

CANADA

SUPERIOR COURT  
(Class Actions)

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PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°. : 500-06-001164-215

STEVE HOLCMAN

- and -

TARIQUE PLUMMER

Applicants

v.

LIGHTSPEED COMMERCE INC.

- and -

DAX DASILVA, JEAN PAUL CHAUVET,  
MARIE-JOSÉE LAMONTHE, PATRICK  
PICHETTE, ROB WILLIAMS, PAUL  
McFEETERS, MERLINE SAINTIL,  
DANIEL MICAŁ, ASHA BAKSHANI,  
BRANDON NUSSEY

- and -

PRICEWATERHOUSECOOPERS LLP

Defendants

**APPLICATION FOR AN ORDER (I) COMPELLING APPLICANTS' LAWYERS TO  
CEASE ALL CONTACTS, DIRECTLY OR INDIRECTLY, WITH DEFENDANT  
LIGHTSPEED COMMERCE INC.'S CURRENT OR FORMER REPRESENTATIVES,  
AND (II) COMPELLING APPLICANTS' LAWYERS TO COMMUNICATE ALL  
RELEVANT INFORMATION CONCERNING THEIR IMPROPER CONTACTS WITH  
LIGHTSPEED COMMERCE INC.'S CURRENT AND FORMER REPRESENTATIVES**  
(Sections 25 and 49 of the *Code of Civil Procedure* and Section 120 of the *Code of  
Professional Conduct of Lawyers*)

TO THE HONOURABLE JUSTICE GRANOSIK OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE  
DEFENDANTS LIGHTSPEED COMMERCE INC., DAX DASILVA, JEAN PAUL  
CHAUVET, MARIE-JOSÉE LAMOTHE, PATRICK PICHETTE, ROB WILLIAMS, PAUL  
MCFEETERS, MERLINE SAINTIL, DANIEL MICAŁ, ASHA BAKSHANI AND  
BRANDON NUSSEY, RESPECTFULLY SUBMIT THE FOLLOWING:

## **I. INTRODUCTION**

1. As further detailed below, the Defendant Lightspeed Commerce Inc. (“**Lightspeed**”) has serious grounds to believe that the *avocats-conseils* for the Applicants, Faguy & Co. Barristers and Solicitors Inc. (“**Faguy**”), has been, either directly or indirectly through a third-party investigation firm, contacting former high-ranking representatives of Lightspeed with the view to obtain information relevant to the dispute in this case, the whole in contravention of Section 120 of the *Code of Professional Conduct of Lawyers*<sup>1</sup> (“**CPCL**”) which prohibits a lawyer from communicating with a person, including former representatives of a legal person, whom he/she knows to be represented by a lawyer.

## **B. CONTEXT**

2. On October 1, 2021, the Applicants, then represented solely by LPC Avocat Inc., filed a hybrid application for authorization of a class action pursuant to ss. 574 and ff. of the *Code of Civil Procedure*, CQLR c. C-25.01 (“**CCP**”) and for authorization to bring an action pursuant to s. 225.4 of the *Securities Act (Quebec)* (CQLR, c. V-1.1) (the “**Securities Act**”) against the Defendants, including Lightspeed (collectively, the “**Application**”).
3. On October 15, 2021, the undersigned lawyers filed an Answer to the summons on behalf of the Defendants (except PwC) and served it on the Applicants’ lawyers.
4. On February 14, 2022, the Applicants filed an application for leave to amend their Application, which was granted on April 11, 2022.
5. On June 17, 2022, the Applicants, now represented by both LPC Avocat Inc. and Faguy as *avocats-conseils*, sought leave to re-amend their Application and communicated a *Re-Amended Application for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Quebec Securities Act* (the “**Re-Amended Application**”). The Court granted leave to amend on September 8, 2022.
6. In their Re-Amended Application, the Applicants essentially allege that Lightspeed misrepresented its growth, customer accounts, gross transaction volume and total addressable market before becoming public and until corrective disclosures were made respectively on September 29, 2021, and on November 4, 2021.
7. According to the Applicants, the short seller report titled “Putting the Brakes on Lightspeed”, published by Spruce Point Capital Management LLC on September 29, 2021, constituted a corrective disclosure, since it revealed the alleged misrepresentations made by Lightspeed.
8. In support of their Re-Amended Application, Applicants rely on, *inter alia*, Exhibit P-71, a series of investigative memorandums prepared by an investigation firm named On Point Investigations LLC, which contain heavily

