

CANADA  
PROVINCE OF QUÉBEC  
District of Montréal

SUPERIOR COURT  
Class Action

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File N°: 500-06-001018-197

**TRACEY ARIAL et al.**

Petitioners

v.

**APPLE CANADA INC.**

-and-

**APPLE INC.**

-and-

**SAMSUNG ELECTRONICS CANADA**

-and-

**SAMSUNG ELECTRONICS CO. LTD**

Respondents

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**APPLICATION BY SAMSUNG ELECTRONICS CANADA AND  
SAMSUNG ELECTRONICS CO. LTD FOR  
LEAVE TO ADDUCE RELEVANT EVIDENCE**

(Articles 574, 575, 18 and 19 CCP)

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**TO JUSTICE PIERRE-C. GAGNON, S.C.J., THE RESPONDENTS SAMSUNG ELECTRONICS CANADA AND SAMSUNG ELECTRONICS CO. LTD (COLLECTIVELY “SAMSUNG”) RESPECTFULLY SUBMIT THE FOLLOWING:**

**I. Introduction**

1. On December 15, 2019, the Plaintiffs filed their *Amended Motion for authorization to Institute a Collective Action and to Obtain the Status of Representative*, as appears from the Court record (the “**Application**”);
2. As appears from the Application, the Plaintiffs originally sought authorization to institute a class action on behalf of the following class:

All persons in the Province of Quebec who purchased, leased and/or used the Phones, namely iPhone 5s, iPhone 5C, iPhone 6, iPhone 6S, iPhone 6S Plus, iPhone SE, iPhone 7, iPhone 7 plus, iPhone 8, iPhone 8 Plus, iPhone X, iPhone XR, iPhone XS, iPhone, XS Max, iPhone 11, iPhone 11 Pro, iPhone 11 Pro Max, Samsung Galaxy S7, Samsung Galaxy S8, Samsung Galaxy S9, Samsung Galaxy J3, Moto e5 Play, Mot g6 Play, Vivo 5 Mini and all additional Samsung models sold from 2013 forward, and any other phones sold or marketed by Defendants from 2013 forward.

3. The Petitioners allege that, although the Respondents market the cell phones they manufacture as emitting radiofrequency (“RF”) radiation below applicable standards and as being safe to carry and use on or in close proximity to the human body, recent testing of the Respondents’ products would have shown that the cell phone owners’ potential RF exposure far exceeds these standards;
4. The Petitioners further allege that recent scientific publications have shown that, even if international and national governmental guidelines are met, RF exposure would still affect living organisms;
5. On June 18, 2020, the Court authorized the Respondents to adduce selected relevant evidence in response to the Petitioners’ Application for authorization;
  - *Arial c. Apple Canada inc.*, 2020 QCCS 1932.
6. On April 22, 2021, the Court authorized amendments to the Petitioners’ motion in the *Re-amended Motion for Authorization to Institute a Collective Action and to Obtain the Status of Representative*, dated August 13, 2020 (the “**Re-Amended Application for Authorization**”);
  - *Arial c. Apple Canada inc.*, 2021 QCCS 1519
7. The Re-Amended Application for Authorization now adds a new cause of action, namely that the entire underlying regulatory framework for RF emissions testing is inadequate: indeed, testing techniques approved by Industry Canada would nevertheless allow cellphones to emit nefarious RF emissions. In addition, and with regards to Samsung, the proposed class action is now targeting two additional cell phone models, namely the Samsung Galaxy S10 and S20;
  - Re-Amended Application for Authorization, paras. 71-88, p 40.
8. Although the Court allowed these amendments, it also permitted the Respondents to seek leave to adduce additional relevant evidence in connection to the Re-Amended Application for Authorization;
  - Re-Amended Application for Authorization, para. 40.

