

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO:

500-06-000738-159

SUPERIOR COURT
(Class Action)

ROGER CHASLES, a person residing at
2020 Rue Montcalm, St. Hubert, Québec, J4T
2C7

KRISTOPHER CHASLES, a person residing
at 2020 Rue Montcalm, St. Hubert, Québec,
J4T 2C7

Petitioners

v.

BELL CANADA INC., a legal person duly
constituted under the laws of Canada, having
its principal place of business at 1 Carrefour
Alexander-Graham-Bell, A-7, Verdun,
Québec, H3E 3B3

and

BELL MOBILITY INC., a legal person duly
constituted under the laws of Canada, having
its principal place of business at 1 Carrefour
Alexander-Graham-Bell, A-7, Verdun,
Québec, H3E 3B3.

and

VIRGIN MOBILE CANADA., a legal person
duly constituted under the laws of Canada,
having its principal place of business at 1
Carrefour Alexander-Graham-Bell, A-7,
Verdun, Québec, H3E 3B3.

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
OBTAIN THE STATUS OF REPRESENTATIVE**
(Art. 1002 C.C.P. and following)

IROITS DE GREFFE
Gouvernement du Québec
Palais Justice MONTREAL

0310281-0152-1633
125,00
2015-04-14

**TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER STATES
AS FOLLOWS:**

GENERAL PRESENTATION

1. The Petitioners wish to institute a class action on behalf of the following groups, of which they are members (collectively, the "Class" or "Class Members"):

all persons in Quebec who were Customers between November 16, 2013 and April 14, 2015. Excluded from the Class are the Respondents' employees board members, officers and directors;

or such other class definition as may be approved by the Court.

DEFINED TERMS

2. The following definitions apply for the purpose of this motion to authorize the bringing of a class action:
- (a) "Ad Profile" means information compiled in the **Relevant Advertising Program** defining the audience to which a third party advertiser wishes to deliver a targeted advertisement;
 - (b) "Bell Canada" means the Respondent Bell Canada;
 - (c) "Bell Mobility" means collectively the Respondents Bell Mobility Inc. and Virgin Mobile Canada;
 - (d) "Bell Mobility Services" means cell phone services including a data plan provided by **Bell Mobility to Class Members**;
 - (e) "Class" and "Class Members" all persons in Quebec who were **Customers** between November 16, 2013 and April 14, 2015. Excluded from the **Class** are the Respondents' employees, board members, officers and directors;
 - (f) "Class Period" means the period from November 16, 2013 and ongoing;
 - (g) "Contract" or "Contracts" means the standard form agreement entered into between **Bell Mobility** and the **Class Members** for the provision of **Bell Mobility Services**;

- (h) "**Customer**" or "**Customers**" means a person who entered into a **Contract** or is listed in the **Contract** as a Customer of **Bell Mobility**;
- (i) "**Customer Profile**" means information compiled by **Bell** regarding a particular **Class Member** consisting of **Demographic Information** and **Network Usage Information**;
- (j) "**Demographic Information**" means information compiled as part of a **Customer Profile** consisting of billing address, location, age, gender, primary language, credit score, average revenue per user, plan type and device information;
- (k) "**Mobile Device**" means a small, usually handheld, computing device with an operating system and with the capability to run application software, and for which telecommunication services are necessary or recommended;
- (l) "**Network Usage Information**" means information compiled as part of a **Customer Profile** consisting of specific **URLs** visited and usage of applications;
- (m) "**PIPEDA**" means the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5;
- (n) "**PPIPS**" means *An Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c.P-39.1;
- (o) "**Relevant Advertising Program**" or "**RAP**" means a program implemented by the Respondents on November 16, 2013, by which the Respondents created **Customer Profiles** for the Petitioners and **Class Members** to facilitate the delivery of targeted advertisements by third party advertisers;
- (p) "**RAP Information**" means the **Network Usage Information**, interest categories and **Demographic Information** used by the Respondents in the **RAP**;
- (q) "*Telecommunications Act*" means the *Telecommunications Act*, SC 1993, c 38; and
- (r) "**URL**" means Universal Resource Locator, or web address.

THE PARTIES

The Petitioner

3. The Petitioners, Roger and Kristopher Chasles reside in St. Hubert, Québec. Kristopher is the son of Roger.

4. Roger entered into a Contract with Virgin Mobile Canada for the provision of Bell Mobility Services, including a data plan for internet usage, on his sons' Mobile Device. Roger was a Customer of Bell Mobility during the Class Period. His account includes his own name and those of his two sons, Kristopher and Jamie Chasles who use the Mobile Devices.
5. At no time were Roger or Kristopher aware of the RAP.