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<sup>1</sup> CQLR c B-1, r 3.1.

redacted notes of meetings which allegedly took place between unidentified third parties, namely private investigators and former Lightspeed employees. The redaction of the investigative memorandums is improper and prevents Defendants from identifying these former employees and adequately defending themselves.

9. On or about January 9, 2023, Defendants filed an *Application for Leave De Bene Esse to Examine Proposed Class Representatives and Plaintiffs' Experts Under the Québec Securities Act, for Leave to Examine Proposed Class Representatives Under the Code of Civil Procedure and to Strike Exhibit P-71*, seeking relief:
  - a) to examine the proposed class representatives and to cross-examine the Applicants' experts; and
  - b) to strike Exhibit P-71 from the record.

**C. FAGUY'S IMPROPER CONDUCT IN THESE PROCEEDINGS**

10. It has recently come to Defendants' attention that Faguy has been contacting former employees, including at least one former high-ranking representative of Lightspeed, through a third-party investigation firm named Group Trak ("**Group Trak**"), the whole with the view to obtain information relevant to the dispute in this case, as further explained below.
11. Indeed, via the platform LinkedIn, Mr. Étienne Rouillard, the Investigations Manager for Group Trak, contacted Ms. Lory Ajamian, who was employed as Vice-President of Marketing at Lightspeed between February 2019 and March 2021, and Executive Vice-President of Marketing between March 2021 and May 2022, with the following message:

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TODAY



**Etienne Rouillard** · 11:37 am

**Lightspeed case - class action**

Hello Mrs Ajamian,

My name is Etienne Rouillard and I am the Investigations Manager for Groupe Trak.

We have been mandated by the firm Faguy et Co Avocats to contact former employees of Lightspeed to find out if they would accept that a lawyer from the firm contact you as a witness.

Please let me know if you are interested.

Etienne Rouillard  
Gestionnaire enquêtes et protection chez  
Groupe Trak

as appears from a screenshot of the LinkedIn conversation between Ms. Ajamian and Mr. Rouillard, a copy of which is communicated herewith as **Exhibit R-1**.

12. The above unequivocally demonstrates that:
  - a) Faguy mandated Group Trak;
  - b) to contact former employees of Lightspeed, including at least one high ranking representative;
  - c) in an attempt to put these former employees in direct contact with Faguy;
  - d) the whole with the view to obtain information relevant to the dispute in this case.
13. It is submitted that this clearly constitutes improper conduct which is prohibited by Section 120 CPCL.
14. Section 120 CPCL states that a “[...] *lawyer must not communicate in a matter with a person whom he knows to be represented by a lawyer [...]*”. Quebec Courts have confirmed that the prohibition extends to a company’s ex-employee where the ex-employee either (1) held a strategic position in the company (i.e., possessed the power to make decisions on behalf of the company or bind the company) and actively participated in the facts that led to the dispute, or (2) was involved in the litigation or occupied a top-ranking position when the litigation unfolded.<sup>2</sup>
15. In the case at hand, Ms. Ajamian clearly qualifies as an ex-employee under Article 120 CPCL, as:
  - a) she occupied top-ranking positions at Lightspeed at the time of her employment, namely Vice-President of Marketing and Executive Vice-President of Marketing; and
  - b) she occupied such positions when the facts relevant to this dispute unfolded and when the present litigation unfolded, notably at the time:
    - i) of Lightspeed’s IPO in 2019 and the years following;
    - ii) when the purported corrective disclosures were made respectively on September 29, 2021, and on November 4, 2021; and
    - iii) when the Applicants filed their Application on October 1, 2021.
16. Faguy’s improper conduct also sheds light on how Exhibit P-71, which contains heavily redacted notes of meetings between private investigators and former Lightspeed employees, likely came to be.

