SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000816-161

DATE: July 3, 2023

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

OPTION CONSOMMATEURS
and
CHANTAL GAGNON
Plaintiffs
v.
SAMSUNG ELECTRONICS CANADA INC.
and
SAMSUNG ELECTRONICS CO., LTD
Defendants

JUDGMENT

OVERVIEW

[1] The Court is seized with various motions presented in the context of a class action authorized more than five years ago.

[2] Firstly, Defendants, Samsung Electronics Canada Inc. ("**Samsung Canada**") and Samsung Electronics Co., Ltd ("**Samsung Electronics**" and together with Samsung Canada, "**Samsung**") ask the Court to issue directions to curtail the use of personal information belonging to class members.

[3] Secondly, Plaintiffs, Option consommateurs and the Designated person, Ms. Chantal Gagnon (together "**Plaintiffs**") ask that the court adjudicate objections raised during the examination of Mr. Frank Martino held on October 6, 2022.

[4] Plaintiffs also filed a case management notice on May 18, 2023, asking that the Court issue directions for the continuation of the examination of Samsung representatives.

[5] Finally, Samsung presents a preliminary motion to dismiss the expert report of Mr. Jean-Guy Prévost (the "**Prévost Report**") on March 23, 2023. Because the latter motion could not be heard during the allotted time, the parties agreed that the court could render judgment based on written representations to follow.

CONTEXT

[6] In the fall 2016, Samsung proceeded to voluntarily recall (the "**Recall**") certain models of washing machines sold in Canada (the "**Washers**") to address the risk of excessive vibration which can cause the lid of the washers to detach.[1] The Recall offered consumers two choices: a free in-home repair combined with a one-year extension of the manufacturer's warranty, or a rebate that could be applied towards the purchase of a new Samsung washer. It also compensated consumers whose washers were damaged.

[7] Plaintiffs filed proceedings shortly after the Recall notice on the basis that the Recall was insufficient to compensate for the damages suffered by consumers.

[8] On or about April 26, 2018, Justice Suzanne Courchesne authorized a class action (the "**Authorization Judgment**")[2] against Samsung for the benefit of Quebec consumers who had purchased certain models of Washers manufactured by the defendants.

[9] On September 17, 2018, the class was modified.[3] At this point, it includes the following people:

> Any person who purchased in Quebec one of the following models of Samsung or Kenmore top-loading washing machines:
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> The following Samsung top-loading washer models manufactured from March 2011 to April 2016:
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> | | | |
> |---|---|---|
> | WA5471ABP/XAA; | WA5451ANW/XAA; | WA5451ANP/XAA; |
> | WA422PRHDWR/AA; | WA456DRHDSU/AA; | WA456DRHDWR/AA; |
> | WA50F9A8DSP/A2; | WA45H7200AP/A2; | WA45H7200AW/A2; |
> | WA45H7000AW/A2; | WA48J7770AW/A2; | WA52J8700AP/A2; |

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1 Exhibit D-1.

2 *Option Consommateurs* c. *Samsung Eletronics Canada inc.*, 2018 QCCS 1751 (Permission to appeal denied, 2018 QCCA 1057).

3 *Option Consommateurs* c. *Samsung Electronics Canada Inc.*, 2018 QCCS 4123.

> The following Samsung top-loading washer models manufactured from March 2011 through June 2016:
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> WA40J3000AW/A2; WA56H9000AP/A2;
>
> The following Samsung top-loading washer models manufactured from March 2011 through October 2016:
>
> WA50K8600AV/A2; WA45K7600AW/A2;
>
> The following Kenmore top-loading washer models manufactured from March 2011 through April 2016:
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> 592-29212; 592-29222; 592-29227; 592-29336;
>
> (the "**Class**" or the "**Members**").

[10] Plaintiffs filed their claim on July 6, 2018.

[11] On May 1, 2019, Justice Gregory Moore issued a confidentiality order to restrict access to and use of "Confidential Information" by the parties.

[12] In the fall of 2019, Plaintiffs asked Samsung to communicate a list of all Class Members together with their contact information (email, address, and phone number).

[13] Samsung indicated that it did not have a list of all Members but that it had: 1) contact information for those customers who decided to share personal information with Samsung Canada; and 2) information received from retailers for the purpose of sending the Recall notices.

[14] On November 29, 2019, Justice Gregory Moore ordered Samsung to communicate the personal contact information that it had in its possession with regard to Class Members except for those who had excluded themselves from the Class.

