their name and current contact information; and,
- b. The total amount of hours, wages paid, and deductions, broken down by the year or years in which the class member worked.

37. The class members will be permitted to complete and submit the Claim Form by fax, email, or mail or through a secure website operated by the Class Action Administrator.

38. The class members will have to submit their Claim Forms by a fixed date ("**Claim Submission Date**").



39. The Defendant will have 60 days after the Claims Submission Date to advise the Class Action Administrator which claims it intends on disputing and the specific basis for those disputes.

40. For any claims that the Defendant does not dispute, the Class Action Administrator will assess and determine the damages owing based on a pre-determined formula.

41. For any claims the Defendant disputes, individual assessments will be conducted pursuant to the following proposed non-exhaustive principles:

- a. The Claim Form and supporting documents will be treated as the claimant's affidavit;
- b. The Defendant must file an affidavit setting out firsthand knowledge in order to dispute the claim for each claim disputed within 60 days of the Claims Submission Date;
- c. A mutually agreed upon Referee will be appointed to conduct the hearings;
- d. The Referee will review the Claim Form and responding affidavit, and will determine whether a decision on the issues in dispute can be made based on the evidence presented, or whether a hearing will be required;
- e. A hearing will be held only if the Referee determines such to be necessary. The hearing shall be held in the least expensive, most efficient manner, and the Referee will be given such powers agreed upon by the parties or as directed by the Court;
- f. Offers to settle will be permitted until the day of the hearing;
- g. Each hearing will last a maximum of two (2) hours each;
- h. Cross-examinations will only be permitted on the Claim Form and on any defence affidavits, and no other oral testimony will be permitted without leave of the Referee;
- i. Each party will be provided an opportunity to make submissions orally or in writing;

- j. Hearings can be conducted by telephone or video;
- k. Hearings and decisions shall not be public;
- l. This process is intended for the self-represented claimant, but the claimant may retain counsel if desired;
- m. Decisions shall be provided in writing within 15 days of the hearing;
- n. There will be no right of appeal from the Referee's decisions;
- o. There will be no costs liability for the claimants or for the Defendant with respect to a hearing before the Referee;
- p. The standard of proof shall be the standard employed in civil courts; and,
- q. The Defendant shall bear the cost of the Referee and the hearings.

42. Once final individual issue determinations, including liability and damages, are completed, individual damage awards would then be distributed to the class members.

### **FUNDING**

43. The Plaintiff's legal fees are to be paid on a contingency basis based on success on the common issues, as provided for in the *CPA*, and are subject to the Court's approval.

44. Monkhouse Law will continue to provide the funding of all disbursements necessary to properly prosecute this action to successful completion.

45. In addition, funding is being sought from third party litigation funding providers. If a potential funder is found, it will be disclosed to the court for approval well before the application for certification.

46. If funding is not obtained, Monkhouse Law will consider indemnifying this action. Monkhouse Law is a well-established firm with steady and reliable income and has the capacity to fund this action.

## **SETTLEMENT**

47. Monkhouse Law will conduct settlement negotiations with the Defendant's counsel from time to time, as circumstances dictate. The Plaintiff is prepared to enter into mediation processes or discussions during the litigation as the Defendant may agree or counsel recommend.

## **REVIEW OF THE LITIGATION PLAN**

48. Notwithstanding the foregoing, this Litigation Plan will be subject to regular review by Monkhouse Law, and may be revised and/or modified at any time during the litigation process as required, under the continuing case management authority of this Court.

**SCHEDULE "A"**

***BANK OF MONTREAL CLASS ACTION***  
***PROPOSED NOTICE OF CERTIFICATION***

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.**

**The Nature of the Lawsuit**

On February 11, 2020, Monkhouse Law commenced an action in the Supreme Court of British Columbia against Bank of Montreal (“**the Defendant**”).

The Lawsuit claims the Defendant breached its statutory, contractual, and common law duties to the class members by calculating vacation and public holiday pay on an employee’s base pay only, ignoring money paid for variable compensation, such as bonuses, commissions, stock options, and share units.

This action was brought on behalf of a class consisting of all non-unionized Variable Compensation Employees who worked for Bank of Montreal since January 1, 2010 to December 31, 2018, and who are federally regulated in the roles of Private Wealth Consultants and Mortgage Specialists (the “Class” or “class members”).

By order dated [INSERT DATE], The Honourable Justice [INSERT NAME] certified the action as a class proceeding and appointed [REDACTED] as representative plaintiff for the class.

**Participation in the Class Action**

If you were an employee of the Defendant and fall within the class definition, you are automatically included as a member of the class unless you opt out. All members of the class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

At this juncture, the Court has not taken a position as to the likelihood of recovery for the representative plaintiff or the Class, or with

respect to the merits of the claims or defences asserted by either side.

**Fees and Disbursements**

You do not need to pay any legal fees out of your own pocket. A retainer agreement has been entered into between the representative plaintiff and Monkhouse Law with respect to legal fees. The agreement provides that the law firm has been retained on a contingency fee basis, whereby it will only be paid its fees in the event of a successful result in the litigation or a Court approved settlement. The fees payable to the lawyers for the class will be paid out of any judgment and will not be paid directly by class members. Any fee paid to lawyers for the class is subject to the Court’s approval.

You will not be responsible for the Defendant’s legal costs if the class action is unsuccessful.

**Opt Out**

If you wish to exclude yourself from this class proceeding (“**opt out**”), you must complete and return the opt out form by no later than [INSERT DATE 120 DAYS AFTER CERTIFICATION ORDER]. The opt out form may be downloaded at: XXX

If you choose to opt out within the above noted deadline you will not recover any monies in the event the representative plaintiffs are successful in this action. If you do not choose to opt out by the prescribed deadline you will be bound by any judgment ultimately obtained in these proceedings, whether favourable or not, or any settlement if approved by the court. You may wish to obtain independent legal advice with respect to this matter.

**Contact Information**

If you have any questions or concerns about the matters in this Notice or the status of the BMO Class Action, please visit:

<https://www.monkouselaw.com/bmo-vacation-and-holiday-pay-class-action/>

You may contact Monkhouse Law in a number of ways.

By email at the following address (please indicate BMO Class Action in the re: line):

[alexandra@monkouselaw.com](mailto:alexandra@monkouselaw.com)

By mail at the following address:

220 Bay Street, Suite 900  
Toronto, Ontario  
M5J 2W4

Or by fax or telephone:

Phone: (416) 907-9249 ext. 211  
Fax: (888) 501-7235

**SCHEDULE "B"**

**NOTICE OF OPTING OUT**

**TO: Monkhouse Law  
220 Bay Street, Suite 900  
Toronto, Ontario  
M5J 2W4**

**ATTN: [ADMINISTRATOR TO BE APPOINTED]**

I do not want to participate in the Vacation and Holiday Pay class action against the Defendant, Bank of Montreal, with the Court File No. VLC-S-S-201733, regarding the claims of wrongful denial of compensation to eligible employees by the Defendants. I understand that by opting out, I will not be eligible for the payment of any amounts awarded or paid in the class action.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, Province, Postal Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

This Notice must be delivered by Registered Mail on or before \_\_\_\_\_, 202\_\_ to be effective.