

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001281-233

**SUPERIOR COURT**  
**(Class Actions)**

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J [REDACTED] R [REDACTED], having an elected domicile at 4101 Sherbrooke St. West, Westmount, District of Montreal, Province of Quebec, H3Z 1A7

Applicant

v.

**ROGERS COMMUNICATIONS CANADA INC.**, legal person having a principal establishment at 4000-800 rue De La Gauchetiere Ouest, Montreal, district of Montreal, Province of Quebec, H5A 1K3

and

**ROGERS COMMUNICATIONS INC.**, legal person having a principal establishment at 4000-800 rue De La Gauchetiere Ouest, Montreal, district of Montreal, Province of Quebec, H5A 1K3

and

**FIDO SOLUTIONS INC.**, legal person having a principal establishment at 4000-800 rue De La Gauchetiere Ouest, Montreal, district of Montreal, Province of Quebec, H5A 1K3

Defendants

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
**(ARTICLES 571 AND FOLLOWING C.C.P.)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. The Applicant seeks authorization to institute a class action on behalf of the following class and subclass of which he is a member, namely:

**“Rogers Infinite” Class:**

All natural and legal persons in Canada who subscribed to Rogers’ Infinite wireless phone plans.

**“Roam Like Home” Class:**

All natural and legal persons in Canada who subscribed to Rogers’ Infinite wireless phone plans.

or any other class to be determined by the Court;

2. The Defendants (herein referred to collectively as “**Rogers**”), offer consumers wireless services under the names “Rogers Wireless”, “Fido” and “Chatr”. Extracts of the CIDREQ for the Defendants are communicated herewith *en liasse* as **Exhibit P-1**;
3. During the Class Period, Rogers advertised that its “Infinite Plans” had “unlimited” data, but failed to disclose to their customers that there were significant reductions in data speed (referred to in the industry as “**throttling**”), after a Rogers subscriber reached a certain data cap;
4. During the Class Period, Rogers also advertised and offered a “Roam Like Home” service (for either \$10.00 or \$15.00 per day plus taxes) and similarly failed to disclose to their customers that they were throttling on other networks;
5. The term “Roam Like Home” is therefore also misleading because subscribers are not able to use their Rogers cell phone (and service) “like home” and actually received services at significantly reduced data speeds when using the “Roam Like Home” service advertised and sold deceitfully as such by Rogers;
6. It is worth noting that Rogers’ main competitors, Telus and Bell appear not to engage in this prohibited and deceptive marketing practice, which gives Class Members the false impression that they can use their phone and Rogers service “like home” when abroad, which is false;
7. For example, Bell calls its similar service “*Roam Better*” and Telus calls its service Easy Roam, as it appears from screen captures communicated *en liasse* as **Exhibit P-2**;
8. On December 1, 2023, the Federal Court of Canada granted the Competition Bureau’s request to obtain a court order to advance its investigation into Rogers’ marketing practices, as it appears from the order communicated as **Exhibit P-3**;
9. On December 4, 2023, the Competition Bureau of Canada issued a news release

titled “*Competition Bureau obtains a court order to advance investigation into Rogers’ marketing practices*”, communicated as **Exhibit P-4**, and which states:

The Competition Bureau has obtained a court order to advance its investigation into certain alleged marketing practices by Rogers Communications Inc. and its subsidiary, Rogers Communications Canada Inc.

The order, granted by the Federal Court of Canada requires Rogers and its subsidiary to produce records and information relevant to the Bureau's investigation.

The Bureau’s investigation involves claims made by Rogers when promoting its Infinite wireless phone plans. In particular, the Bureau is examining claims that the plans have unlimited data, when there are allegedly significant reductions in data speed, known as throttling, after a subscriber reaches a certain data cap.

The Bureau is looking to determine if Rogers’ marketing practices raise concerns under the civil deceptive marketing provisions of the Competition Act. There is no conclusion of wrongdoing at this time.