The Respondents

6. The Respondent, Bell Canada is a corporation incorporated under the laws of Canada with its head office located in Verdun, Quebec. It carries on the business of, *inter alia*, selling telecommunications services for Mobile Devices and in residential homes and commercial spaces.
7. Bell Canada is the parent corporation of Bell Mobility Inc.. Bell Canada created or oversaw and directed the creation of RAP. Bell Canada directed its own employees and those of its subsidiaries to collect Bell Mobility's Customers' Demographic and Network Usage Information and Bell Canada sold, either directly or through its subsidiaries, that information to third party advertisers.
8. The Respondent, Bell Mobility Inc., is a corporation incorporated under the laws of Canada with its head office located in Verdun, Quebec. It carries on the business of, *inter alia*, selling Bell Mobility Services. At all material times, Bell Mobility Inc. was the parent corporation of Virgin Mobile Canada.

9. The Respondent, Virgin Mobile Canada, is a partnership under the laws of Canada with its head office located in Quebec. It carries on the business of, *inter alia*, selling Bell Mobility Services.
10. At all material times, Bell Mobility Inc. and Virgin Mobile Canada entered into Contracts with the Petitioners and Class Members for the provision of Bell Mobility Services.

THE FACTS

Overview

11. This motion and action concerns privacy breaches resulting from the unauthorized collection, use and retention of the personal information of Customers who have received Bell Mobility Services since November 15, 2013.
12. The Petitioners and Class Members all entered into contracts with the Respondents for the provision of Bell Mobility Services for their Mobile Devices, and were paying for the provision of those services on November 16, 2013 and thereafter.

Notice of the Relevant Advertising Program

13. Beginning in August 2013, the Respondents purported to announce that they would be collecting and tracking the URLs visited by Bell Mobility Customers on their Mobile Devices and using their Customers' Demographic Information, including their postal codes, gender, age range and payment patterns to deliver more relevant, targeted advertisements.
14. Between August 2013 and February 2014, Bell Mobility sent millions of notifications to Bell Mobility Customers through text messages, emails, and as part of their bills where it was represented that account and network usage information would be used to deliver ads

that are more relevant. The notifications included a link by which users could obtain more information about the program and/or opt out of it.

15. The Respondents named their plan to collect customer information the Relevant Advertising Program, or RAP, and launched it on November 16, 2013.
16. The manner in which the Respondents provided notice of the RAP to its Customers did not provide sufficient notice for the Customers to provide informed consent to participate in the RAP.

Customer Profiles and Ad Profiles

17. Under the auspices of the RAP, Bell Mobility, Virgin and Bell Canada have been tracking and collecting Network Usage Information and Demographic Information of Bell Mobility Customers to create a Customer Profile for each Class Member. Specifically, the Customer Profiles consist of the following information of each of their Customers:
 - a. URLs visited by Bell Mobility Customers using web browsers or apps on their Mobile Devices in both Canada and while roaming on foreign networks;
 - b. Billing address location including the city and full or partial postal codes;
 - c. Age;
 - d. Gender;
 - e. Primary language;
 - f. Credit score;
 - g. Average Revenue per User (based on monthly billing amounts);
 - h. Plan type; and
 - i. Device information.

18. Once Customer Profiles were created, the Respondents allowed third party advertisers to log on and create Ad Profiles, for a fee. These Ad Profiles define the audience of Bell Mobility Customers to whom the advertisers would like to deliver targeted ads. The Ad Profiles are comprised of a number of dimensions which correspond to a specific type of information in the Customer Profiles. For example, an advertiser could create an Ad Profile designed to define the audience of the ad to 26-30 year old males living in the City of Ottawa with below average credit and an interest in hockey.
19. Bell Mobility and/or Bell Canada then facilitated the delivery of targeted ads by the third party advertisers to Bell Mobility Customers whose Customer Profiles match the Ad Profile for that advertiser.