[15] Samsung filed its plea on December 7, 2020. It alleges that most consumers will not experience the problems which led to the decision to proceed with the Recall. For those who were susceptible to having an issue, it contends that the Recall resolved the problem and that no damages were caused.

[16] On March 30, 2021, Plaintiffs examined Mr. Anand Majithia, Vice-president Sales and Product Management for Samsung Canada.

[17] On April 1, 2021, Plaintiffs examined Mr. Sungjong Kim, of Samsung Electronics.

[18] Numerous objections were raised with regard to questions and requests for undertakings. Plaintiffs also alleged that some answers were incomplete. They requested permission to re-examine Samsung representatives on issues that the original representatives could not answer.

[19] On September 13, 2021 (rectified October 7, 2021), Justice Moore ruled on the objections raised by Samsung during the examination of the Samsung representatives.[4] In this judgment, Justice Moore:

19.1. Refused to order the communication of recorded customer conversations which occurred in the context of the Recall (undertaking U-14 of the examination of Mr. Majithia);

19.2. Refused to order the communication of personal contact information for the 64 customers who, according to the press release announcing the Recall, had incurred top detachment incidents;

19.3. Refused to order the communication of information contained in the Samsung's customer database as to how these 64 cases had been resolved.

[20] On October 28, 2021, Justice Moore authorized Plaintiffs to examine another Samsung Canada representative on the following subjects:

20.1. The sequence of events and the internal steps taken by Samsung Canada leading to the Recall;

20.2. The determination of the terms and conditions of the Recall, including the technical repairs offered, the additional instructions given to Class Members and the monetary benefits offered to Class Members in the context of the Recall;

20.3. Management and follow-up of the Recall by Samsung Canada once it has been deployed, including tracking of the repairs offered.

[21] However, Justice Moore refused Plaintiffs' request to examine a Samsung Canada representative on "interactions between Samsung Canada and Class members in the context of the Recall".

[22] On March 2, 2022, Justice Moore ordered Samsung to respect their undertaking to provide the Customer service team records of interactions between Samsung and its customers in the context of the Recall (undertaking U-10 of the examination of Mr. Majithia). However, he allowed Samsung to redact all contact information for those customers.

[23] Plaintiffs appealed the three judgments but, in the meantime, Justice Moore ordered that the parties should proceed with the examination of a Samsung Canada representative, Mr. Frank Martino, on the subjects he had authorized.

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4 *Option Consommateurs* c. *Samsung Electronics Canada Inc.*, 2021 QCCS 3842 (Appeal denied, 2023 QCCA 132).

[24] Mr. Martino was examined on October 6, 2022.

[25] Again, numerous objections were raised which will be dealt with in this judgment.

[26] On January 11, 2023, the Court of Appeal:[5]

26.1. Granted Plaintiffs' request to obtain an unredacted copy of undertakings (U-6, U-10 and U-12) that include the names and the contact information for Quebec residents;

26.2. Granted Plaintiffs' request to obtain the record of the 4,694 class members who benefitted from the extended warranty under the Recall program;

26.3. Allowed Samsung Canada's representative to be examined on the subject of "interactions between Samsung Canada and Class Members in the context of the Recall".

[27] On May 18, 2023, Plaintiffs filed a case management notice to be authorized to examine a Samsung representative on the following matters:

27.1. The documents disclosed as a result of the judgment of the Court of Appeal;

27.2. The documents, information and responses given or to be given, as a result of any objections dismissed by the present judgment;

27.3. The subject authorized by the Court of Appeal (interactions between Samsung Canada and Class Members in the context of the Recall);

27.4. The document communicated as undertaking U-17 (the record of the 4,694 class members who benefitted from an extended warranty).

[28] The motions before the Court raise the following questions:

28.1. Do measures need to be put in place regarding communications with Class Members?

28.2. How should the objections made during the examination of Mr. Martino be decided?

28.3. Should Plaintiffs be entitled to proceed with additional examinations of Samsung representatives?

28.4. Has Samsung met the burden to show a valid cause to summarily dismiss the Prévost Report?

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5 *Option Consommateurs* c. *Samsung Electronics Canada Inc.*, 2023 QCCA 19.

ANALYSIS

1. Do Measures Need to Be Put in Place Regarding Communications with Class Members?

[29] Samsung notes that as a result of Justice Moore's judgment on November 29, 2023 and the decision of the Court of Appeal dated January 11, 2023, Plaintiffs have access to the personal information of approximately 27,000 Quebec Samsung customers (the "**Quebec Samsung Customers**").