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<sup>2</sup> See *Churchill Falls (Labrador) Corporation Ltd. c. Hydro-Québec*, 2015 QCCA 782 at para. 27.

17. Therefore, not only are the Applicants' lawyers illegally contacting, either directly or indirectly, Lightspeed's former employees to obtain information relevant to the dispute in this case, but they are also relying on evidence, such as Exhibit P-71, which is likely the fruit of work prohibited under Article 120 CPCL.
18. Should this be the case, given the seriousness of such improper conduct under Quebec law, Lightspeed could be entitled to seek, *inter alia*, the disqualification of Applicants' lawyers as counsel on record in the present proceedings.
19. In light of the foregoing and in order to properly and thoroughly assess the extent of Faguy's improper conduct in these proceedings, Lightspeed requests that this Court order Applicants' lawyers to immediately cease all contacts with current or former representatives of Lightspeed and to disclose all relevant information regarding their communications or attempted communications, whether directly or indirectly, with current or former representatives of Lightspeed.
20. Moreover, Lightspeed hereby requests that this Court reserve all of Lightspeed's rights and recourses in connection with Faguy's improper conduct, including relief for the disqualification of Applicants' lawyers in these proceedings.
21. Considering that the facts that may come to light as a result of this proceeding may lead to a motion to disqualify the attorneys representing the Plaintiffs, it is urgent that the present Application be adjudicated before any pending proceedings.
22. Moreover, it appears from the Applicants' argument plan filed in support of their contestation of Defendants' preliminary motions that they invoke litigation privilege with respect to Exhibit P-71 (at para. 96). Although Lightspeed denies the application of such privilege, Lightspeed submits that the present Application must be adjudicated before its preliminary motion to strike Exhibit P-71, since the evidence that may come to light as a result of this proceeding is relevant to determine whether the exception to litigation privilege based on improper conduct applies to Exhibit P-71.

**WHEREFORE MAY IT PLEASE THIS HONOURABLE COURT:**

**GRANT** the present Application;

**ORDER** Applicants' lawyers to immediately cease all communications or attempted communications, whether directly or indirectly including through a third-party investigation firm, including Group Trak, with any current or former representative of Lightspeed Commerce Inc. ("**Lightspeed**");

**ORDER** Applicants' lawyers, within ten (10) days of the Order to be rendered herein, to communicate to the undersigned counsel a sworn affidavit detailing the following:

- i) the identity of the current or former representatives of Lightspeed that were contacted, whether directly or indirectly (including through Group Trak or On Point Investigations LLC), by Applicants' lawyers;

- ii) the dates on which these representatives were contacted;
- iii) the means by which the communications were made, including whether these communications took place during a meeting or by telephone or other technological means;
- iv) the duration of these communications; and
- v) the identity of those who have contacted or were instructed to contact such representatives;

**ORDER** Applicants' lawyers, within ten (10) days of the Order to be rendered herein, to communicate to the undersigned counsel all written communications exchanged between current or former representatives of Lightspeed and Applicants' lawyers or any third-party acting under Applicants' lawyers' instructions (including Group Trak and On Point Investigations LLC);

**ORDER** Applicant's lawyers, within ten (10) days of the Order to be rendered herein, to communicate any memorandums, notes or other document summarizing the communications or attempted communications by the Applicant's lawyers or third parties acting on their behalf (including Group Trak and On Point Investigations LLC) and Lightspeed employees or past employees;

**ORDER** Applicant's lawyers, within ten (10) days of the Order to be rendered herein, to communicate any mandate letter signed between the Applicants' lawyers and third-party representatives tasked with communicating with Lightspeed's present and past employees, including Group Trak and On Point Investigations LLC;

**RESERVE** Lightspeed's rights to seek in due course all appropriate relief and remedies with respect to Applicants' counsel's improper conduct in these proceedings, including to seek the Applicants' counsel's disqualification as counsel on record in the present proceedings;

**THE WHOLE** with costs.

**MONTREAL**, February 17, 2023



**Stikeman Elliott LLP**

1155 René-Lévesque Blvd. W.

41<sup>st</sup> Floor

Montréal (Québec) H3B 3V2

**Me Stéphanie Lapierre**

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**Me Frédéric Paré**

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**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
(Class Action)

No: 500-06-001164-215

**STEVEN HOLCMAN**

- and -

**TARIQUE PLUMMER**

Applicants

v.