Opting Out

20. All Customers were subjected to the RAP. The only means by which a Customer could avoid being included in the RAP was to opt out of the program. Despite opting out, Bell continued to use Network Usage Information to further develop its Customer Profiles. It did not offer a way for Customers to opt out of the use of their information for the purposes of creating and augmenting their Customer Profile and offered no way for the Customers to have the information in their Customer Profiles deleted.
21. The notices Bell Mobility sent to its Customers notifying them about the RAP failed to identify that the Customers' credit score, account revenue or device type were also being used for the purposes of the RAP.
22. The Petitioners and the Class Members were not provided with accurate or complete information about the RAP as further detailed below, and therefore were unable to

provide informed consent to participating in the RAP. Customers were not adequately informed about the type and sensitivity of the information being tracked, collected, and used in the creation of their Customer Profiles.

The Office of the Privacy Commissioner of Canada's Findings

23. In the weeks following the announcement of the creation of the RAP, 170 complaints were made by Class Members to the Office of the Privacy Commissioner of Canada alleging that the RAP violated *PIPEDA*. Notwithstanding the complaints and investigation, the Respondents elected to go forward with the RAP.
24. The Office of the Privacy Commissioner conducted an extensive review of the alleged privacy breaches under *PIPEDA*. On April 7, 2015, the Office of the Privacy Commissioner issued a report on its findings, which concluded, *inter alia*, that the Respondents did not provide adequate disclosure of the information being collected pursuant to the RAP or obtain adequate consent of its Customers for the RAP. It recommended that Bell Mobility give its Customers an express choice regarding whether or not they wished to participate in the RAP and establish an opt in procedure. Bell Mobility and/or Bell Canada have now agreed to comply with the Privacy Commissioner's recommendation.
25. Specifically, the Privacy Commissioner found that:
 - a. the collection, use and disclosure of the credit scores of the Petitioners and the Class Members was inappropriate and violated section 5(3) of *PIPEDA*;
 - b. given the sensitivity of the information collected and the reasonable expectations of Bell Mobility's Customers, Bell Mobility was required to obtain the express consent of its Customers to enroll them in the RAP;

- c. the opt-out options for Bell Mobility Customers did not allow them to withdraw consent to the use of his or her information for its profiling purposes and did not explain to its Customers that opting out of the RAP did not result in Bell Mobility ceasing the use of Customer Information for profiling purposes; and
- d. Bell Mobility's notifications about RAP did not provide sufficient detail to its Customers to allow them to form the basis of meaningful consent to the RAP.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE CLASS MEMBERS

Breach of Contract

26. The Petitioners and the Class Members all entered into Contracts with Bell Mobility.

Under the Contracts, Bell Mobility agreed to provide the Petitioners and Class Members with Bell Mobility Services, including internet access on their Mobile Devices in exchange for fees.
27. All Contracts were similar or identical with respect to the terms associated with Bell's collection, retention, and disclosure of its Customers' personal information and contained the following express or implied terms:
 - a. That the Respondents would comply with all relevant statutory obligations regarding the collection, retention and disclosure of the Petitioners' and Class Members' personal information, including the obligations set out in sections 5 and 6 of the *PPIPS*;
 - b. That the Respondents would not disclose a Customer's personal information to a third party or parties, without the Petitioners' or Class Members' consent; and
 - c. That the Respondents would notify and obtain the express consent of the Petitioners and Class Members before disclosing their personal information, including their Demographic and Network Usage Information, to third parties.
28. Bell Mobility breached these express and implied terms of the Contracts with the Petitioners and the Class Members by failing to secure the informed consent of the

Petitioners and the Class Members to include their Demographic Information and Network Usage Information in the RAP.

29. Bell Mobility failed to comply with the statutory obligations set out in ss. 5 of the *PPIPS* that it only collect personal information by lawful means. As an implicit term of the Contracts, s. 5 of *PPIPS* was breached by Bell Mobility because the opt-out program was inadequate and therefore Class Members did not give their consent to Bell Mobility collecting their personal information. Without the Class Members' informed consent, Bell Mobility had no lawful means by which they could collect information relating to their Customers' Network Usage Information.
30. By collecting the Demographic and Network Usage Information for Customer Profiles, tracking their Customers' web browsing and application activity, and processing this information into a manner in which advertising opportunities could be sold to third parties without the Class Members' consent and in violation of *PPIPS*, the Respondents Bell Mobility Inc. and Virgin Mobile Canada fundamentally breached the Contract.
31. The Class claims damages for breach of contract equivalent to all fees paid for data services during the Class Period and mental distress or alternatively nominal damages.
32. The Class Members reasonably expected that in exchange for a monthly fee to use Bell Mobility as an internet provider for mobile devices, the Respondents would not covertly spy on every aspect of usage, collect the usage data, or sell it to third parties.