[30] These include customers who may have opted out of the Class or who, after receiving notice that the class action had been authorized, decided to remain passive.

[31] Samsung asks that the Court restrict the communication between Plaintiffs' Counsel and the Quebec Samsung Customers. They suggest that an initial communication take place through a notice preapproved by the Court pursuant to article 581 C.C.P. This preliminary preapproved notice would ask the Quebec Samsung Customers if they wish to receive further communications from Class Counsel. Any further communication would be limited to those Class Members who opt-in to future communications.

1.1 Applicable Law

[32] The right to communicate with class members differs according to the communicator of the information and when these communications take place.

[33] For example, communications with class members are subject to different rules depending on whether they emanate from class counsel, Defendants or Defendants' counsel. Furthermore, communications which take place prior to authorization are treated differently than those occurring post-authorization or after the opt-out period.

1.1.1 Communications prior to authorization

[34] Prior to authorization, the action does not exist, at least not on a collective basis.[6]

[35] Thus, the rules that govern communications with putative class members at this stage are somewhat more difficult to ascertain.

[36] Certainly, the representative Plaintiff has an attorney-client relationship with class counsel. Other putative class members, who have initiated a discussion with class counsel, may have such a relationship with class counsel as well.

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6 *Thompson* c. *Masson*, [1993] R.J.Q. 69 (C.A.).

[37] When potential or existing class members communicate with class counsel, a solicitor-client relationship also exists, and these members benefit from the lawyer's ethical obligations including solicitor-client privilege.[7]

[38] Some potential class members do not communicate with class counsel. They may have an attorney-client relationship with another counsel. For most class members, no professional relationship exists, and putative class members are, for the most part, considered unrepresented.[8] In fact, many may not even be aware that someone wishes to file a claim on their behalf.

[39] Nonetheless, most recognize that there is a "potential solicitor-client relationship" between proposed class members and class counsel, which creates a *sui generis* relationship between them.[9]

[40] Class counsel have a duty to act in the interests of class members from the moment the authorization application is filed.[10] Class counsel remains bound by general ethical obligations towards potential class members. The lawyer "must avoid all methods and attitudes likely to give a profit-seeking character to his profession",[11] refrain making "a representation that is false or misleading, that amounts to coercion, duress, or harassment or that seeks to take advantage of a person who is vulnerable",[12] and "must

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7 *Belley* c. *TD Auto Finance Services Inc./Services de financement auto TD inc.*, 2018 QCCA 1727, para. 30; *Filion* c. *Québec (Procureure générale)*, 2015 QCCA 352, para. 48 and 55; *Lundy* v. *VIA Rail Canada Inc.*, 2012 ONSC 4152, para. 20; *Conseil québécois sur le tabac et la santé* c. *JTI-MacDonald Corp.*, 2011 QCCS 4090, paras. 8 and 9 (Appeal dismissed, 2012 QCCA 2013); *Ward-Price* v. *Mariners Haven Inc.*, [2004] O.J. No. 2308 (Q.L.) (S.C.J.), paras. 7 and 18; Yves LAUZON and Bruce W. JOHNSTON, "Les communications avec les membres", EYB2021TPA39, para. 6.3.1.1.1; Jasminka KALAJDZIC, "Self-Interest, Public Interest, and the Interests of the Absent Client: Legal Ethics and Class Action Praxis", (2011) 49 *Osgoode Hall L.J.*, 1, p. 24.

8 *S.N. c. Miller*, 2023 QCCS 2333, para. 67(1); *Lundy* v. *VIA Rail Canada Inc.*, *supra*, note 7, para. 28; Y. LAUZON and B. W. JOHNSTON, *supra*, note 7, para. 6.3.1.1.1.

