

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-000738-159

SUPERIOR COURT
(Class Action)

ROGER CHASLES,

and

KRISTOPHER CHASLES,

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

**PETITIONER'S AMENDED MOTION TO STAY THE PETITIONERS'
MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 4.2, 46 C.C.P. and 3137 C.C.Q.)**

TO THE HONOURABLE JUSTICE GAGNON, JUDGE OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONERS STATES AS FOLLOWS:

Introduction

1. The Petitioners in this Motion seek a stay of the Petitioners' Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative, in light of the fact that all members of the proposed class are to be added as proposed class members of a companion class action awaiting certification in Ontario, which will give rise to a situation of *lis pendens* and warrants the exercise of this Court's discretion to stay proceedings pursuant to article 3137 C.C.Q.

The Quebec Proceedings

2. On April 14, 2015, the Petitioners filed a Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative, which describes the proposed class 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;

or such other class definition as may be approved by the Court.
3. This Action is based on the Respondents' alleged breach of contract, breach of s. 219 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, breach of s. 7(i) and 36 of the *Telecommunications Act*, S.C. 1993, c. 38, and intrusion upon seclusion.
4. The Quebec Petitioners are represented by a joint effort of the law firms Charney Lawyers PC (Mr. Charney has been authorized to act in this matter by the Barreau du Québec) and Legal Logik Inc in Québec.

The Ontario/National Proceedings

5. On April 16, 2015 a Statement of Claim was filed by the Plaintiffs Settimo Tocco in Ontario, and amended on April 21, 2015 to add the plaintiff Travis Briggs, affixed with Court File Number CV-15-00022122-00CP, against the same defendants as in the Quebec Proceedings. A copy of the Amended Statement of Claim is produced herein as **Exhibit R-1**.
6. The Statement of Claim does not name Virgin Mobile Canada as a Defendant because it is a division of the defendant Bell Mobility Inc. and does not have legal personality.
7. The Statement of Claim describes the proposed class as:

all persons in Canada, except in the Province of Québec, who had Bell Mobility and Virgin Mobile Canada accounts with data service between November 16,

2013 and April 13, 2015, excluding officers, directors and employees of the defendants.

8. If this petition is granted then an Amended Amended Statement of Claim will be filed in Ontario to revise the class definition to include Bell customers in Quebec, and to add the Quebec Petitioners Roger Chasles and Kristopher Chasles as representative plaintiffs in the Ontario proposed national class action.
9. Attached as **Exhibit R-2** is a draft of the proposed Amended Amended Statement of Claim.
10. The Amended Amended Statement of Claim will describe the proposed class as:

all persons in Canada who had Bell Mobility and Virgin Mobile Canada accounts with data service between November 16, 2013 and April 13, 2015, excluding officers, directors and employees of the defendants...
11. The Ontario Action is already advancing the same claims as the Quebec Action for breach of contract, breach of the *Telecommunications Act*, S.C. 1993, c. 38, and intrusion upon seclusion. The Amended Amended Statement of Claim adds claims for persons in Quebec during the Class Period arising from the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, as well as claims for all class members arising from negligence, breach of confidence and waiver of tort. The Ontario Action will therefore advance all of the claims advanced in the Quebec Action, in addition to several other causes of action.
12. On April 16, 2015, counsel for the plaintiffs in the Ontario Action launched a website at www.bellmobilityprivacybreach.com to inform putative class members about the class action. On May 27, 2015, the French version of this website was also launched. Both sites have a summary page and questionnaire where putative class members can provide information to counsel for the plaintiffs. Plaintiffs' counsel continue to update both the French and English websites. Attached as **Exhibit R-3** are copies of the summary and questionnaire pages from the French version of the website.

Status of the Ontario Class Action

13. On April 27, 2015, the statement of claim in the Ontario Action was served on the defendants.
14. On April 28, 2015, plaintiffs' counsel sent a letter to Melanie Schweizer, Bell Canada's in-house counsel, to request that steps be taken to preserve the defendants' electronic customer information and profiles at issue in the action. On April 30, 2015, John Laskin of Torys wrote to advise that his firm was retained to act for the defendants. He confirmed that the defendants were "taking steps to quarantine the information so that it will be accessible only for the purposes of litigation." Sylvie Rodrigue, a partner from Torys' Québec office, was copied on the letter attached as **Exhibit R-4**.