Breach of section 219 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1

33. The Respondents are subject to the obligations of the *Consumer Protection Act*, which prohibits persons who enter into agreements or conduct transactions with consumers from

engaging in prohibited practices. The RAP constitutes a prohibited practice because the representations that the Respondents made to their Customers in relation to the RAP were false and misleading contrary to section 219, the particulars of which are as follows:

- a. At the time that the Customers purchased Bell Mobility Services, the Respondents represented through the Contract that it would comply with its own privacy policy, *PIPEDA* and *PPIPS* and protect their Customer's privacy, including their Network Usage Information;
 - b. The Respondents failed to disclose to its Customers all of the types of Demographic Information and Network Usage Information that would be collected and tracked as part of the RAP;
 - c. The Respondents failed to obtain adequate consent of its Customers for the RAP, and failed to provide sufficient detail to their Customers to allow them to form the basis of meaningful consent; and
 - d. The Respondents failed to disclose that opting out of the RAP did not result in Bell Mobility ceasing the use of the Customer Information for profiling purposes;
34. As a result of the breaches of the *Consumer Protection Act*, the Petitioners plead that they and the Class have suffered damages for the false and misleading representations made to them by the Respondents. The damages include the return of all amounts paid to the Respondents by Class Members for the Bell Mobility Services on the basis that the Bell Mobility Services that the Petitioners and Class Members paid for were not as represented. The actual value of the data package offered by the Respondents is zero because privacy is a fundamental component of the service Customers purchased. In addition, the Petitioners and Class Members are entitled to punitive damages pursuant to section 272 of the *Consumer Protection Act*.

Breach of sections 7(i) and 36 of the *Telecommunications Act*

35. The Respondents are considered Canadian carriers and are regulated under the authority of the *Telecommunications Act* and in particular the Canadian Radio-Television and Telecommunications Commission ("CRTC").
36. As such, the Respondents are subject to policy obligations under s. 7(i) of the *Telecommunications Act* including the objective to "contribute to the protection of the privacy of persons". The RAP is inconsistent with section 7(i) because of it involves accessing, tracking, and using sensitive information consisting of the URLs visited and internet searches conducted by Customers without their informed consent. The Respondents have unmatched level of access and use of personal information about Canadians, including their Network Usage and Demographic Information.
37. Furthermore, the RAP breaches s. 36 of the *Telecommunications Act* which prohibits Canadian carriers from controlling the content or influencing the meaning or purpose of telecommunications carried by it for the public. Through the collection, use, and processing of the Customers' personal information through the RAP, the Respondents are providing telecommunications services for the unapproved purpose of marketing and selling advertising opportunities.
38. As a result of the breaches of the *Telecommunications Act*, the Petitioners pleads that he and the Class have suffered damages for the unlawful collection and selling of targeted advertisements. These damages include the inconvenience of being targeted while browsing the internet by unsolicited advertisements which detracts from the Customers'

internet usage experience on their Mobile Devices. The Petitioners and Class Members are entitled to these damages pursuant to s. 72 of the *Telecommunications Act*.

Intrusion Upon Seclusion

39. The Respondents intruded upon the seclusion of the Petitioners and the Class Members by intentionally and/or recklessly accessing the Petitioners' and the Class Members' private Demographic and Network Usage Information without their express consent and contrary to the express and/or implied terms of the Contracts.
40. Specifically, the Respondents intruded by:
- a. reviewing and/or examining each of the Petitioners and Class Members' Demographic and Network Usage Information to create Customer Profiles without their consent; and
 - b. disclosing enough information about Bell Mobility Customers to third party advertisers who could potentially identify the Customer by using tracking cookies, device fingerprinting, account information, or other tracking methods and link details from the associated Ad Profile to its own profile for that individual.
41. This intrusion is highly offensive because of the sensitive nature of some of the Network Usage Information accessed, including, but not limited to URLs relating to serious health conditions, sexual orientation, and financial condition of the Petitioners and the Class Members. It is also offensive because it requires the Petitioners and Class Members to opt out of the RAP rather than provide their informed consent to the program.
42. The Respondents were well aware that the standard in the internet services supply industry with respect to obtaining consent to the collection and sale of sensitive personal information is an opt in system, yet they elected to offer only an opt out system. The

Respondents knew that the vast majority of the Class would never opt in and so decided to unlawfully manipulate the Class by requiring opt outs.