9 *Trottier c. Canadian Malartic Mine*, 2018 QCCA 1075, para. 44; *Filion c. Québec (Procureure générale)*, *supra*, note 7, paras. 48 and 55; *S.N. c. Miller*, supra, note 8, para. 67(1); *Lundy* v. *VIA Rail Canada Inc.*, *supra*, note 7, paras. 7, 31 and 32; Y. LAUZON and B. W. JOHNSTON, *supra*, note 7, para. 6.3.1.1.1; Pierre-Claude LAFOND, Libres propos sur la pratique de l'action collective – Sur le statut des membres et les obligations des avocats, Montréal, Les Éditions Yvon Blais, 2020, para. 4.1; Michael A. EIZENGA and Christiaan A. JORDAAN, "Ethical Issues in Class Actions Defence: Communications with Putative Class Members" in Barreau du Québec, Service de la formation continue, *Colloque national sur les recours collectifs: développements récents au Québec, au Canada et aux États-Unis (2013)*, volume 362, Cowansville, Éditions Yvon Blais, 2013, p. 214; Mario WELSH and Shaun FINN, « Le statut particulier des membres du groupe et ses conséquences déontologiques et pratiques », in Service de la formation continue du Barreau du Québec, vol. 410, *Colloque national sur l'action collective – Développements récents au Québec, au Canada et aux États-Unis*, Montréal, Éditions Yvon Blais, 2016, p. 2.

10 *Major* c. *Wainberg*, 2016 QCCS 902, paras. 71 to 73; Maxime NASR et Victoria SANSCARTIER , "I'm gonna make him an offer he can't refuse": les limites aux communications avec les membres, (2022) 520 Développements récents (Colloque national sur l'action collective) 123, p. 136; Y. LAUZON and B. W. JOHNSTON, *supra*, note 7, para. 6.3.1.1.2;

11 *Code of Professional Conduct of Lawyers*, RLRQ, c. B-1, r. 3.1, s. 7.

12 *Ibid.*, s. 8.

not, directly or indirectly, insistently or repeatedly urge anyone to retain his professional services".[13]

[41] The case management judge, appointed to hear the motion to authorize the class action and manage the case has specific powers to "rule on any special requests made by the parties […], authorize or order provisional measures or safeguard measures as it considers appropriate".[14] These powers include the right to issue appropriate orders to control communications with class members to ensure the integrity of the judicial process and the protection of class member rights.[15]

[42] With regard to communications between defendants and potential class members, some courts have observed that such communications at this stage may be problematic because they "may interfere with a nascent lawyer and client relationship and may dismember the putative class by persuading putative class members not to participate. This, in turn, may discourage the representative plaintiff or class counsel from prosecuting the proposed class action".[16] Nonetheless, it is usually recognized that, prior to authorization, defendants may communicate with potential class members in the ordinary course of business, including to gather facts about a potential situation, for settlement purposes or to incite them to opt out of the class as long as they refrain from giving false, misleading, or intimidating information.[17] On the other hand, courts will generally not be shy to intervene if they feel that communications are inappropriate[18] or to ensure that potential class members are well informed prior to accepting a settlement offer. For example, the court could order the defendant to advise putative class members of the

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13 *Ibid.*, s. 9.

14 Arts. 49, 158 and 572 CCP.

15 *Bernard* c. *Collège Charles-Lemoyne de Longueuil*, June 22, 2023, C.A. 500-09-029946-226, jj. Schrager, Cotnam et Sansfaçon, paras. 21 and 22; *Lundy v. VIA Rail Canada Inc., supra,* note 7, paras. 9-13, 34-35 and 37; *Vitelli* v. *Villa Giardino Homes Ltd.*, 2001 CanLII 28067 (ON SC), para. 31.Y. LAUZON and B. W. JOHNSTON, *supra*, note 7.

16 *Lundy* v. *VIA Rail Canada Inc.*, *supra*, note 7, para. 7.

17 *Bernard* c. *Collège Charles-Lemoyne de Longueuil*, *supra*, note 15, para. 51; *Trottier* c. *Canadian Malartic Mine*, supra, note 9, paras. 46 to 49; *S.N. c. Miller*, *supra*, note 8, para. 67(2); *Association des amis du Patro Lokal de Saint-Hyacinthe* c. *Frères maristes*, 2021 QCCS 3353, paras. 11, 12 and 18 (Motion for permission to appeal dismissed, 2021 QCCA 1660); *Del Guidice* c. *Thompson* 2021 ONSC 2206, paras. 23 to 29; *Lundy* v. *VIA Rail Canada Inc.*, *supra*, note 7, para. 8; *Smith* c. *National Money Mart Co.*, [2007] O.J. no. 1507 (C.S.), para. 31; *Association d'aide aux victimes des prothèses de la hanche/Hip Implant Victims'Aid Association* c. *Centerpulse Orthopedics Inc. (Sulzer Orthopedics Inc.)*, [2005] R.J.Q. 1701 (C.S.); Maxime NASR et Victoria SANSCARTIER, *supra*, note 10, pp. 136 and 137; Y. LAUZON and B. W. JOHNSTON, *supra*, note 7, para. 6.3.1.2; Pierre-Claude LAFOND, supra, note 9, p. 97; Federal Judicial Centre, Manual for Complex Litigation, 4th ed. (Washington, DC: Federal Judicial Center, 2004), 21.12, pp. 248, 249, quoted by Justice Perell in *Lundy* v. *VIA Rail Canada Inc.*, *supra*, note 7, para. 13.