- ~~12-15.~~ The plaintiffs delivered a Certification Record to the defendants on December 9, 2015. Mr. Justice ~~Scott K. Campbell~~ Christopher Bondy of the Ontario Superior Court is case managing the proceeding.
16. On January 4, 2016, counsel for the parties attended a case management teleconference with Justice Bondy to discuss scheduling of the plaintiffs' certification motion.
17. On October 27, 2016, plaintiffs' counsel wrote to the defendants' counsel to request their comments on a proposed timetable for the plaintiffs' certification motion including the timing for the defendants' delivery of a responding record. That day, plaintiffs' counsel proposed to Ms. Rodrigue that a motion be brought on consent to stay the Québec Proceedings so that Roger Chasles and Kristopher Chasles could be added as plaintiffs to represent Québec residents in the Ontario action.
18. On November 2, 2016, counsel for the parties spoke by telephone and agreed to explore prospects to reach a consent order for the certification motion. As a result, Ms. Rodrigue sent a letter to Justice Gagnon of this court to request an indulgence of time on the stay motion to see if a resolution could be reached. Justice Gagnon advised that counsel had until January 9, 2017 to determine how they wished to proceed.
19. On December 22, 2016, plaintiffs' counsel advised that they intended to amend the statement of claim in the Ontario Action to add Roger Chasles and Kristopher Chasles as plaintiffs to represent Québec residents and they proposed scheduling the motion to stay the Québec Proceedings to be heard in March. Ms. Rodrigue responded that it was too soon to seek dates for a stay motion and stated that if an agreement on consent certification in Ontario was reached the defendants would agree to add the Québec plaintiffs as representative plaintiffs for a Québec subclass in the Ontario action.
20. On January 6, 2017, upon the filing of this petition to stay the Québec Proceedings, Justice Gagnon advised that he wished to hear from Ms. Rodrigue and communicate with Justice Bondy. Ms. Rodrigue responded that day to advise that if an agreement was reached on certification in the Ontario Action was reached by January 9 the defendants would not challenge the plaintiffs' motion to stay the Québec Proceedings otherwise in the absence of an agreement the defendants would challenge the petition to stay.
21. On January 19, 2017, Justice Gagnon wrote to Justice Bondy suggesting that the court may be inclined to grant a temporary stay of the Québec Proceedings if the interests of Québec class members could be protected in the Ontario action.
22. On January 24, 2017, the certification hearing in the Ontario Action was scheduled to be heard by Justice Bondy on June 21 to 23, 2017.
23. On January 26, 2017, Justice Bondy responded to Justice Gagnon. On February 1, 2017 Justice Bondy informed Justice Gagnon that he had the plaintiffs' proposed amended statement of claim to add the Québec plaintiffs.

24. On February 8, 2017, Mr. Charney wrote to Justice Gagnon to inform him that a motion was scheduled for leave to amend the statement of claim to add the Québec plaintiffs in the Ontario Action. Ms. Rodrigue responded by letter to state that the defendants intend to challenge the petition to stay the Québec proceeding.
25. On March 7, 2017, plaintiffs' counsel served a motion record for a motion for leave to amend the statement of claim. On March 13, 2017, the defendants served their responding motion record. Shortly thereafter, counsel agreed to adjourn the motion pending the outcome of the Québec petition for a stay. On March 17, 2017, Justice Bondy issued an endorsement, attached as **Exhibit R-5**, adjourning the motion to amend the statement of claim to add the Québec plaintiffs in the Ontario Action.
26. Discussions between counsel continued in April and May, but an agreement on a consent certification order in the Ontario Action was not reached. On June 5, 2017, the defendants' counsel advised that there was insufficient time for them to prepare a responding record for the plaintiffs' certification motion scheduled for June 21 to 23, 2017. Consequently, on June 8, 2017 the motion was adjourned on consent.
27. On June 12, 2017, plaintiffs' counsel received from the court new dates in October and November 2017 for the hearing of their certification motion, however the defendants' counsel advised they were unavailable for all of the dates.
28. On June 28, 2017, the court proposed further dates in October which were held pending confirmation of the defendants' counsel's availability. At this time, it was announced that Mr. Laskin had been appointed to the Federal Court of Appeal and would therefore no longer be working on the matter. Over the following weeks, the defendants' counsel could not confirm their availability in October due to summer holidays and a delay in confirming who would replace Mr. Laskin as lead counsel for the defendants.
29. On September 13, 2017, the certification hearing in the Ontario Action was scheduled for January 22 to 24, 2018.
13. ~~To date the defendants have not delivered responding materials and it is unknown whether the defendants intend to do so. A date for certification will be scheduled by the court at the next case conference. Counsel are canvassing dates with the court.~~