43. The Petitioners pleads that he and the Class have suffered damages for the unlawful intrusion by the Respondents into their Network Usage Information without their consent. These damages include the inconvenience of being targeted while browsing the internet by unsolicited advertisements which detracts from the Customers' internet usage experience on their Mobile Devices.
44. Bell Canada is jointly and severally liable to the Petitioners and the Class along with Bell Mobility Inc. and Virgin Mobile Canada for intrusion upon seclusion.

REMEDIES

45. The Petitioner and each Class Member has suffered damages and loss as a result of Bell Mobility's breach of contract and the Respondents' intrusion upon seclusion, as particularized above.
46. The Petitioner pleads that he and the Class are entitled to damages.
47. The Petitioner seeks on his own behalf, and on behalf of the Class, an order that all Respondents must disgorge all profits that the Respondents generated as a result of benefitting from the breach of contract, breach of the *Telecommunications Act*, breach of the *Consumer Protection Act* and intrusion upon seclusion,.
48. The Petitioner seeks on his own behalf, and on behalf of members of the Class, punitive damages for the Respondents' conduct in:

- (a) including the Petitioner and Class Members in RAP without first getting their informed and adequate consent;
 - (b) misleading the Petitioner and Class Members about the nature of the information that was being collected for the RAP; and
 - (c) refusing to establish an opt-in program for RAP despite the Privacy Commissioner's findings.
49. The Respondents were lax, passive, ignorant with respect to the Petitioner and Class Members' rights and to their own obligations; displayed ignorance, carelessness, and serious negligence; and such conduct was high-handed, outrageous, reckless, wanton, deliberate, callous, disgraceful, willful and in complete disregard for the rights of the Petitioners and Class Members.
50. The Petitioners plead that only a punitive damages award will prevent the Respondents from continuing their unlawful conduct as particularized herein.

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

51. The composition of the Class makes the application of Articles 59 or 67 of the C.C.P. impractical for the following reasons:
- a. Class Members are numerous and are scattered across the province and are estimated to be in the millions;
 - b. The names and addresses of the Class Members are not known to the Petitioner (but are likely known to the Respondents);
 - c. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded;
 - d. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the Court system;

- e. A multitude of actions risks having contradictory judgments on questions of fact and law that are similar or related to all Class Members;
 - f. 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; and
 - g. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.
52. The claims of the Class Members raise identical, similar or related questions of fact or law namely:
- a. Did Bell Mobility enter into a Contract with the Class Members for the provision of Bell Mobility Services?
 - b. Did the Contract between Bell Mobility and the Class Members contain terms that Bell Mobility would not use, collect, retain, and/or disclose the Class Members' personal information except as provided by the Contract and by applicable statutes?
 - c. Did the notices provided by the Respondents about the initiation of the RAP constitute sufficient notice such that the Class Members could provide informed consent to the Respondents about participating in RAP?
 - d. Was the opt-out program sufficient in providing the Respondents with adequate consent from the Class Members to include them in the RAP?
 - e. Are one or more of the Respondents liable to the Class for breaches of the *Telecommunications Act*?
 - f. Are one or more of the Respondents liable to the Class for breaches of the *Consumer Protection Act*?
 - g. Did one or more of the Respondents commit the tort of intrusion upon seclusion?
 - h. Are the Respondents or any one of them liable for damages to the Class?
 - i. Is this an appropriate case for the Respondents to disgorge profits?

j. Are the Respondents liable for punitive damages?

53. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

54. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages;

55. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the Petitioner's action against the Respondents;

DECLARE that the Respondents are liable to the Class Members for the following:

- a. breach of contract;
- b. breaches of the *Telecommunications Act*;
- c. breaches of the *Consumer Protection Act*; and
- d. intrusion upon seclusion.

CONDEMN the Respondents to pay the Class Members damages;

GRANT an order that an independent auditor be appointed to oversee the dismantling of the Customer Profiles collected pursuant to the RAP;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

ORDER the treatment of individual claims of each Class Member in accordance with articles 1037 to 1040 C.C.P; and