18 *Bernard* c. *Collège Charles-Lemoyne de Longueuil*, *supra*, note 15, para. 51; *S.N. c. Miller*, *supra*, note 8, para. 67(2); *Durling* v. *Sunrise Propane Energy Group Inc.*, 2012 ONSC 6328; *Association d'aide aux victimes des prothèses de la hanche/Hip Implant Victims'Aid Association* c. *Centerpulse Orthopedics Inc. (Sulzer Orthopedics Inc.), supra*, note 15, paras. 46 et 79; *1176560 Ontario Ltd. v. Great Atlantic & Pacific Company of Canada Ltd.*, 2002 CanLII 6199 (ON SC), para. 76; Maxime NASR et Victoria SANSCARTIER, supra, note 10, p. 137.

filing of the motion to authorize a class action and inform them of the nature of the class proceeding before entering a settlement. The court could also insist that any settlement offer indicate that the signing of a release could deprive the potential member of the benefits of a class action judgment or settlement.[19]

[43] Thus, while the court undoubtedly has the power to intervene to ensure the integrity of the judicial process and the protection of class member rights, such intervention should be "narrowly directed and sparingly employed" and reserved for situations where the need to interfere has been demonstrated.[20]

1.1.2 Communications after the expiry of the opt-out deadline

[44] After authorization and more specifically after the opt-out deadline has passed, the situation is much clearer.

[45] At that point, a notice has been sent to all class members advising them that the class action has been authorized.[21] The notice includes a description of the issues, the class and the conclusions sought. It provides the name of the representative plaintiff, the identity of class counsel as well as contact information. The right to opt out and the procedure to follow to do so are explained.

[46] Notices are also required when a case has been settled to inform class members of the settlement approval hearing and allow members to make representations on the settlement.[22]

[47] The court has a duty to review and approve such notices.

[48] The court may also order a notice to be sent to class members "at any stage" "if it considers it necessary for the protection of their rights".[23]

[49] However, the court's power to order notices to be sent if required, does not imply that the court must review all communications between class counsel and class members. Neither article 581 C.C.P. nor other provisions of the Code go that far. While the legislator recognizes that, in certain cases, the court's supervision of communications to the class may be required to protect the interests of class members, excessive supervision is susceptible to hinder rather than further class members' interests.

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19 *David* v. *Loblaw*, 2018 ONSC 198; *White* v. *IKO*, 2010 ONSC 3920; *Lewis* v. *Shell Canada Ltd.* (2000), 2000 CanLII 22379 (ON SC), 48 O.R. (3d) 612 (S.C.J.), paras. 13 to 20; William B. Rubenstein, *Newberg on class actions*, Fifth Edition, Volume 3, Chapters 7 to 10 (Thompson Reuters, 2013), pp. 367,399-400.

20 *S.N. c. Miller*, *supra*, note 8, para. 67(3); *Bernard c. Collège Charles-Lemoyne de Longueuil*, 2022 QCCS 555, paras. 75 and 76 (confirmed in appeal, *supra*, note 15); *Pearson v. Inco Ltd.*, 2001 CanLII 28084 (ON SC), paras. 10 and 18.

21 Arts. 576 and 579 C.C.P.

22 Art. 590 C.C.P.

23 Art. 581 C.C.P.

[50] Once a class action has been authorized and the opt-out period has concluded, the status of class members is very close to that of a party to the proceedings.[24] At that stage, the duty of class counsel to protect the interests of all class members is unambiguous. All members are equal and enjoy the same rights regardless of how involved they wish to be in the proceedings.[25] Communications between class counsel and class members may be useful to provide information about the proceedings and the rights of class members, gathering facts about the individual claim of each class members, identifying adequate witnesses for trial, etc.