**LIGHTSPEED COMMERCE INC. ET AL.**

Defendants

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

To: **LPC Avocat Inc.**  
c/o Mtre Joey Zukran  
276 Saint-Jacques Street, Suite 801  
Montréal, Québec, H2Y 1N3

**Faguy & Co.**  
c/o Mtres Elizabeth Meloche / Shawn K. Faguy  
329 de la Commune Street West, Suite 200  
Montréal, Québec, H2Y 2E1

Attorneys for Plaintiffs

To: **OSLER, HOSKIN & HARCOURT LLP**  
c/o c/o Mtres Éric Préfontaine / Frédéric Plamondon / Josy-Ann Therrien  
1000 de La Gauchetière Street West, Suite 2100  
Montréal, Québec H3B 4W5  
Attorneys for Defendant PricewaterhouseCoopers LLP

**TAKE NOTICE** that the *APPLICATION FOR AN ORDER (I) COMPELLING APPLICANTS' LAWYERS TO CEASE ALL CONTACTS, DIRECTLY OR INDIRECTLY, WITH DEFENDANT LIGHTSPEED COMMERCE INC.'S CURRENT OR FORMER REPRESENTATIVES, AND (II) COMPELLING APPLICANTS' LAWYERS TO COMMUNICATE ALL RELEVANT INFORMATION CONCERNING THEIR IMPROPER CONTACTS WITH LIGHTSPEED COMMERCE INC.'S CURRENT AND FORMER*

*REPRESENTATIVES (Sections 25 and 49 of the Code of Civil Procedure and Section 120 of the Code of Professional Conduct of Lawyers)* will be presented for hearing before the Honourable Lukasz Granosik of the Superior Court of Québec, on **February 22, 2023**, at **9:30 a.m.**, in **Room 15.09** of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montreal, Québec, H2Y 1B6.

**GOVERN YOURSELVES ACCORDINGLY.**

Montréal, February 17, 2023



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**STIKEMAN ELLIOTT LLP**

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Montréal (Québec) H2B 3V2

**Mtre. Stéphanie Lapierre**

Tel.: (514) 397-3029

Email: Slapierre@stikeman.com

**Mtre. Frédéric Paré**

Tel: (514) 397-3690

Email : Fpare@stikeman.com

**ATTORNEYS FOR DEFENDANTS  
LIGHTSPEED COMMERCE INC.  
(PREVIOUSLY LIGHTSPEED POS  
INC.), DAX DASILVA, JEAN PAUL  
CHAUVET, MARIE-JOSÉE LAMOTHE,  
PATRICK PICHETTE, ROB WILLIAMS,  
PAUL MCFEETERS, MERLINE SAINTIL,  
DANIEL MICKAK, ASHA BAKSHANI AND  
BRANDON NUSSEY**



**SUPERIOR COURT  
(Class Actions)**

**No : 500-06-001164-215**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**STEVE HOLCMAN**

**- and -**

**TARIQUE PLUMMER**

**Applicants**

**- v. -**

**LIGHTSPEED COMMERCE INC. ET AL.**

**Defendants**

**BS0350**

**File no. : 144699-1025**

**NOTICE OF PRESENTATION**

**ORIGINAL**

**Me Stéphanie Lapierre  
514 397 3029 | slapierre@stikeman.com**

**Me Frédéric Paré  
514 397 3690 | fpare@stikeman.com**

**STIKEMAN ELLIOTT  
Stikeman Elliott LLP LAWYERS  
1155 René-Lévesque Blvd. W., 41st Floor  
Montréal, Québec, Canada H3B 3V2**

CANADA

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

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PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

N°. : 500-06-001164-215

**STEVE HOLCMAN**

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v.

