

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
No.: 500-06-000977-195

**SUPERIOR COURT**  
(Class Action)

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**DENIS GAUTHIER**

Plaintiff

**v.**

**BOMBARDIER INC. *et al.***

Defendants

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**DE BENE ESSE APPLICATION FOR LEAVE TO AMEND  
THE MOTION FOR AUTHORIZATION**  
(Articles 206 and 585 CCP)

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**TO THE HONOURABLE CHRISTIAN IMMER, S.C.J., SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, AS DESIGNATED JUDGE FOR THIS INSTANCE, THE PLAINTIFF DENIS GAUTHIER RESPECTFULLY SUBMITS THE FOLLOWING:**

**I - INTRODUCTION**

1. On February 14, 2019, the Plaintiff filed a *Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action* (the “**Motion for Authorization**”) against Bombardier Inc. (“**Bombardier**”), Alain Bellemare, Bombardier’s Chief Executive Officer at the relevant time, and John Di Bert (“**Di Bert**”), Bombardier’s Chief Financial Officer at the relevant time, as appears from the Court record.
2. The Motion for Authorization has not been amended since this file was instituted.
3. On November 8, 2019, this Court granted, in part, the Defendants’ motion to adduce a voluminous amount of evidence that they considered relevant to respond to the Motion for Authorization, including five (5) lengthy sworn declarations and dozens of exhibits in support thereof.
4. As of that date, the evidence in this case emanated mainly from the Defendants, and not from the Plaintiff, at the authorization stage.
5. In 2020, the Plaintiff requested the communication of documentation from the Defendants in the hope of circumscribing the upcoming examinations of the Defendants’ affiants. The Defendants communicated documentation in waves over several months, as the parties collaborated to move the file forward.
6. Thousands of pages of documents were communicated by the Defendants, and reviewed by the Plaintiff and his retained expert, during this period.

7. On January 18, 2021, the Plaintiff examined Di Bert on his sworn declaration.
8. Di Bert's answers to undertakings were received on August 8, 2021, and subsequently reviewed by the Plaintiff and his retained expert.
9. The Plaintiff did not examine the other four affiants.
10. On January 15, 2022, the Plaintiff's expert completed his analysis of the Defendants' reporting and forecasting processes, in connection with the affirmation of Bombardier's 2018 FCF Guidance on August 2, 2018. A copy of this report was sent to the Court and the Defendants on January 17, 2022.
11. The Plaintiff now seeks leave to amend the Motion for Authorization to:
  - a) Allege facts discovered since the filing of the Motion for Authorization; and
  - b) Clarify some of the allegations in the Motion for Authorization in light of the information communicated or otherwise obtained since the institution of the proceedings.
12. The proposed amendments are laid out in the draft *Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action* (the "**Amended Motion for Authorization**"), communicated herewith as **Exhibit R-1**.
13. The proposed amendments are relevant. They will not unduly delay the proceedings. They are not contrary to the interests of justice. And they will not result in an entirely new application having no connection with the original one.
14. According to the Plaintiff, the authorization of the Court to amend pleadings is not required prior to the authorization of a class action, in accordance with Article 206 CCP. This application is therefore filed *de bene esse*.

## II - CONTEXT

15. The Motion for Authorization seeks to obtain leave from this Court to institute an action pursuant to (a) section 225.4 of the *Québec Securities Act*, chapter V-1.1, and (b) article 574 CCP.
16. The Plaintiff's recourse stems from the Defendants' misrepresentations, including their failure to make timely disclosure of material facts, concerning Bombardier's 2018 FCF Guidance which the Defendants stated to be "Breakeven  $\pm$ \$150 million".
17. On August 2, 2018, it was unreasonable for the Defendants to reaffirm this guidance when they knew or should have known that it would likely not be achieved.
18. The Plaintiff pleads that the price of Bombardier's securities was artificially inflated as of August 2, 2018 as a result of the Defendants' misrepresentations and it plummeted when the Defendants corrected Bombardier's 2018 FCF guidance on November 8, 2018. This putative class action seeks compensation for the resulting damages for all class members.

### III - GROUNDS FOR LEAVE TO AMEND

#### A- Recently Discovered Facts

19. Several new relevant facts have come to light since the filing of the Motion for Authorization.
20. Not that it matters, but most of those new facts emanate from the evidence communicated by the Defendants in their affidavits and documentary productions related thereto.
21. It is in the interests of justice and of the putative class members that these facts be added in the Motion for Authorization.
22. The Plaintiff therefore seeks this Honourable Court's permission to amend the Motion for Authorization and file the Amended Motion for Authorization, Exhibit R-1.

#### B- Clarification of Allegations

23. The Plaintiff also seeks permission to make certain amendments set forth in the Amended Motion for Authorization in order to refine and complete his extant allegations.
24. Once again, the amendments sought are in the interests of the putative class members and in the interests of justice.

#### FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

**GRANT** this *De Bene Esse* Application for Leave to Amend the Motion for Authorization;

**AUTHORIZE** the amendments laid out in the *Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action* attached hereto, and the filing of said proceeding;

**RENDER** any other order that it considers useful or necessary to safeguard the rights of the putative class members and of the parties;

**THE WHOLE** without costs, save in the event of contestation.

MONTRÉAL, this 31<sup>st</sup> day of January, 2022

(s) *Faguy & Co.*

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#### FAGUY & CO. BARRISTERS & SOLICITORS INC.

Attorneys for the Plaintiff

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**DENIS GAUTHIER**

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**LIST OF EXHIBITS**

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**Exhibit R-1:** *Draft Amended Motion for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act and Application for Authorization to Institute a Class Action.*

MONTRÉAL, this 31<sup>st</sup> day of January, 2022

**(s) Faguy & Co.**

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**FAGUY & CO. BARRISTERS & SOLICITORS INC.**

Attorneys for the Plaintiff

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**NOTICE OF PRESENTATION**

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**TO:** Mtre Jean Bertrand  
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Attorneys for the Defendants

In the event of contestation, **TAKE NOTICE** that this *De Bene Esse Application for Leave to Amend the Motion for Authorization* shall be presented for adjudication before the Honourable Christian Immer, S.C.J., on **March 21, 2022, at 9:30 a.m.**, at the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal (Québec), H2Y 1B6, or by any electronic means determined by the Court.

**GOVERN YOURSELVES ACCORDINGLY.**

MONTRÉAL, this 31<sup>st</sup> day of January, 2022

**(s) Faguy & Co.**

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**FAGUY & CO. BARRISTERS & SOLICITORS INC.**

Attorneys for the Plaintiff

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<p><b>MOTION FOR LEAVE TO AMEND THE MOTION FOR AUTHORIZATION</b></p>	
<p><b>FAGUY &amp; CO.</b> BARRISTERS &amp; SOLICITORS INC.</p>	
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