

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE HORKINS

) TUESDAY, THE 31st DAY
) OF JANUARY, 2012
)

BETWEEN:

**JAMES RICHARD MACDONALD, JOHN A. ZOPPAS, LYNN D.
ZOPPAS and TAMAS VARGA**

Plaintiffs

and

**BMO TRUST COMPANY, BMO NESBITT BURNS INC., BMO
INVESTORLINE INC. and BMO BANK OF MONTREAL**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an order certifying this action pursuant to s. 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, ("CPA") was heard on December 12 – 14, 2011 at Toronto, Ontario.

ON READING the Statement of Claim, affidavits, factums and supplementary submissions, filed, and on hearing oral submissions of counsel for the parties:

1. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to s. 5 of the CPA.
2. **THIS COURT ORDERS** that James Richard MacDonald, John A. Zoppas, Lyn D. Zoppas and Tamas Varga are appointed as the representative plaintiffs for the class (the "Class").
3. **THIS COURT ORDERS** that the Class is defined as follows:

All current and former clients of BMO InvestorLine Inc. ("InvestorLine") and BMO Nesbitt Burns Inc. ("BMO NB") resident in Canada, who held one or more registered accounts administered by BMO Trust, BMO NB and/or InvestorLine Inc. (the "Trust Accounts") and purchased or sold investments denominated in foreign currency in their Trust Accounts or were paid dividends or interest in a foreign currency in their Trust Account(s), or otherwise received foreign currency into their Trust Account(s) which was then converted to Canadian dollars by the defendants during the period between:

 - (i) June 14, 2001 and September 6, 2011 for:
 - a. all clients and former clients of InvestorLine;
 - b. the 14 clients of BMO NB who opted out of the class proceeding entitled *Skopit v. BMO Nesbitt Burns Inc.*, either entirely or with respect to the overlap period with this action; and
 - (ii) October 1, 2002 and September 6, 2011 for all other clients of BMO NB.
4. **THIS COURT ORDERS** that the following issues are certified as common issues:
 - a) Were the Defendants, or any of them, acting as trustees of the registered accounts held by members of the Class (the "Class Members") as identified below, and if so, what duties did the defendants owe to the Class Members in this capacity?

- b) Did the Defendants breach their fiduciary duties and duties as trustees owed to the Class by making unauthorized, systematic exchanges of foreign currency held or paid into the Class Members' registered trust accounts, including registered retirement savings plan accounts ("RRSPs"), registered retirement investment funds ("RRIFs"), locked-in retirement accounts ("LIRAs"), locked-in investment funds ("LIFs"), locked-in retirement income funds ("LRIFs"), and registered education savings plans ("RESPs") (the "Trust Accounts")?
- c) Did the Defendants act in breach of their fiduciary duties and duties as trustees of the Trust Accounts by charging undisclosed and unauthorized fees in connection with the unauthorized systematic exchanges of foreign currency held in the Trust Accounts to Canadian dollars?
- d) Did the Defendants act in breach of their fiduciary duties and duties as trustees of the Trust Accounts by charging undisclosed and unauthorized fees to the Class Members in connection with the authorized exchange of foreign currency in the Trust Accounts in furtherance of an authorized purchase of foreign investments?
- e) Did the Defendants breach their contracts with the Class Members?
- f) What damages are the Class Members entitled to in respect of the unauthorized foreign exchange transactions and the foreign exchange transactions (together, the "FX Transactions")?

- g) Are the defendants obliged to disgorge all profits they made during the class period with respect to the unauthorized foreign exchange transactions, or the foreign exchange transactions?
- h) Are the defendants obliged to disgorge all the foreign exchange fees they charged to the Class during the class period with respect to the unauthorized foreign exchange transactions, or the foreign exchange transactions?
- i) Have the Defendants have been unjustly enriched at the expense of the Class by their receipt of undisclosed fees on all FX Transactions?
- j) Do the Defendants hold the profits they received from the Class Members' Trust Accounts as a result of the FX Transactions in a constructive trust for the benefit of the Class?
- k) Is the Class entitled to an accounting and disgorgement of all profits earned by the defendants from the FX Transactions?
- l) Should the Defendants be permanently enjoined from conducting unauthorized foreign exchange transactions and charging undisclosed and unauthorized fees on any FX Transactions?
- m) Does the Defendants' conduct warrant an award of punitive damages, and, if so, in what amount?
- n) Are the Plaintiffs entitled to pre-judgment and post-judgment interest on the damages claimed at the amount of the average rate of return earned on the

Trust Accounts, collectively, during the class period compounded monthly or the rate of return that would have been achieved in another reasonably prudent alternative investment, or, alternatively pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43??

5. **THIS COURT ORDERS** that notice of certification (the “Notice of Certification”), in the form attached as Schedule 1 hereto, is hereby approved.
6. **THIS COURT ORDERS** that the opt-out deadline shall be 90 days after the publication of the Notice of Certification.
7. **THIS COURT ORDERS** that the methods of publication of the Notice of Certification (the “Notice”) shall be:
 - a. Press Release

Paliare Roland Rosenberg Rothstein LLP (“Class Counsel”) will issue a press release regarding the certification order and containing the Notice within 15 days of the granting of the certification order.
 - b. Print Media

The Notice will be published within 30 days of the approval of the order granting certification in:
 - i. English in both the Wednesday and Saturday national editions of the *National Post* and *The Globe and Mail*; and
 - ii. French in one publication in Quebec and one in New Brunswick.

