

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE JUSTICE HARVISON YOUNG)
THE HONOURABLE JUSTICE THORBURN)
THE HONOURBLE JUSTICE COPELAND)

TUESDAY, THE 2nd
DAY OF MAY, 2023

B E T W E E N :

VANESSA FAREAU and RANSOME CAPAY

Plaintiffs (Appellants)

and

BELL CANADA and HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendants (Respondents)

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS APPEAL, made by the plaintiffs (appellants), Vanessa Fareau and Ransome Capay, from the order of Justice Perell of the Superior Court of Justice (the “**Motion Judge**”) dated April 26, 2022, was heard February 21, 2023 at the Court of Appeal for Ontario, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5 with reasons reserved until this day.

ON READING the Appeal Book and Compendium, Factum, Book of Authorities, Exhibit Book and Oral Hearing Compendium of the appellant and on reading the Factum, Book of Authorities, and Oral Hearing Compendium of the Respondent, Her Majesty the Queen in Right

of Ontario, and on reading the Factum, Compendium, Book of Authorities, and Oral Hearing Compendium of the respondent, Bell Canada, and on hearing the submissions of the lawyers for the parties,

1. **THIS COURT ORDERS** that the plaintiffs' appeal of the Motion Judge's order dismissing their claim against Ontario that payphone commissions received by Ontario constitute an unconstitutional, unlawful *ultra vires* tax is hereby dismissed.

2. **THIS COURT ORDERS** that the permanent stay imposed by the Motion Judge on the claims of: (i) unjust enrichment against both Bell and Ontario; (ii) breach of consumer protection legislation and unconscionable contracts against Bell only; and (iii) breach of fiduciary duty against Ontario only, is varied to a temporary stay in accordance with the terms of this Order.

3. **THIS COURT ORDERS** that with respect to the plaintiffs' claims for: (i) unjust enrichment against both Bell and Ontario; (ii) breach of consumer protection legislation and unconscionable contracts against Bell only (collectively, the "**Joint Claims**"), the temporary stay ordered in paragraph two, shall remain in place pending the CRTC's decision to either address the reasonableness of the rates or decline to do so, and upon the later of:

- (a) expiration of applicable timelines for appeal or judicial review of the CRTC decision; or
- (b) completion of judicial review or the exhaustion of appeals related to any such CRTC decision.

4. If the CRTC declines jurisdiction or declines to address the reasonableness of the rates that are the subject of the Joint Claims, subject to any judicial review or appeals at paragraph 3(a), (b) above, the temporary stay will be lifted.

5. If the CRTC accepts jurisdiction or addresses the reasonableness of the rates that are the subject of the Joint Claims, subject to any judicial review or appeals at paragraph 3(a), (b) above, the temporary stay shall become permanent.

6. **THIS COURT ORDERS** that with respect to the plaintiffs' claims for breach of fiduciary duty against Ontario only, the temporary stay ordered in paragraph two shall remain in effect subject to the following:

(a) If the CRTC declines jurisdiction to adjudicate the reasonableness of the rates at issue in the plaintiffs' claim, the stay shall be lifted upon the later of (i) expiration of applicable timelines for appeal or judicial review of the CRTC decision, or (ii) completion of judicial review or the exhaustion of appeals related to any such CRTC decision.

(b) If the CRTC accepts jurisdiction to adjudicate the reasonableness of the rates at issue in the plaintiffs' claim, the stay shall be lifted upon the later of (i) expiration of applicable timelines for appeal or judicial review of the CRTC's final decision concerning the rates at issue in the plaintiffs' claim, or (ii) completion of judicial review or the exhaustion of appeals related to the CRTC's final decision concerning the rates at issue in the plaintiffs' claim.

7. **THIS COURT ORDERS** that the Law Foundation of Ontario shall pay Ontario its costs of this appeal in the amount of \$10,000.00, inclusive of HST and disbursements.

THIS ORDER BEARS INTEREST at the rate of 6.0 percent per year commencing on May 2, 2023.



Court of Appeal for Ontario

Registrar

Marco Bonifaz

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

NOV 15 2023

PER / PAR: MB

FAREAU, et al. **BELL CANADA, et al.**
Appellants (Plaintiffs) and Respondents (Defendants)

Court File No. C70691

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at TORONTO

Proceeding under the *Class Proceeding Act, 1992*

ORDER

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