

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-06-000961-181

**SUPERIOR COURT**  
(Class Actions)

---

**STUART THIEL**, an individual residing at  
[REDACTED]

and

**BRIANNA THICKE**, an individual residing at  
[REDACTED]

**FACEBOOK, INC.**, a legal person duly constituted pursuant to the laws of Delaware, having its principal place of business at 1601 Willow Road, Menlo Park, CA 94025, USA

v.

**FACEBOOK CANADA LTD.**, a legal person duly constituted pursuant to the laws of Canada, having its principal place of business at 661 University Avenue, Suite 1201, 12th Floor, Toronto, ON M5G 1M1, Canada

Defendants

---

**APPLICATION FOR PERMISSION TO AMEND THE APPLICATION FOR  
AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO DISCONTINUE  
THE APPLICATION AGAINST ONE OF THE DEFENDANTS  
(art. 585 C.p.c., art. 213 C.p.c. and art. 25 C.p.c.)**

---

**TO THE HONOURABLE JUSTICE THOMAS M. DAVIS, J.C.S., SITTING IN AND FOR  
THE DISTRICT OF MONTREAL, THE APPLICANTS RESPECTFULLY SUBMIT THE  
FOLLOWING:**

## OVERVIEW

1. On December 19, 2018, the applicants filed an application to authorize a class action against the defendants, Facebook Inc. and Facebook Canada Ltd. (collectively, “Facebook”), on behalf of the following group:

all persons in Quebec whose Facebook account data commencing in 2010 and ongoing was sold to third parties by the defendants without Class Members’ consent, or who gained access to Class Members account data through exemptions from the defendants’ privacy rules.

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

2. In brief, the class action seeks to hold Facebook accountable for violating class members’ privacy rights by providing third parties with illegal access to users’ personal and private information without their knowledge or consent;
3. On February 13, 2020, this Court dismissed the defendants’ application to temporarily stay the class action in favour of various actions in Ontario on the basis that the interests of class members would be better protected by allowing the Quebec action to proceed;
4. On August 28, 2020, Trudel Johnston & Lespérance filed an act of representation on behalf of the applicants;
5. After a careful review of the file by counsel, the applicants seek to amend the application for authorization to institute a class action and to obtain the status of representative in order to:
  - a. Provide additional factual context and exhibits in support of the application for authorization;
  - b. Modify the definition of the proposed class;
  - c. Reduce, simplify and clarify the causes of action and common questions in conformity with the civil law of Quebec; and
  - d. Remove the claims for compensatory damages;
  - e. Discontinue the claim against one of the two defendants;
6. The proposed amended application is included as **Exhibit R-1**. The applicants note that while many aspects of this application are similar to or the same as the original application, their ability to represent those changes visually is limited as the application has been subject to significant restructuring and the order of paragraphs has therefore changed substantially;

7. Each of the modifications have been proposed in the best interests of class members and with the intention of advancing the claim in Quebec as expeditiously as possible. The proposed amendments, which are briefly addressed below, are also proposed in accordance with the overarching principle of proportionality;

**Additional factual and evidentiary context for the application**

8. First, the proposed amended application includes additional factual context and exhibits, all of which are relevant to the Court’s analysis of the conditions for authorization set out in article 575 C.p.c.;<sup>1</sup>
9. These additions and modifications serve to:
  - a. Clarify the defendant’s business model as it relates to proposed class members’ rights and the faults alleged;
  - b. Provide additional details regarding the wrongful conduct giving rise to the proposed class members’ claims;
  - c. Explain the contractual relationship between Facebook and its users;
  - d. Summarize Facebook’s obligations under the U.S. Federal Trade Commission’s consent order;
  - e. Offer examples of public representations made by Facebook with regard to users’ privacy rights which are relevant to the alleged wrongdoing;
10. Despite these additions, which complete and elucidate the applicants’ claims, the factual basis for the proposed class action is fundamentally unchanged, and the claims remain anchored in the 2018 reporting by the *New York Times* which first exposed the impugned data sharing practices;

