

C A N A D A  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

Collective Action  
S U P E R I O R C O U R T

No: 500-06-001018-197

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**Tracey Arial et als.**

Plaintiff/Representatives

vs.

**Samsung Electronics Canada and Apple Canada  
et als.**

Defendant/Respondents

=====  
**Representatives' Motion for Permission to Amend their Motion Seeking Authorisation of a  
Collective Action**

**(Arts. 206ff, 572 C.C.P.)**

**PLAINTIFF/REPRESENTATIVES TRACEY ARIAL ET ALS RESPECTFULLY  
SUBMIT:**

**A. THE PROCEEDINGS:**

1. Plaintiff/Representatives claim injunctive relief, monetary damages, punitive and *Charter* damages from the Defendant/Respondents for those who purchase, lease or use smart phones from 2013 forward and were victims of false advertising, failure to warn of dangerous electromagnetic emissions (EMF pollution) for a Quebec class in excess of a million members;
2. Petitioner filed an Amended Motion December 15<sup>th</sup>, 2019, serving it and the Exhibits on the Defendants/Respondents;
3. Other amendments are to render this Class Action compliant with the rules and pursuant to His Lordship's instruction later dated October 15, 2019.

**B. RELEVANCE AND COMPLETION OF THE AMENDMENTS:**

4. The Amended Proceedings complete the original proceedings in fact and in law in that the claim of Plaintiff/Petitioners relates to effects of EMF cellphone pollution in Quebec and Defendant/Respondents failure to warn and false advertisement of consumer products;

5. Exhibits 3-B to **H**, added at paragraph 69, support the allegation that the misleading advertising and failure to inform and warn of health risks is considerable. Exhibit 3-**HA** was published February 7 and came to Plaintiff/Petitioners' attention February 8, 2020;
6. In order to respect the Rule of Law, to provide meaningful access to Justice (proportionality) and protect the fundamental rights provided for in the Quebec and Canadian *Charters*, Plaintiff/Representative's full, corrected and complete claim, as well as Expert Reports and Exhibits confirming same, completed and corrected by the proposed amendments, should be fully heard;
7. The task of correctly and fully describing the effects of smartphone EMF pollution in the Province of Quebec is exceptionally difficult and made more complex given the following:
  - (i) The extension of the class to all smartphones from 2013 onward is justified by Exhibits 3A-**H** as well as the presumption of liability and burden of exculpation being shifted to Defendants.
  - (ii) EMF pollution including non-ionizing radiation and its health effects is a contested science, replete with galling conflicts of interest as concerns industry and regulators;
  - (iii) Addition of Representatives provides for more complete representation of the class;
  - (iv) The July 12, 2016 decision in *Davis vs. B.C. Hydro* 2016 BCSC 1287 (CanLII) is the first Canadian case concerning EMF Class Action litigation. It explicitly recognizes the right to claim based on the liberty interest and the right to security of person protected by section 7 of the Charter (at paras. 95 ff.) as a result of EMF exposure and recognizes that the Representative should advance some evidence of a *methodology* of establishing general causation at Authorization, i.e. a reasonable prospect of doing so (at paras. 133 ff.);
  - (v) Bioactivity of EMF has long been recognized, including by the US Environmental Protection Agency since 1990. An analogous result was shown by the Interphone study surveys demonstrating significant increase in brain tumors on the side of the head where mobile phones and cordless phones were held (Hardell and Carlburg, "Mobile phones, cordless phones and the risk for brain tumours", *Int J Oncol.* 2009 Jul; 35 (1):5-17).
  - (vi) Paragraph 32 indicates Defendant's misrepresentation and proffering of False science, both claims being made in the original Motion.
  - (vii) References to consumer protection and punitive damages at paragraphs 113 and 114 bolster the original claims made concerning failure to inform and to warn.
  - (viii) The injunctive relief referred to in paragraphs 116 to 119 and 205 provide detail concerning the specific relief sought. Footnote 65 at page 30 and the additional exhibit adduced are filed in support of the claim for medical monitoring

(ix) Additions to paragraph 152 complete the claims made pursuant to the Canadian Competition Act.

(x) The section “Complexity/Medical Causality” (paragraphs 210 to 218) relate to how this Honorable Court should deal with “scientific” causality claims at the Authorization stage. It adds to the claim of presumptive proof and causation at Authorization.

8. The added conclusions are provided to assist this Honorable Court in properly adjudicating the collective action and are proportional, given the claims made by Representatives.
9. As provided for by Art. 18 C.C.P., in order to properly observe the principle of proportionality, and their right to be heard, it is respectfully submitted that Plaintiff/Representatives may complete the claim and file all proof relevant to Authorization;
10. The January 13, 2020 Turin (Italy) Court of Appeal decision in *Romeo c INAIL* indicates the causal connection between cell phone use and neuromas (cancer) and further speaks to the bias and conflict of interest in industry funded research and regulatory capture;
11. In particular, proposed Exhibits R-3 E, F, G while not necessary for Authorization are nonetheless relevant given the rights at issue and the state of the “science”;
12. It would be contrary to the duty to collaborate for Defendants to contest the present Motion Seeking Permission to Amend, fully respects the Rule of Proportionality;

**C. CONCLUSIONS**

13. For these reasons, Plaintiff/Representatives ask this Honourable Court, in the interests of Justice and to preserve and ensure the rights of the proposed Class, to permit Plaintiff/Petitioners to Amend their proceedings as set out in the Amended Motion Notified to all parties December 15<sup>th</sup>, 2019;

Montreal, February 9<sup>th</sup>, 2020

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**CHARLES O’BRIEN**  
**LORAX LITIGATION**  
Attorney for Plaintiff/Representative  
AO1372

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**NOTICE OF PRÉSENTATION**

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To : **NOTIFICATION**  
**Attorneys for Respondents**  
**Defendants:**

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PLEASE NOTE that this Motion will be presented before the Honorable Mr. Justice Pierre C. Gagnon, J.C.S. as soon as this matter may be heard, at the Montreal Superior Court located at 1 Notre Dame East, in a room and at a time to be determined by his Lordship.

PLEASE DO GOVERN YOURSELVES ACCORDINGLY

Montréal, February 9, 2020

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**Charles O'Brien**  
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