Internet

The Notice and the Certification Order shall be published on the web page maintained by Class Counsel in respect of this proposed class proceeding.

c. Direct mail and e-mail

To the extent Class Members provide Class Counsel with email addresses, Class Counsel will send the Notice via e-mail to Class Members at the e-mail addresses provided.

The Defendants shall deliver the Notice by direct mail to the last known address for each Class Member who is presently a client of BMO. This version of the Notice may be included with any other ordinary course mailing to be delivered to those Class Members.

Justice C. Horkins
THE HONOURABLE JUSTICE C. HORKINS

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 12 2012

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:



SCHEDULE "1"

NOTICE

**To: All Registered Account Holders of
BMO Trust Company, BMO Nesbitt Burns Inc. and
BMO InvestorLine Inc.**

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

Who this Notice is for:	All customers of BMO Nesbitt Burns Inc. ("BMO NB") and BMO InvestorLine Inc. ("Investorline" and with BMO NB and BMO Trust Company, "BMO"), residing in Canada, who held or hold one or more registered account at any time during the following periods in which a foreign exchange conversion was effected .
The Class	<p>(i) June 14, 2001 and September 6, 2011 for:</p> <p style="margin-left: 40px;">a. all clients and former clients of InvestorLine; and</p> <p style="margin-left: 40px;">b. the 14 clients of BMO NB who opted out of the class proceeding entitled <i>Skopit v. BMO Nesbitt Burns Inc.</i>, either entirely or with respect to the overlap period with this action; and</p> <p>(ii) October 1, 2002 and September 6, 2011 for all other clients of BMO NB.</p>

Registered accounts are:

- A registered retirement savings plan
- A registered retirement investment fund
- A registered education savings plan
- A locked-in retirement account
- A locked-in investment fund
- A locked-in retirement income fund

If you hold or held a registered account with BMO NB or Investorline during this time period, this Notice is for you, and you

are part of the Class Action.

PURPOSE OF THIS NOTICE:

An action has been certified as a class proceeding by order of the Ontario Superior Court of Justice dated <insert date>.

The Claim

The claim alleges that BMO breached their contracts with the Class Members, and that BMO acted in breach of the trust and fiduciary duties that they owed to the Class by automatically converting to Canadian dollars any foreign currency that was paid into registered accounts, even though the *Income Tax Act* allowed foreign currency to be held in a registered account after June 14, 2001.

In particular, the claim alleges that BMO made unauthorized foreign currency exchanges, and that they charged undisclosed or inadequately disclosed and unauthorized fees in respect of foreign currency transactions.

The Class Action seeks an order requiring BMO to reimburse the foreign exchange fees it charged to the Class on the purchase and sale of foreign investments held in registered accounts, and in respect of the conversion of foreign currencies that have been paid into the registered accounts.

BMO is contesting the claim.

A copy of the Statement of Claim and the Order certifying this action as a class proceeding can both be reviewed at www.rrspclassaction.com

HOW THIS CLASS ACTION AFFECTS YOU

If you fall within the Class, and you wish to participate in the proceeding, then you do not need to do anything more at this stage. You are automatically included in the Class.

No Cost to You

There is no cost to you to participate in the class action. You will have no responsibility to pay any legal fees. Class Counsel will only be paid in the event that the action succeeds at trial or there is a settlement. Class Counsel have entered into a contingency fee agreement with the representative plaintiff. The agreement provides for a contingency fee of 25% of the amount recovered in the Class Action to be paid to Class Counsel, along with reimbursement of all disbursements and taxes. The court must approve the payment of any legal fees to Class Counsel

You will be Bound by a Judgment or Settlement in the Action

Each Class member who does not opt out of the Class Action will be bound by the terms of any judgment or any settlement approved by the court. Each Class Member may be entitled to share in the amount of any judgment awarded or settlement reached in the

Class Action.

**HOW TO OPT OUT OF
THE CLASS ACTION**

If you DO NOT WANT TO PARTICIPATE in this proceeding, then you must notify class counsel in writing that you wish to opt out of the class action.

**If you do not want to
participate in the Action**

If you decide to opt out, you will not be bound by the terms of any judgment or settlement. However, you also will not be eligible for any of the benefits of any settlement or judgment if the action is successful.

**Address for Sending
Your Notice of Opt Out**

If you wish to opt out of the Class Action, you must deliver a letter to Class Counsel that includes your full name and address and that states that you do not wish to participate in this Class Action. The letter must be sent on or before **<insert date>** at 5:00 pm EST, to the following address:

BMO Class Action
Paliare Roland LLP
250 University Ave., Suite 501 Toronto, ON
M5H 3E5

Fax: 416-646-4301

Opt Out Deadline:

No Class member will be permitted to opt out after **<insert date>**.

CLASS COUNSEL:

Ken Rosenberg, Jeffrey Larry and Lindsay Scott of the law firm of Paliare Roland LLP, are Class Counsel. Class Counsel can be reached at Suite 501, 250 University Ave., Toronto, ON, M5H 2E5 or by telephone, at 416-646-4300.

PUBLICATION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE

Court File No. 06-CV-316213 CP

James Richard MacDonald et al. v. BMO Trust Company and BMO Nesbitt Burns Inc. and BMO Bank of Montreal

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

**PALIARE ROLAND ROSENBERG
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