**LIGHTSPEED COMMERCE INC.**

- and -

**DAX DASILVA, JEAN PAUL CHAUVET, MARIE-  
JOSÉE LAMONTHE, PATRICK PICHETTE, ROB  
WILLIAMS, PAUL McFEETERS, MERLINE  
SAINTIL, DANIEL MICAÏ, ASHA BAKSHANI,  
BRANDON NUSSEY**

- and -

**PRICEWATERHOUSECOOPERS LLP**

Defendants

**LIST OF EXHIBITS**

| <b>Exhibit</b> | <b>Description</b>  |
|----------------|---|
| R-1            | Screenshot of the LinkedIn conversation between Ms. Ajamian and Mr. Rouillard |

**MONTREAL**, February 17, 2023

*Stikeman Elliott*

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**Stikeman Elliott LLP**

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**ATTORNEYS FOR DEFENDANTS  
(EXCEPT PWC)**

---

TODAY

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**Etienne Rouillard** · 11:37 am

**Lightspeed case - class action**

Hello Mrs Ajamian,

My name is Etienne Rouillard and I am the Investigations Manager for Groupe Trak.

We have been mandated by the firm Faguy et Co Avocats to contact former employees of Lightspeed to find out if they would accept that a lawyer from the firm contact you as a witness.

Please let me know if you are interested.

Etienne Rouillard  
Gestionnaire enquêtes et protection chez  
Groupe Trak

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**À:** Amara Khy  
**Objet:** RE: NOTIFICATION | 500-06-001164-215 | STEVE HOLCMAN ET AL. v. LIGHTSPEED  
COMMERCE INC. ET AL. - Application Regarding Faguy's Improper Conduct (Contacting  
Former Representatives of Lightspeed)

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**De :** Amara Khy <[AKhy@stikeman.com](mailto:AKhy@stikeman.com)>  
**Envoyé :** Friday, February 17, 2023 9:56 AM  
**À :** [jzukran@lpclex.com](mailto:jzukran@lpclex.com); Elizabeth Meloche <[emeloche@faguyco.com](mailto:emeloche@faguyco.com)>; [skf@faguyco.com](mailto:skf@faguyco.com); [eprefontaine@osler.com](mailto:eprefontaine@osler.com);  
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**Objet :** NOTIFICATION | 500-06-001164-215 | STEVE HOLCMAN ET AL. v. LIGHTSPEED COMMERCE INC. ET AL. -  
Application Regarding Faguy's Improper Conduct (Contacting Former Representatives of Lightspeed)

**TRANSMISSION SLIP OF A NOTIFICATION BY EMAIL (Art. 134 C.P.C.)**

**SENDER(S)**

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**Name :** **Mtres Elizabeth Meloche / Shawn K. Faguy**  
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Place, date and time of the transmission Montreal, February 17, 2023  
Time : See time of transmission of this e-mail

Nature of document **Application for an Order (i) Compelling Applicants' Lawyers to Cease All Contacts, Directly or Indirectly, with Defendant Lightspeed Commerce Inc.'s Current or Former Representatives, and (ii) Compelling Applicants' Lawyers to Communicate All Relevant Information Concerning their Improper Contacts with Lightspeed Commerce Inc.'s Current and Former Representatives**

Court Docket Number: 500-06-001164-215  
Our file: 144699-1025  
Number of pages transmitted 13 pages

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**Amara Khy**

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**SUPERIOR COURT**

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**N° 500-06-001164-215**

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**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

---

**STEVE HOLCMAN et Al.**

**Applicants**

**vs.**

**LIGHTSPEED COMMERCE INC. et ALS.**

**Defendants**

**BS0350**

**Our File: 144699-1025**

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**APPLICATION REGARDING FAGUY'S IMPROPER  
CONDUCT (CONTACTING FORMER  
REPRESENTATIVES OF LIGHTSPEED)**

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**ORIGINAL**

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