**Modification of the proposed class definition**

11. Second, the applicants seek to modify the definition of the proposed class as follows:

<b>Application for Authorization December 19, 2018</b>	<b>Proposed Amended Application, Exhibit R-1</b>
all persons in Quebec whose Facebook account data commencing in 2010 and ongoing was sold to third parties by the defendants without Class Members’ consent, or who gained access to Class Members account data through exemptions from the defendants’ privacy rules.	All persons in Quebec whose Facebook account data commencing in 2010 and ongoing was (...) <u>made accessible</u> to third parties by the defendant_ without Class Members’ consent, or who gained access to Class Members’ account data through exemptions from the defendant’s privacy rules.

<sup>1</sup> *Khazaiy c. HP Canada cie*, 2020 QCCS 3163, par. 4; *Attar c. Red Bull Canada Itée*, 2017 QCCS 322, par. 21.

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

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

12. This proposed class definition does not change the composition of the proposed class and more accurately characterizes the nature of the wrongdoing alleged in both the original application filed in December 2018 as well as in the proposed amended application;

### **Reduction and simplification of causes of action and common questions**

13. Third, the proposed modifications reduce and simplify the alleged causes of action and the list of common questions, as summarized in **Appendix I**;
14. These changes aim to bring the applicants' claims into harmony with the civil law of Quebec and to clarify the relevant legal syllogisms to accordance with the test for authorization under art. 575 C.p.c.;
15. To this end, the proposed application reorganizes the causes of action under the frameworks of the Quebec *Charter* and the *Consumer Protection Act*. Determinations regarding the defendants' other statutory and contractual obligations remain nonetheless essential to the case, as they are what will ultimately inform the scope and nature of the class members' *Charter* rights;
16. In particular, the modifications remove the claims in extracontractual liability and unjust enrichment, as there is a contract that forms that basis for the relevant private law obligations between the parties, as detailed in the proposed amended application;
17. Similarly, because the defendant's obligation to act honestly and in good faith forms part of its general contractual obligations under the civil law, they need not be articulated as distinct causes of action and have been removed;
18. In order to provide greater specificity, the common questions that made a general reference to breach of confidence have also been replaced with a direct reference to article 9 of the Quebec *Charter*, which protects the right to non-disclosure of confidential information in Quebec;
19. This provision of the *Charter* is also intimately related to article 5, which protects the right to respect for one's private life, as well as to the relevant articles of the *Civil Code* and provisions of the *Act respecting the protection of personal information in the private sector*, as cited in the application;

20. These changes do not alter the composition of the proposed group. They are furthermore in the best interests of proposed class members and in the interests of justice, as they serve to clarify the nature of the claims at stake under Quebec law and will greatly simplify the authorization process;
21. As discussed in the section that follows, the claims for damages and other remedies have also been modified accordingly;

### **Withdrawal of claims for compensatory damages**

22. Fourth, the proposed amended application been rewritten to reflect a claim for purely punitive damages under the *Charter* and the *Consumer Protection Act*;
23. After a careful review of the file and the relevant jurisprudence, counsel for the applicants are of the view that any compensatory damages to which class members could be entitled would require a highly individualized, case-by-case analysis. As a result, such damages are unlikely to be susceptible to collective proof or collective recovery under Quebec law. The claims for compensatory damages have thus been removed from the proposed amended application;
24. The claims for the common law remedies of disgorgement and restitution, which are not available in the circumstances, have similarly been removed;
25. Counsel for the applicants are nonetheless of the view that class members are entitled to claim significant punitive damages in this case, both for the defendant's intentional and unlawful violation of their rights under the *Charter* and for its breach of the *Consumer Protection Act*;
26. A decision to ground the class action in a strong claim for punitive damages also better aligns with the goals of the proposed class representatives in this case—namely, to denounce, deter, and sanction the defendant's wrongful and unlawful conduct;

### **Discontinuance with regard to Facebook Canada Ltd.**

27. Finally, the applicants seek the Court's permission discontinue the proposed class action with respect to the defendant Facebook Canada Ltd.;<sup>2</sup>
28. Facebook Canada Ltd. is a wholly-owned subsidiary of the U.S. entity Facebook Inc.. It advances the public policy agenda of its parent corporation and lobbies on its behalf in Canada;

---

<sup>2</sup> *Krimed c. Uber Technologies inc.*, 2016 QCCS 2768.

