



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

GASTON J. PERREAULT and ODETTE DI MURO

Plaintiffs

- and -

BELL CANADA (also known as THE BELL TELEPHONE COMPANY OF CANADA), BELL CANADA INC., BELL MEDIA INC., EXPERTECH NETWORK INSTALLATION INC., BELL MOBILITY INC., and BELL TV INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer,

serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: August 19, 2022

Issued by:

Local Registrar

Address of
court office:

393 University Avenue
Toronto, ON M5G 1E6

TO: **BELL CANADA**
1 Carrefour Alexander-Graham-Bell A-7
Verdun, QC, H3E 3B3
Canada

AND TO: **BELL MEDIA INC.**
299 Queen St. West
Toronto, ON, M5V 2Z5
Canada

AND TO: **EXPERTECH NETWORK INSTALLATION INC.**
1 Carrefour Alexander-Graham-Bell A-7
Verdun, QC, H3E 3B3
Canada

AND TO: BELL MOBILITY INC.
1 Carrefour Alexander-Graham-Bell A-7
Verdun, QC, H3E 3B3
Canada

BELL TV INC.
1 Carrefour Alexander-Graham-Bell A-7
Verdun, QC, H3E 3B3
Canada

CLAIM

1. The Plaintiffs claim:

- (a) An order certifying this action as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
- (b) A declaration that in 1998, the Defendants improperly calculated the rate of indexation of the Class Members pension benefits under the Bell Canada Pension Plan;
- (c) A declaration that the Defendants breached its fiduciary and trust duties to the Plaintiffs and Class Members;
- (d) A declaration that the Defendants breached the terms of the contract set out in the Bell Canada Pension Plan;
- (e) A declaration that the Defendants were, and continue to be, unjustly enriched by their breach of contract and breach of fiduciary and trust duties to the Plaintiffs and the Class Members;
- (f) A declaration that the Defendants are liable to the Plaintiffs and Class Members for damages caused by the Defendants' breach of contract, breach of fiduciary and trust duties, and unjust enrichment to the Plaintiffs and Class Members;
- (g) Damages payable by the Defendants for breach of fiduciary and trust duties, breach of contract, and unjust enrichment in the amount of approximately \$30 million or such other amount as may be determined by an actuary or by the court; or

- (h) An order that the Defendants adjust the indexation amounts applicable to the class and pay the Class Members the amounts owing to date, plus interest, and an order that all future indexation or other increases be applied to the adjusted pension amounts such that Class Members are put in the same position as if the 1998 indexation amounts were correctly calculated at first instance;
- (i) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;
- (j) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1995, c. C.43, as amended;
- (k) Pursuant to section 26 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the costs of notice and administering the plan of distribution of the recovery of this action, plus applicable taxes; and
- (l) Such further and other relief as this Honourable Court may deem just.

2. Without limiting any claims or allegations that may be set out in the Statement of Claim, the Plaintiffs plead the following:

The Plaintiffs

3. The Plaintiff, Gaston J. Perreault, is a resident of Québec City, Québec. He was hired as an employee of Bell Canada around April, 1955 in Drummondville, Québec in the position of Outside Representative and Clerk in the Commercial department. Over the course of a 35 year employment career, he was promoted to various positions including with the Business Office (or

Commercial) departments across Québec, Sales functions; and to middle management. His final position prior to his retirement was as District Manager-Business Office in Québec City.

4. As part of his employment compensation, Mr. Perreault participated in the Bell Canada Pension Plan (the "**Bell Canada Plan**") and earned pension benefits for his retirement. Mr. Perreault retired from Bell Canada in 1990 and began receiving his monthly pension benefits from the Bell Canada Plan in 1990.

5. The Plaintiff, Odette Di Muro, is a resident of Montreal, Québec. She was hired as an employee of Bell Canada in July 1960 as a clerk in the printing department. Over the course of a 33 year employment career, she was promoted to various positions including: Manager, Graphic Design, Manager, Service Bureau, Manager, University Recruitment, and Manager of Human Resources. Her final position was as Manager, Recruitment.

6. As part of her employment compensation, Ms. Di Muro participated in the Bell Canada Plan and earned pension benefits for her retirement. Ms. Di Muro retired from Bell Canada in 1996 and began receiving her monthly pension benefits from the Bell Canada Plan in 1996.

The Defendants

7. Bell Canada (or, the "**Plan Administrator-Defendant**") is a corporation incorporated pursuant to the laws of Canada. It is a subsidiary of BCE Inc., a publicly-traded corporation that carries on business in communications and media and has its headquarters in Verdun, Québec.

8. Bell Canada is the administrator of the Bell Canada Plan. The Bell Canada Plan has substantial surplus assets.

9. Expertech Network Installation Inc. is a corporation incorporated pursuant to the laws of Canada. Expertech Network Installation Inc. maintains its headquarters in Verdun, Quebec at the same corporate address as Bell Canada.

