

SUPREME COURT OF NOVA SCOTIA

Citation: Gillis v. BCE Inc., 2014 NSSC 279

Date: 2014-07-17

Docket: Hfx. No. 234376

Registry: Halifax

Between:

John Gillis, Jane Doe XVII, John Doe Ltd. XVII, Jane Doe XVIII, John Doe Ltd. XVIII, John Doe XIX, John Doe XX, John Doe XXI, John Doe XXII

Plaintiffs

v.

BCE Inc., Bell Canada, Bell Mobility Cellular Inc., Bell Mobility Inc., Aliant Telecom Inc., Bell Atlantic, Maritime Tel & Tel Ltd., NBTel Inc., Island Telecom Inc., New/Tel Communications Inc., Bell Aliant Regional Communications, Limited Partnership, Allstream Inc., Manitoba Telecom Services Inc., MTS Communications Inc., TELUS Corporation, TELUS Communications Company, TELUS Communications Inc., TELUS Mobility, B.C. TEL, TELUS Communications (B.C.) Inc., Clearnet Communications Inc., Alberta Government Telephones (AGT), Saskatchewan Telecommunication (SaskTel), Saskatchewan Telecommunications Holding Corporation, AT&T Canada Inc., Mircocell Telecommunication Inc., Rogers Communications Inc., Rogers Communications Partnership, Fido Solutions Inc., Rogers Cantel Inc., Rogers Wireless Inc. and Rogers AT&T Wireless

Defendants

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Judge: The Honourable Justice Peter P. Rosinski

Heard: May 14, 2014, in Halifax, Nova Scotia [last written submission July 17, 2014]

Written Decision: July 17, 2014

Summary:

In 2004 the Merchant Law Group filed similar class actions in nine provinces against numerous telecommunications services providers alleging consumers had been charged “system access fees” which were not legally justifiable. Plaintiffs’ counsel concentrated on moving the litigation forward only in Saskatchewan. In 2012 the matter was conclusively certified there as a class action, based only on a claim of “unjust enrichment” and under an “opt in” regime for non-residents. Until 2014, the Nova Scotia action was inactive. In 2014 the Defendants sought to have stayed as an abuse of process the similar class actions in Ontario, Manitoba, and Nova Scotia, each of which has an “opt out” regime for non-residents. The Defendants argued that the Nova Scotia action was never intended to be actively pursued by Plaintiffs’ counsel, and that counsel had questionable motives for filing multiple similar class actions in different provinces. They further argued that given the certification of the Saskatchewan action, the Nova Scotia action serves no further legitimate purpose, if it ever did, and it should be stayed by the court as an abuse of process. The Plaintiffs argued, among other things, that the objective of class proceedings is in part behaviour modification of the offending party and that this is best advanced in an “opt out” regime province, such as Nova Scotia, which provides greater accountability for the offending party as a result of greater inclusion in the putative non-resident class. On May 14 the hearing proceeded to conclusion. While the decision was under reserve, the Defendants made a motion to reopen the hearing “to present further evidence” pursuant to Rule 82 .22 (2)(c). The Defendants argued that Plaintiffs’ counsel had made inconsistent submissions to this Court and courts in Alberta and Manitoba, as to the motivation for initially filing and maintaining the action in Nova Scotia and in the other provinces, and that such evidence should be considered by

this Court on the motion to stay the proceedings. The Rule 82.22 motion was addressed within the Rule 88 motion to stay the proceedings as an abuse of process. A determination of the admissibility of several affidavits was also addressed within the decision herein.

Issues:

- (1) Should the Court grant leave to permit the Defendants to “present further evidence” regarding the alleged inconsistent submissions to courts in the provinces of Manitoba and Alberta?
- (2) Should the Court stay the proceeding as an abuse of process?

Result:

- (1) No leave granted to permit the Defendants to “present further evidence” as the proffered “evidence” arose through Defendants’ counsel’s affidavit, and was found not to be necessary to prevent an injustice as between the parties, after balancing the risk of both procedural and substantial injustice to each of the parties;
- (2) No stay of proceedings granted – the Court found that the Nova Scotia action was legitimately instituted, and remained at this time a legitimate and viable action, given the complexities and uncertainties of multi-jurisdictional class action proceedings of a similar nature. The Defendants did not meet the high threshold required to satisfy the Court that this drastic remedy ought to be granted.

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