

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE MACPHERSON)

FRIDAY, THE 21st

THE HONOURABLE JUSTICE SHARPE)

DAY OF FEBRUARY, 2020

THE HONOURABLE JUSTICE JAMAL)

B E T W E E N :

LESLIE AUSTIN

Plaintiff
(*Appellant*)

- and -

**BELL CANADA, BELL MEDIA INC.,
EXPERTECH NETWORK INSTALLATION INC.,
and BELL MOBILITY INC.**

Defendants
(*Respondents*)

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS appeal by the Appellant of the Order for summary judgment of Justice Morgan, dated August 12, 2019, made at Toronto, Ontario (the "Judgment") was heard on February 5, 2020 at Osgoode Hall, 130 Queen St. W., Toronto, Ontario.

UPON reading the appeal book and compendium, compendium, exhibit books, factum and book of authorities of the Appellant, and the compendium, factum and book of authorities of the Respondents, and upon hearing submissions of counsel for the Appellant and counsel for the Respondents and reasons for decision released this day,

1. **THIS COURT ORDERS** that the appeal is allowed, summary judgment dismissing the action is set aside, and in its place award summary judgment in favor of the Appellant.

2. **THIS COURT ORDERS** that the Respondents are jointly and severally liable to the Class for breach of contract and owe damages to the Class as a result of this breach.
3. **THIS COURT ORDERS** that the Judgment of Morgan J. with respect to the certified common issues is revised as follows:

- (a) **Did the Defendants owe a contractual obligation to provide pension indexation under the Plan? If so, what amount of pension indexation ought to have been applied and provided in respect of the year 2017?**

The Defendants did owe contractual duties to the Plaintiff and the Class members. Pension indexation in respect of the year 2017 should have been provided in the amount of 2%.

- (b) **Did the Defendants breach their contractual obligations?**

Yes.

- (c) **Does Bell Canada, as administrator of the Plan, owe a duty as a trustee to the class?**

This issue has not been determined.

- (d) **Did Bell Canada breach its duty as a trustee?**

This issue has not been determined.

- (e) **Did Bell Canada, as administrator of the Plan, owe a fiduciary duty to the class?**

Yes

- (f) **Did Bell Canada breach its fiduciary duty?**

This issue has not been determined.

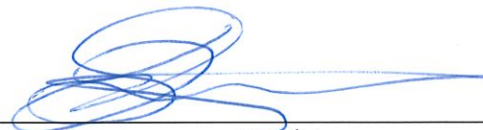
- (g) **If one or more of the above common issues are answered in the affirmative, can the amount of damages payable by the Defendants be determined on an aggregate basis? If so, in what amount?**

This issue has not been determined.

4. **THIS COURT ORDERS** that the matter is remitted to the motion judge for any ancillary or consequential matters that may arise from this Order.
5. **THIS COURT ORDERS** that costs of this appeal be paid to the Appellany by the Respondents, fixed in the amount agreed to by the parties, namely \$22,500 inclusive of taxes and disbursements.

THIS ORDER BEARS INTEREST at the rate of 3% (three percent) commencing on February 21st, 2020.

ENTERED AT/INSCRIT À TORONTO
ON/BOOK NO:
LE/DANS LE REGISTRE NO:
FEB 26 2021



Registrar
Court of Appeal for Ontario

PER/PAR: *TS*

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Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

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