

**CITATION:** Perreault v. Bell Canada, 2024 ONSC 3570  
**COURT FILE NO.:** CV-22-00685817-00CP  
**DATE:** 20240620

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Gaston J. Perreault and Odette Di Muro

**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.

**BEFORE:** J.T. Akbarali J.

**COUNSEL:** *Andrew Hatnay and Abir Shamim*, for the plaintiffs

*Dana Peebles and Deborah Templer*, for the defendants

**HEARD:** June 20, 2024

**Proceeding under the *Class Proceedings Act, 1992***

**ENDORSEMENT**

**Overview**

[1] The plaintiffs in this putative class action seek leave to discontinue the action pursuant to s. 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (“CPA”). The defendants consent to the order.

**Background**

[2] The plaintiff are pensioners of Bell Canada. In their claim, filed on September 19, 2022, they allege that Bell Canada miscalculated the cost-of-living allowance (“COLA”) increase applied to annual pensions in the year 1998; they state that Bell applied a 1% increase rather than the 2% increase that should have been applied. In effect, the allegation is that Bell rounded the increase down to 1% when it should have rounded it up to 2%.

[3] The 1998 rounding error alleged came to light in separate proceedings, *Austin v. Bell Canada*, which dealt with a similar COLA calculation in 2017 that had also been rounded down, but which the Court of Appeal found should have been rounded up: *Austin v. Bell Canada*, 2020 ONCA 142.

[4] In addition to the class proceeding that was commenced, the Bell Pensioners Group (“BPG”) and an individual Bell retiree (Leslie Austin, the plaintiff in the *Austin* case), wrote to the Office of the Superintendent of Financial Institutions (“OSFI”), which regulates pension plans for federally regulated industries, with respect to the 1998 COLA error.

[5] In discussions with OSFI, Bell took the position that any concerns about the good faith implementation of the pension plan from 1998 was subject to applicable limitation periods. It took the same position with respect to this action.

[6] However, OSFI concluded that it was not subject to any statute bar which might apply in civil litigation, and decided that Bell was required to revise the 1998 calculation. Bell and OSFI negotiated an Action Plan under which Bell completed the re-calculation, gave notice to the affected pensioners, and compensated them.

[7] The notice provided under the Action Plan included two information sessions (one in English, one in French) that Bell held for affected pensioners (who are also putative class members) to notify them of the retroactive COLA adjustment payments under the Action Plan. Bell also initiated newspaper and radio campaigns and established a dedicated call centre to respond to enquiries from affected pensioners.

[8] BPG also published an information page on its website informing members about the retroactive COLA payments being made.

[9] Separately, class counsel posted a summary of the proposed class proceeding on its firm website, and received over 175 individual inquiries from putative class members.

[10] Thus far, Bell has paid approximately \$84.2 million to retroactively adjust the 1998 Pension Index, and has agreed to extend benefits to any other pensioner families that come forward in the future.

[11] Although the Action Plan was not a settlement of the class action, the parties to this action agree that the action has become spent, or moot, as a result of the steps taken by Bell through its agreement with OSFI to address the COLA miscalculation from 1998.

## **Analysis**

[12] A discontinuance under s. 29 of the *CPA* requires court approval. It also requires the court to consider whether notice should be given under s. 19 of the *CPA* and what the notice should include.

[13] The test for leave to discontinue a class proceeding is whether the interests of the class will be prejudiced: *Hudson v. Dr. Richard Austin*, 2010 ONSC 2789, at para. 35.

[14] In considering a motion for discontinuance, the court should consider whether the proceeding was commenced for an improper purpose, whether there is a viable replacement party

so that putative class members are not prejudiced; or whether the defendant will be prejudiced: *Lam v. Canada Goose Holdings Inc.*, 2021 ONSC 2627, at para. 16.

[15] Approving a discontinuance is different than approving a settlement. A discontinuance need not be beneficial or in the best interests of the putative class members: *Johnson v. North American Palladium Ltd.*, 2021 ONSC 3346, at para. 15.

[16] For the reasons that follow, I am satisfied in this case that leave to discontinue ought to be granted.

[17] First, there is no suggestion that the proceeding was commenced for an improper purpose. Rather, it was commenced to address the 1998 COLA error, which has now been addressed, albeit through the Action Plan that Bell agreed to with OSFI.

[18] Second, given the success of the Action Plan, there is no possibility that the discontinuance of this proceeding will prejudice the putative class members. Nor will it prejudice the defendants, who have consented to its discontinuance.

[19] As was the case in *Castrillo v. Workplace Safety and Insurance Board*, 2018 ONSC 4221, the purpose of this proposed class action has been spent. The action has been rendered moot. As a result, I approve the discontinuance of the action.

[20] The plaintiffs also seek approval for their notice plan, pursuant to s. 29(2) of the *CPA*. The plaintiffs propose to post a notice of the discontinuance on class counsel's website.

[21] I am satisfied with the notice plan and the form of the notice. Viewed practically, taking into account the thorough notice provided to pensioners through the Action Plan, and the absence of any prejudice to class members from the discontinuance, a broader notice plan will only result in unnecessary expense.

### **Summary of Orders**

[22] In conclusion, I approve the discontinuance of the action, the proposed notice plan, and the proposed notice.

[23] Order to go in accordance with the draft I have signed.

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J.T. Akbarali J.

**Date:** June 20, 2024