10. Applicant communicates the guidance for advertisers in the telecommunications industry, published by the Competition Bureau in 2017, warning against enticing consumers with claims that promise unlimited services, only to impose additional mandatory fees or caps as **Exhibit P-5**;
11. The word “**infinite**” – as used by Rogers in its advertising – is defined as “extending indefinitely”, “subject to no limitation or external determination” and “extending beyond, lying beyond, or being greater than any preassigned finite value however large”, as it appears from **Exhibit P-6**;
12. The problem is that the term “infinite” – as used by Rogers in its advertising – is misleading because, while the usage of data is theoretically unlimited, given that Rogers throttles (significantly reducing browsing speeds) the subscriber is unable to adequately use their device (for example, any data-demeaning services, such as multimedia platforms YouTube and streaming services), which was the case for the Applicant;
13. Rogers is well aware of this issue, as it appears from a 2019 article titled “*Rogers increases Infinite plan throttle speeds from 256Kbps to 512Kbps*”, communicated as **Exhibit P-7**;
14. The Applicant brings this action because she wants to hold Rogers accountable for using the misleading terms “*Roam Like Home*” and “*Infinite*” and to obtain compensation for all Class Members;

**I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (S. 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

15. The Applicant has been a client of Rogers for several years and currently has the Rogers “Infinite Plan +10”, as it appears from **Exhibit P-8**;
16. The Applicant communicates her current contract with Rogers as **Exhibit P-9**;
17. The Applicant has paid \$10.00 to \$15.00 per day for the Rogers “Roam Like Home” service, as it appears from **Exhibit P-10**;
18. To avoid repetition, Applicant refers to 2 to 13 above, as if fully recited at length in this section, and adds that her wireless services were certainly not “infinite” or unlimited as described and advertised by Rogers;
19. Additionally, when using “Roam Like Home” in Italy and in Florida, Applicant could not roam *like* home as Rogers throttled her wireless services to significantly lower speeds (because they were throttling on other networks);
20. Rogers used deceptive and illegal advertising, contrary to Quebec’s Consumer Protection Act (“**CPA**”) and the *Competition Act*, which had a fraudulent effect on the Applicant when she subscribed to the Rogers Infinite plan and when she agreed to pay a daily fee (\$10 or \$15 plus taxes) for Rogers Roam Like Home. Rogers also failed to provide the services it undertook to provide in violation of article 16 CPA.
21. As a result of Rogers’ misconduct, Applicant is entitled to claim compensatory and punitive damages in amounts to be determined on the merits;
22. Punitive damages are particularly appropriate – and important – in this case, especially when comparing Rogers’ conduct with that of Bell and Telus as alleged at paragraph 7 above;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

23. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
  - a) In the promotion and sale of its “Infinite” plans, did Rogers violate the CPA or the Competition Act, and, if so, are Class members entitled to either a reduction of their obligation, damages and/or punitive damages, and in what amounts?
  - b) In the promotion and sale of its “Roam Like Home” service, did Rogers violate the CPA or the Competition Act, and, if so, are Class members

entitled to either a reduction of their obligation, damages and/or punitive damages, and in what amounts?

**C) THE COMPOSITION OF THE CLASS**

24. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
25. The Applicant conservatively estimates the number of persons included in the two proposed Classes and to be in the millions;
26. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of Rogers;
27. Class members are very numerous and are dispersed across the province and across Canada;
28. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
29. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

30. The Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
  - a) She is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
  - b) She is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) Her interests are not antagonistic to those of other Class members;
31. Additionally, the Applicant respectfully adds that:
  - a) She mandated her attorneys to file the present application for the sole purpose of having her rights, as well as the rights of the other members, recognized and protected so that they can receive an adequate compensation according to the law;
  - b) She has the time, energy, will and determination to assume all the

responsibilities incumbent upon her in order to diligently carry out the action (in fact she has already adequately assumed this role in other class actions);

- c) She cooperates and will continue to fully cooperate with her attorneys;
- d) She understands the nature of the action;

## **II. DAMAGES**

- 32. In light of the foregoing allegations, damages may be claimed solidarily against the Defendants by Class members on account of each cause of action pursuant to section 253 or 272 CPA, the Civil Code of Quebec, the Competition Act, and the Common Law;

## **III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

- 33. The action that the Applicant wishes to institute on behalf of the members of the Class is : (i) an action for a reduction of obligations pursuant to s. 272(c) CPA; (ii) in damages and punitive damages pursuant to s. 272 CPA; and (iii) an action in civil liability;
- 34. The conclusions that the Applicant wishes to introduce by way of an originating application are:

**ALLOW** the class action of the Representative Plaintiff and the members of the Class;

**CONDEMN** the Defendants, solidarily, to pay the Class members an amount to be determined in damages or (reduction of obligations) and **ORDER** that this condemnation be subject to collective recovery;

**CONDEMN** the Defendants, solidarily, to pay the Class members punitive damages in an aggregate amount to be determined and **ORDER** that this condemnation be subject to collective recovery;

**CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

**ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the

costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

#### **IV. JURISDICTION**

35. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal;
36. The Applicant invokes articles 3148 (2), (3) or 3136 C.C.Q. to sue the Defendants in the province of Quebec on behalf of all Class members;
37. With respect to the criteria of article 3148(2), Rogers owns an establishment in Quebec (6315 Chemin de la Côte-de-Liesse), as it appears from **Exhibit P-11** and the dispute includes and relates to its activities in Quebec;

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

1. **AUTHORIZE** the bringing of a class action in the form of an originating application for a reduction of obligations (or damages) pursuant to s. 272(c) CPA, and in damages and punitive damages pursuant to s. 272 CPA, as well as an action in civil liability;
2. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Classes herein described as:

##### **“Rogers Infinite” Class:**

All natural and legal persons in Canada who subscribed to Rogers’ Infinite wireless phone plans.

##### **“Roam Like Home” Class:**

All natural and legal persons in Canada who subscribed to Rogers’ Infinite wireless phone plans.

or any other class to be determined by the Court;

3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
  - a) In the promotion and sale of its “Infinite” plans, did Rogers violate the CPA or the Competition Act, and, if so, are Class members entitled to either a reduction of their obligation, damages and/or punitive damages, and in what amounts?
  - b) In the promotion and sale of its “Roam Like Home” service, did Rogers violate the CPA or the Competition Act, and, if so, are Class members entitled to either a reduction of their obligation, damages

and/or punitive damages, and in what amounts?

4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
  1. **ALLOW** the class action of the Representative Plaintiff and the members of the Class;
  2. **CONDEMN** the Defendants, solidarily, to pay the Class members an amount to be determined in damages or (reduction of obligations) and **ORDER** that this condemnation be subject to collective recovery;
  3. **CONDEMN** the Defendants, solidarily, to pay the Class members punitive damages in an aggregate amount to be determined and **ORDER** that this condemnation be subject to collective recovery;
  4. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;
  5. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  6. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
  7. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
5. **ORDER** the publication of a notice to the class members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
6. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;
7. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;
8. **RENDER** any other order that this Honourable Court shall determine;



**9. THE WHOLE** with costs including publication fees.

Montreal, December 4, 2023

Montreal, December 4, 2023

*(s) Lex Group Inc.*

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**LEX GROUP INC.**

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*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

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**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the **Superior Court** in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:**            *En liasse*, extracts of the CIDREQ for the Defendants;
- Exhibit P-2:**            *En liasse*, extracts of the Bell and Telus websites;
- Exhibit P-3:**            Federal Court order dated December 1, 2023;
- Exhibit P-4:**            December 4, 2023, Competition Bureau news release titled "*Competition Bureau obtains a court order to advance investigation into Rogers' marketing practice*";
- Exhibit P-5:**            Guidance for advertisers in the telecommunications industry, published by the Competition Bureau in 2017;
- Exhibit P-6:**            Definition of the word "infinite";
- Exhibit P-7:**            Copy of 2019 article titled "*Rogers increases Infinite plan throttle speeds from 256Kbps to 512Kbps*";
- Exhibit P-8:**            Applicant's Rogers invoice and Infinite plan details;

- Exhibit P-9:** Applicant's contract with Rogers;
- Exhibit P-10:** *En liasse*, Applicant's Rogers invoices;
- Exhibit P-11:** *En liasse*, extract from the property assessment roll and the tax statement for the property owned by Rogers situated at 6315 Chemin de la Côte-de-Liesse.

These exhibits are available on request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, December 4, 2023

Montreal, December 4, 2023

*(s) Lex Group Inc.*

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**LEX GROUP INC.**

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*(s) LPC Avocat Inc.*

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**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 C.P.C.)

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**TO: ROGERS COMMUNICATIONS CANADA INC.**  
4000-800 rue De La Gauchetiere Ouest  
Montreal, Quebec, H5A 1K3

**ROGERS COMMUNICATIONS INC.**  
4000-800 rue De La Gauchetiere Ouest  
Montreal, Quebec, H5A 1K3

**FIDO SOLUTIONS INC.**  
4000-800 rue De La Gauchetiere Ouest  
Montreal, Quebec, H5A 1K3

**Defendants**

**TAKE NOTICE** that Applicant's *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELVES ACCORDINGLY.**

Montreal, December 4, 2023

Montreal, December 4, 2023

*(s) Lex Group Inc.*

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**LEX GROUP INC.**

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*(s) LPC Avocat Inc.*

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