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

56. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal because the Class Members and Respondents reside everywhere in the Province of Quebec.
57. The Petitioner, who is requesting to obtain the status of representative will fairly and adequately protect and represent the interest of the Members of the Group for the following reasons:
- a. He understands the nature of the action;
 - b. He is available to dedicate the time necessary for an action to collaborate with Class Members; and
 - c. His interests are not antagonistic to those of other Class Members.
58. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the Petitioner's action against the Respondents;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

all persons in Quebec who were Customers between November 16, 2013 and April 14, 2015. Excluded from the Class are the Respondents' employees board members, officers and directors;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a. Did Bell Mobility enter into a Contract with the Class Members for the provision of Bell Mobility Services?
- b. Did the Contract between Bell Mobility and the Class Members contain terms that Bell Mobility would not use, collect, retain, and/or disclose the Class Members' personal information except as provided by the Contract and by applicable statutes?
- c. Did the notices provided by the Respondents about the initiation of the RAP constitute sufficient notice such that the Class Members could provide informed consent to the Respondents about participating in RAP?
- d. Was the opt-out program sufficient in providing the Respondents with adequate consent from the Class Members to include them in the RAP?
- e. Are one or more of the Respondents liable to the Class for breaches of the *Telecommunications Act*?
- f. Are one or more of the Respondents liable to the Class for breaches of the *Consumer Protection Act*?
- g. Did one or more of the Respondents commit the tort of intrusion upon seclusion?
- h. Are the Respondents or any one of them liable for damages to the Class?
- i. Is this an appropriate case for the Respondents to disgorge profits?
- j. Are the Respondents liable for punitive damages?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

DECLARE that the Respondents are liable to the Class Members for the following:

- a. breach of contract;
- b. breaches of the *Telecommunications Act*;
- c. breaches of the *Consumer Protection Act*; and
- d. intrusion upon seclusion.

CONDEMN the Respondents to pay the Class Members damages;

GRANT an order that an independent auditor be appointed to oversee the dismantling of the Customer Profiles collected pursuant to the RAP;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 C.C.P.;

ORDER the treatment of individual claims of each Class Member in accordance with articles 1037 to 1040 C.C.P; and

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

DECLARE that all Class Members that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with Article 1006 C.C.P., pursuant to a further Order of the Court, and **ORDER** Respondents to pay for said publication costs;

THE WHOLE with costs, including the costs of all publications of notices.

Montreal, April 14, 2015

for and on behalf of Legal Leap Inc.
CHARNEY LAWYERS
151 Bloor St. W., Suite 890
Toronto, ON M5S 1P7

Theodore P. Charney
Andrew J. Eckart

Phone: 416.964.7950
Fax: 416.964.7416

Lawyers for the Petitioner

NOTICE TO DEFENDANTS AS TO CONTESTATION

Take notice that the Plaintiff has filed this application in the office of the **Superior Court** of the judicial district of Montreal.

To file an answer to this application, you must file an Appearance, personally or by advocate, at the courthouse of Montreal, 1, rue Notre-Dame Est, Montréal (Québec), H2Y 1B6, within 10 days of service of this Motion.

If you fail to file an Appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an Appearance, the application will be presented before the court on **June 29, 2015, at 9h00, in Room 2.16**. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding of the court may hear the case, unless you make a written agreement with the Plaintiff or the Plaintiff's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the Court.

REQUEST FOR TRANSFER OF A SMALL CLAIM

As the Defendant, you may make a request to the clerk for the action to be disposed of before the small claims division of the Quebec Court, pursuant to the rules of Book VIII of the *Code of Civil Procedure of Quebec* (R.S. Q. C-25), if the amount claimed does not exceed \$15,000.00, exclusive of interest, if you would be admissible as a Plaintiff under that Book and if the action would be admissible under that Book.

Should you fail to make such a request, you may be liable for costs greater than those applicable under Book VIII of this Code.

MONTREAL, April 14, 2015

for and on behalf of Lead Link Inc.
CHARNEY LAWYERS
Attorneys for Petitioners

500-06-000738-159

68639

NO:

SUPERIOR COURT
(Civil Division)

ROGER CHASLES;
and
KRISTOPHER CHASLES;
Plaintiffs

vs.

BELL MOBILITY INC.;
BELL CANADA INC.;
VIRGIN MOBILE CANADA;
Defendants

**MOTION TO AUTHORIZE THE BRINGING OF
A CLASS ACTION AND TO OBTAIN THE
STATUS OF REPRESENTATIVE**
(Art. 1002 C.C.P. and following)

ORIGINAL

Mon dossier :

01 892

BL5655

LEGAL LOGIK INC.

7575 TransCanadienne, BUREAU 407
SAINT-LAURENT (QUÉBEC)
CANADA H4T 1V6

TÉL: (514) 419-4069
TÉLÉC: (514) 419-4068

DOMICILE ÉLU
JEAN-FELIX BOUCHARD – HUISSIERS DE JUSTICE
430 STE-HELENE
MONTREAL, QUEBEC
H2Y 2K9

AUTO
125