**II. The Evidence Samsung Seeks Leave to Adduce**

9. The additional allegations in the Plaintiffs' Re-Amended Application for Authorization and supporting exhibits in relation to (1) the "phony testing regimen" for cell phone RF emissions in Canada and (2) Samsung cell phone models Galaxy S10 and S20 are not only incomplete, but also misleading;
10. As a result, clarifications from Samsung are required to assist the Court in determining whether the authorization criteria of article 575 CCP are met and, in particular, whether Plaintiffs have shown an arguable case ;

**A. The Legal Warnings Provided by Samsung for cell phone models Galaxy S10 and S20**

11. At paragraph 112 and following of the Re-Amended Application for Authorization, the Petitioners allege that Samsung has failed to warn cell phone users of the danger posed by its cell phones concerning RF exposure, or to provide instructions for safe use of its cell phones;
12. In response to the Petitioners' misleading allegations, Samsung intends to submit that, on the contrary, it provided relevant information to users of the cell phones specifically identified in the Petitioners' class action with regard to RF energy exposure and compliance with the applicable RF exposure limits;
13. The Court has already authorized Samsung to adduce relevant evidence from the user manuals including legal warnings for cell phone users with regard to RF energy exposure for the cell phone models targeted in the Petitioners' Application;
  - Exhibit S-7, Exhibit S-8, Exhibit S-9 and Exhibit S-10;
14. Therefore, Samsung now seeks leave to adduce the same user manuals including legal warnings for cell phone models Galaxy S10 and S20:
  - Galaxy S10, as appears from an extract of the user manual, entitled "*Health and Safety*" communicated herewith as **Exhibit S-16**;
  - Galaxy S20, as appears from the user manual entitled "*Safety Information*" communicated herewith as **Exhibit S-17**;
15. This evidence would greatly assist the Court in determining whether the Petitioners have met their burden of demonstrating an arguable case pursuant to article 575 (2) CCP against Samsung;

**B. Information from Industry Canada on Samsung's cell phone models Galaxy S10 and S20**

16. The Petitioners allege that the Respondents' smartphones exceed applicable RF exposure standards, a gratuitous assertion that Samsung vigorously denies;
17. In order for the Court to assess these allegations in regards to cell phone models S10 and S20, Samsung seeks leave to adduce excerpts from Industry Canada's website, which attest that these models fully comply with applicable standards;
18. This Court already authorized Samsung to adduce such relevant evidence for the Samsung cell phone models originally targeted in the Application;

➤ **Exhibit S-11, Exhibit S-12, Exhibit S-13 and Exhibit S-14;**

19. Accordingly, Samsung now seeks to adduce the same relevant evidence for the additional models in the Re-Amended Application for Authorization, as follows:
  - Galaxy S10 (Certification Number: 649E-SMG973U), as appears from an excerpt from the Government of Canada website, communicated herewith as **Exhibit S-18**;
  - Galaxy S20 (Certification Number: 649E-SMG981U), as appears from an excerpt from the Government of Canada website, communicated herewith as **Exhibit S-19**;
20. This evidence would greatly assist the Court in determining whether the Petitioners have met their burden of demonstrated an arguable case pursuant to article 575 (2) *CCP* against Samsung;

**C. Industry Canada's Regulatory Norms on Radiofrequency Energy and Safety Are Cautious and Safe**

21. The Re-amended Application for Authorization introduced a new cause of action, namely that Industry Canada's regulatory framework for RF emissions testing is "phony" and inadequate;
22. At authorization, Samsung intends to vigorously oppose these allegations and show that Samsung is not responsible for establishing the regulatory framework or standard for RF emissions or testing and that Industry Canada represents that its regulatory framework on radiofrequency energy and safety is cautious and ensures the safety of Canadians;
23. Accordingly, Samsung seeks leave to adduce additional excerpts from Industry Canada's website which specifically explain that its RF emissions benchmarks, in particular the Specific Absorption Rate ("**SAR**"), are cautious and sit well below the threshold of risk or danger:

- “Radiofrequency and Safety”, as appears from an excerpt from the Government of Canada website, communicated herewith as **Exhibit S-20**;
24. This evidence would greatly assist the Court in determining whether the Petitioners have met their burden of demonstrated an arguable case pursuant to article 575 (2) *CCP* against Samsung with respect to the adequacy of Industry Canada’s regulatory standards;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