29. The Canadian entity is not a party to the contract between the social media platform and its users, and therefore is not responsible for the collection, communication, or use of their personal information. As a result, counsel for the applicants are of the view that the wrongdoing at issue in the proposed class action is more properly attributed to the U.S. entity, Facebook Inc.;
30. A discontinuance with regard to Facebook Canada Ltd. has no material impact on the composition of the class and would simplify the proceedings at the authorization stage. Any impact on proposed class members is essentially hypothetical, as their legal relationship with Facebook Canada Ltd. in relation to the facts alleged does not appear sufficient to ground a cause of action;

### **Conclusion**

31. The proposed modifications will simplify the debate both at the authorization stage and on the merits by narrowing the applicants' claims to those with a well-defined basis in Quebec law;
32. Potential class members' interests are better protected by the amended application, which provides a stronger legal and factual foundation to support the collective vindication of their rights in Quebec;
33. The proposed modifications are furthermore in the best interests of justice and in accordance with the principle of proportionality under the rules of civil procedure;

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

**GRANT** the applicants' application for permission to amend their application for authorization to institute a class action and to discontinue the action against one of the defendants;

**ALLOW** the applicants to discontinue their application for authorization of a class action with regard to the defendant Facebook Canada Ltd.;

**ALLOW** the discontinuance to be filed with the Court in the 10 days following the date of judgment without any formality other than publication of the discontinuance in the Registre des actions collectives, as established by the Superior Court in accordance with article 573 C.p.c.;

**ALLOW** the applicants to amend their Application for authorization to institute a class action and to obtain the status of representative as set forth in the amended application communicated as Exhibit R-1;

THE WHOLE without costs.

Montréal, October 27, 2020

  
**TRUDEL JOHNSTON & LESPÉRANCE**  
Counsel for the Applicants

Toronto, October 27, 2020

  
**CHARNEY LAWYERS**  
Counsel for the Applicants

---

**NOTICE OF PRESENTATION**  
(Article 574 C.C.P.)

---

TO: **Me Éric Préfontaine**  
**Me Jessica Harding**  
Osler, Hoskin & Harcourt LLP  
1000, rue De La Gauchetière Ouest  
Bureau 2100  
Montréal, QC H3B 4W5  
Téléphone / Telephone : 514-904-8100  
Télécopieur / Fax : 514-904-8101  
[eprefontaine@osler.com](mailto:eprefontaine@osler.com)  
[jharding@osler.com](mailto:jharding@osler.com)

**TAKE NOTICE** that the *Application for permission to amend the Application for authorization to institute a class action and to discontinue the application against one of the defendants* will be presented at the Superior Court at the Courthouse of Montréal, located at 1 Notre-Dame Street East, at a date and time to be determined.