Lis Pendence and Stay of Proceedings

14.30. Article 3137 C.C.Q. states that five criteria for *lis pendens*:

3137. On the application of a party, a Québec authority may stay its ruling on an action brought before it if another action, between the same parties, based on the same facts and having the same subject is pending before a foreign authority, provided that the latter action can result in a decision which may be recognized in Québec, or if such a decision has already been rendered by a foreign authority. [emphasis added]

- ~~15.31.~~ It is respectfully submitted that these criteria are met. Nevertheless, the case law, including *Lebrasseur c. Hoffman-La Roch Ltée*, 2011 QCCS 5457, makes clear that the Court has an abundant discretion in this area and that the “interests of the class” should be the guiding criteria for the exercise of this discretion.
- ~~16.32.~~ Class counsel consists in part of the same law firms in Ontario and Quebec. Class counsel are determined to have the Ontario Action advanced judiciously and for the benefit of the class members.
- ~~17.33.~~ The Quebec class members will not be prejudiced. By participating in a single, national class action, the efforts of class counsel will be unified and focused on one central action rather than spread across multiple actions.
- ~~18.34.~~ The Petitioners will not be prejudiced because they will participate as proposed representative plaintiffs in the Ontario action.
- ~~19.35.~~ The Petitioners submit that it is in the interest of justice and in its own interest to avoid a multiplicity of Court proceedings which would run contrary to the “spirit of mutual comity that is required between the courts of different provinces in the Canadian legal space” as per *Canada Post Corp v. Lepine*, [2009] 1 S.C.R. 549.
- ~~20.36.~~ The defendants’ head office is in Toronto and their counsel have offices in Toronto.
- ~~21.37.~~ The Petitioners believe that it is in the interest of justice to proceed in an orderly fashion and submit that the present case should be stayed until a final resolution of the Ontario Action.

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

GRANT the present Motion;

STAY the Petitioners’ Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative until a final judgement on the certification of the class proceedings brought before the Ontario Superior Court of Justice in Ontario Court File Number CV-15-00022122-00CP;

TAKE NOTICE of the undertaking by the Petitioners to advise the Court promptly of any decision by the Ontario Superior Court of Justice regarding the certification of said class proceedings;

THE WHOLE without costs, save in the event of contestation.

Montreal, October 3, 2017

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NOTICE OF PRESENTATION

TO: SYLVIE RODRIGUE
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1 Place Ville Marie, Suite 2880
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Attorneys for the Respondents

TAKE NOTICE that the present motion will be presentable for adjudication before the Honourable Justice Gagnon of the Superior Court of Quebec, at the Palais de Justice in Montreal, located at 1 Notre Dame East, on the **October, 31 2017** in the morning, or as soon as the Court so decides.

Montreal, October 3, 2017

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COUR SUPÉRIEURE
(Class Action Division)

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PLAINTIFFS

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ORIGINAL

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Defendants

AMENDED LIST OF EXHIBITS

- EXHIBIT R-1:** Copy of the Amended Statement of Claim;
- EXHIBIT R-2:** Copy of the Amended Amended Statement of Claim;
- EXHIBIT R-3:** Summary and questionnaire pages from French version of the website;
- EXHIBIT R-4:** April 28, 2015 Letter from John Laskin;
- EXHIBIT R-5:** March 17, 2017 Endorsement of Justice Bondy;

Montréal, October 3, 2017

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