10. Bell Mobility Inc. is a corporation incorporated pursuant to the laws of Canada. Bell Mobility Inc. maintains its headquarters in Verdun, Québec at the same corporate address as Bell Canada.

11. Bell Media Inc. is a corporation incorporated pursuant to the laws of Canada. Bell Media Inc. maintains its headquarters in Toronto, Ontario.

12. Bell TV Inc. is a dissolved corporation which was incorporated pursuant to the laws of Canada. It maintained its headquarters in Montreal, Québec, and previously employed some of the Class Members. Upon dissolution in 2006, its pension obligations to the Class Members were assumed by Bell Canada, which continues to contribute to the Bell Canada Plan on behalf of the former employees of Bell TV Inc.

13. Bell Canada Inc., Bell Media Inc., Expertech Network Installation Inc., Bell Mobility Inc., and Bell TV Inc. (collectively, the “**Employer-Defendants**”), are participating and contributing employer companies in the Bell Canada Plan.

The Class

14. The Class consists of all persons who are or were members of the Bell Canada Plan, or otherwise entitled to benefits under the Bell Canada Plan, pursuant to section 8.7 of the Bell Canada Plan, or a predecessor section, as of January 1, 1998, together with the spouses, estates, heirs, beneficiaries, and representatives of any of such persons who have died.

Background

15. The Defendants created the Bell Canada Plan as part of the employment contract with its employees to provide a monthly payment to employees and certain other beneficiaries on their retirement. The monthly pension benefit amount varies from individual to individual, and the amount is determined based on various factors, including the retiree's salary history and length of employment.

16. Under the terms of the Bell Canada Plan, the pension benefit paid to retirees is required to be increased annually by Bell Canada as a form of partial inflation protection. This is known as indexation, or a cost-of-living ("**COLA**") adjustment.

17. Under the terms of the Bell Canada Plan, the annual indexation increase to be applied by Bell Canada, as the administrator of the Bell Canada Plan, to retirees' pension benefits is "the annual percentage increase of the Consumer Price Index ("**CPI**")", ***as determined by*** Statistics Canada" (emphasis added), which figure is then to be rounded to the "nearest whole number", to a maximum to 2%.

18. For the annual indexation increase for the year 1998, Bell Canada incorrectly used *its own* calculation of the CPI to arrive at 1.49%, which Bell then rounded *down* to 1%. The applicable CPI as determined by Statistics Canada for that period was 1.5%, which when rounded to the nearest whole number is *up* to 2%.

19. The difference between a 1% indexation increase that Bell incorrectly applied and a 2% indexation increase is significant for the Class Members.

20. In addition, Bell Canada's indexation error for 1998 continues to compound in each subsequent year as future indexation increases are applied to a constantly incorrect lower pension benefit amount for each of the Class Members, thus continually and annually depriving the Class Members from receiving their correct monthly pension benefits that they earned while employees of Bell Canada.

21. Conversely, Bell Canada error advantages itself by generating continually lower contribution requirements to the Bell Canada Plan, thus saving Bell Canada cash, and unjustly enriching Bell Canada at the expense of the retirees.

The Austin v. Bell Canada decision of the Ontario Court of Appeal

22. In 2020, the Court of Appeal for Ontario decided this same issue in *Austin v Bell Canada*, 2020 ONCA 142 ("*Austin*"). In *Austin*, the plaintiff brought a class action against Bell Canada for making the same error described above for the 2017 indexation increase. In its decision released on February 21, 2020, the Ontario Court to Appeal held that under the terms of the Bell Canada Plan, Bell Canada should have used the CPI figure *as determined by* Statistics Canada of 1.5% and then rounded that up to 2%. The Court of Appeal decision required Bell Canada to correct its error, implement the 2% indexation increase for the year 2017, and pay compensation to the affected class members in that case.

Despite the Court of Appeal's decision, Bell Canada refuses to correct the same error it made for the 1998 indexation

23. As noted, in 1998, Bell Canada made the same indexation error they had made in 2017 which the Court of Appeal held was wrong.

24. Following the release of the *Austin* decision, the plaintiffs' pensioner organization, the Bell Pensioners Group, contacted Bell Canada requesting that it correct the same error it made for the 1998 indexation increase.

25. Despite numerous requests by the Bell Pensioners Group, Bell Canada has refused to correct its error for the 1998 indexation increase.

26. Bell Canada's failure to correct its error for the the 1998 indexation, despite the decision of the Ontario Court of Appeal, is a breach of trust, breach of contract, and breach of fiduciary duty under both the common law and the *Pension Benefits Standards Act, 1985*, R.S.C., 1985, c. 32 (2nd Supp.). As a result of this error, the Plaintiffs and the Class members have suffered damages and are continually suffering damages.

27. The Plaintiffs propose that this action be tried in the City of Toronto.

August 19, 2022

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Lawyers for Plaintiffs

Court File No.

GASTON J. PERREAULT and ODETTE DI MURO v. **BELL CANADA et. al.**

Plaintiffs

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act*, 1992

NOTICE OF ACTION

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