**PLEASE ACT ACCORDINGLY.**

Montréal, October 27, 2020

  
**TRUDEL JOHNSTON & LESPÉRANCE**  
Counsel for the Applicants

Toronto, October 27, 2020

  
**CHARNEY LAWYERS**  
Counsel for the Applicants



## APPENDIX I

Application for Authorization December 19, 2018	Equivalent Questions in Proposed Amended Application, Exhibit R-1
1. Did one or more of the defendants commit a fault, either an act or omission that a reasonable, diligent and prudent person would not have done?	<i>Removed</i>
2. Was there an injury suffered by the applicants and Class Members?	<i>Removed</i>
3. Is there a causal link between the fault and the injury?	<i>Removed</i>
4. Did one or more of the defendants enter into a contract with the Class Members in respect of the collection, use, retention and/or disclosure of their account information?	1. Did the defendant enter into a contract with the class members in respect of the collection, use, retention and/or disclosure of their account information?
5. Did the contract between the defendant(s) and the Class Members contain express or implied terms that Facebook would utilize appropriate safeguards to protect the Class Members' account information from unauthorized access and distribution?	2. Did the contract between the defendant and the class members contain express or implied terms that Facebook would utilize appropriate safeguards to protect the class members' account information from unauthorized access and distribution?
6. Did one or more of the defendants breach the contract? If so how?	3. Did the defendant breach the contract? If so how?
7. Did one or more of the defendants have a duty in the performance of its contractual obligations to act honestly and in good faith?	<i>Removed</i>
8. Did one or more of the defendants breach its duty in the performance of its contractual obligations to act honestly and in good faith? If so how?	<i>Removed</i>
9. Are one or more of the defendants liable to the Class for breaches of arts 3, 35, 36, and/or 37 of the CCQ?	5. Did the defendant breach articles 3, 35, 36, and/or 37 of the CCQ?  6. Did the defendant breach its statutory obligations under the PPIPS?
10. Did one or more of the defendants breach art. 5 of the <i>Charter</i> ?	7. Did the defendant breach article 5 of the <i>Charter</i> ?
11. If so, are Class Members entitled to punitive damages per art. 49 of the <i>Charter</i> ?	9. Are class members entitled to punitive damages per art. 49 of the <i>Charter</i> ?

12. Are one or more of the defendants liable to the Class for breaches of art. 219 of the <i>CPA</i> ?	4. Is the defendant liable to the class for breaches of the <i>CPA</i> ?
13. Did the collection, use and retention of the Class Members' account information create an obligation of confidence in which one or more of the defendants were expected to protect and secure the Class Members' account information?	<i>Removed</i>
14. Did one or more of the defendants breach the confidence of the Class Members? If so, how?	8. Did the defendant breach article 9 of the <i>Charter</i> ?
15. Were one or more of the defendants unjustly enriched by not paying the costs of implementing appropriate cybersecurity measures, staffing, and/or practices, policies and procedures?	<i>Removed</i>
16. Are the defendants or any one of them liable for damages to the Class for failure in their duty not to harm others, breach of contract, breach of privacy, breach of the <i>CPA</i> , breach of the <i>Charter</i> , breaches of the <i>CCQ</i> , and/or breach of confidence?	<i>Removed</i>
17. Is this an appropriate case for the defendants to disgorge profits?	<i>Removed</i>
18. Are the defendants liable for punitive damages?	10. Is the defendant liable for punitive damages under the <i>CPA</i> ?  See also 9, above: "Are class members entitled to punitive damages per art. 49 of the <i>Charter</i> ?"
19. Are any of the defendants liable to the Class Members for unjust enrichment and liable to Class Members to make restitution?	<i>Removed</i>
20. Can the court assess damages in the aggregate, in whole or in part, for the Class? If so, what is the amount of the aggregate damage assessment(s) and who should pay it to the Class?	11. What is the amount of the aggregate punitive damages to be awarded to the class?

No.: 500-06-000961-181

---

SUPERIOR COURT  
(Class Action)  
DISTRICT OF MONTRÉAL

---

**STUART THIEL**

-et-

**BRIANNA THICKE**

**Applicants**

c.

**FACEBOOK, INC.**

-and-

(...)

**Defendant**

Our file: 1461-1

BT 1415

---

**APPLICATION FOR PERMISSION TO AMEND THE  
APPLICATION FOR AUTHORIZATION TO  
INSTITUTE A CLASS ACTION AND TO  
DISCONTINUE THE APPLICATION AGAINST ONE  
OF THE DEFENDANTS**

---

**ORIGINAL**

---

Lawyers: Me André Lespérance  
Me Lex Gill  
Me Mathieu Charest-Beaudry

**TRUDEL JOHNSTON & LESPÉRANCE, S.E.N.C.**  
750, Côte de la Place d'Armes, suite 90  
Montréal (Québec) H2Y 2X8  
Tel. : 514 871-8385  
Fax : 514 871-8800  
[andre@tjl.quebec](mailto:andre@tjl.quebec)  
[lex@tjl.quebec](mailto:lex@tjl.quebec)  
[mathieu@tjl.quebec](mailto:mathieu@tjl.quebec)