- A. GRANT** the present *Application by Samsung Electronics Canada and Samsung Electronics Co. Ltd for Leave to Adduce Relevant Evidence*;
- B. ALLOW** Respondents Samsung Electronics Canada and Samsung Electronics Co. Ltd to file Exhibit S-16, Exhibit S-17, Exhibit S-18, Exhibit S-19 and Exhibit S-20, as described above, into the Court record;
- C. THE WHOLE**, with cost to follow suit.

Montreal, May 31, 2021

*Borden Ladner Gervais S.E.N.C.R.L., S.R.L.*

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## NOTICE OF PRESENTATION

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**TAKE NOTICE** that the *Application by Samsung Electronics Canada and Samsung Electronics Co. Ltd for Leave to Adduce Relevant Evidence* will be presented for hearing and adjudication before Honourable justice Pierre-C. Gagnon of the Superior Court, at a date and time to be determined by the Court.

**KINDLY GOVERN YOURSELF ACCORDINGLY.**

Montreal, May 31, 2021

*Borden Ladner Gervais S.E.N.C.R.L., S.R.L.*

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CANADA  
PROVINCE OF QUÉBEC  
District of Montréal

SUPERIOR COURT  
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Respondents

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## LIST OF ADDITIONAL EXHIBITS

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- Exhibit S-16:** Samsung Galaxy S10 -Extract of the user manual, entitled "*Health and Safety*";
- Exhibit S-17:** Samsung Galaxy S20 user manual entitled "*Safety Information*";
- Exhibit S-18:** Galaxy S10 – Certification 649E-SMG973U;
- Exhibit S-19:** Galaxy S20 - Certification Number 649E-SMG981U;

**Exhibit S-20:** Government of Canada website – Radiofrequency Energy and Safety.

Montreal, May 31, 2021

*Borden Ladner Gervais S.E.N.C.R.L., S.R.L.*

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**De:** Angers, Nathalie  
**Envoyé:** May 31, 2021 2:03 PM  
**À:** 'Charles O'Brien'  
**Cc:** Brabander, Kristian; Hebert, Alexandra; Saint-Onge, Jean; Martin, Catherine; Chênevert, Karine  
**Objet:** NOTIFICATION : 500-06-001018-197 Arial et als. vs. Apple inc. et als. - Samsung's Application for leave to Adduce Evidence and Exhibits S-16 to S-20 (Our file: 025347.49)  
**Pièces jointes:** Samsung Exhibits S-16 to S-20.zip; 2021-05-31 Application for leave to adduce evidence (Defendants Samsung).pdf

### NOTIFICATION BY ELECTRONIC COURIER TRANSMISSION SLIP (ARTICLE 134 C.P.C.)

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#### DATE:

Montréal, May 31, 2021

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## COURT FILE NUMBER AND NATURE OF THE NOTIFIED DOCUMENT:

**Record number:** 500-06-001018-197  
**Parties:** Tracey Arial et al. v. Apple Canada Inc. et als.  
**Nature of the document:** **Application by Samsung Electronics Canada and Samsung Electronics Co. Ltd for Leave to Adduce Relevant Evidence and Exhibits S-16 to S-20**

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**Number of pages:**  
(attachments only)



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SUPERIOR COURT  
(Class Action)

DISTRICT OF MONTRÉAL  
N° : 500-06-001018-197

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Plaintiffs

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-and-

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**SAMSUNG ELECTRONICS CANADA**

-and-

**SAMSUNG ELECTRONICS CO. LTD.**

Defendants

**APPLICATION BY SAMSUNG ELECTRONICS  
CANADA AND SAMSUNG ELECTRONICS CO.  
LTD FOR LEAVE TO ADDUCE RELEVANT  
EVIDENCE AND EXHIBITS S-16 TO S-20  
(Articles 574, 575, 18 and 19 CCP)**

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