[51] Thus, absent the particular cases mentioned in the C.C.P., class counsel must be allowed to communicate freely and unimpededly with potential class members as long as it is for a "legitimate purpose" and in a "non-abusive way".[26] An order to curtail communication between class counsel and class members "should be based on a clear record and specific findings" that demonstrate abuse and the need for the limitation.[27]

[52] Of relevance is the fact that courts generally grant requests made by class counsel to force Defendants to communicate the list of potential class members to allow class counsel to fulfill their ethical duty towards the members.[28]

[53] Conversely, courts generally refuse to order class counsel to disclose the contact information of members who have registered with class counsel when the Defendant's stated objective is to communicate with them.[29] Disclosure of the number of registered members may sometimes be ordered when the purpose is "to obtain an idea of the scope of the action".[30]

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24 *Belley* c. *TD Auto Finance Services Inc./Services de financement auto TD inc.*, *supra*, note 7, para. 30; *Trottier* c. *Canadian Malartic Mine*, *supra*, note 15, para. 44; *Filion* c. *Québec (Procureure générale)*, *supra*, note 7, paras. 43, 48 and 55; *Société des loteries du Québec* c. *Brochu*, 2006 QCCA 1117; *Lévy* c. *Nissan Canada inc.*, 2021 QCCS 5063, para. 15; *Dick* c. *Johnson & Johnson Inc.*, 2015 QCCS 6049, paras. 21 and 49 (Motion for leave to appeal to the Supreme Court dismissed (S.C. Can., 2016-09-15) 36996); Maxime NASR et Victoria SANSCARTIER, *supra*, note 10, pp. 129-131.

25 *Belley* c. *TD Auto Finance Services Inc./Services de financement auto TD inc.*, *supra*, note 7, para. 30; *Filion* c. *Québec (Procureure générale)*, *supra*, note 7, para. 32; *Dick* c. *Johnson & Johnson Inc.*, *supra*, note 24, para. 21.

26 *Ward-Price* c. *Mariners Haven Inc.*, [2004] O.J. no. 2308; *Mangan* v. *Inco Ltd.*, 1998 CanLII 14671 (ON SC); Y. LAUZON and B. W. JOHNSTON, *supra*, note 7, para. 6.3.1.1.2.

27 *Gulf Oil Co.* v. *Bernard*, 452 U.S. 89 (1981) cited by Y. LAUZON and B. W. JOHNSTON, *supra*, note 7, para. 6.3.1.1.2;

28 *Option Consommateurs* c. *Samsung Electronics Canada Inc.*, *supra*, note 5; *Lévy* c. *Nissan Canada inc., supra*, note 24, paras. 11 and 12; *Association pour la protection automobile (APA)* c. *Nissan Canada inc.*, 2021 QCCS 4490, para. 19; *Dick* c. *Johnson & Johnson Inc.*, *supra*, note 24, paras. 20, 21 and 49; *Tremblay* c. *Capitale (La), assureur de l'administration publique inc.*, 2010 QCCS 2761; *Thibault* c. *St. Jude Medical Inc.*, 2006 QCCS 2025, paras. 20 to 25.

29 *Filion* c. *Québec (Procureure générale)*, *supra*, note 7, paras. 53 to 55.

30 *Belley* c. *TD Auto Finance Services Inc./Services de financement auto TD inc.*, *supra*, note 7, para. 46.

[54] Defendants' right to communicate with class members is thus restricted at this stage. Once the class action is authorized and the delay to opt out has expired, class members are represented by class counsel, and they become bound by an eventual settlement or judgment on the merits of the class action.

[55] Any communication between defendants' counsel and class members after the class action is authorized is governed by the provisions of the *Code of Professional Conduct of Lawyers* that deal with communications between counsel and a known represented party.[31]

[56] Direct communications between defendants and class members are also frowned upon after authorization as they are susceptible to affect the balance of power between the parties and reduce the effectiveness of the class action mechanism to facilitate access to justice, modify harmful behaviour and conserve judicial resources.

[57] Courts must be extremely vigilant with regards to communications between defendants and class members during the pivotal opting-out period. The exclusion period is a critical stage in the process, as it seals the fate of the members. When the opting-out period expires, the composition of the class crystallizes, and the class action takes shape. Class members are bound by the outcome of the collective action, while those who have opted out remain free to sue on their own. At this decisive stage, the Court must balance two important values: the preservation of the integrity of the class action mechanism and the parties' freedom of expression. Because defendants are often tasked with transmitting class action notices, courts must ensure that they do not take advantage of this responsibility to address potential members directly in order to compromise the exclusion process.[32]

[58] After the opting-out period has expired, the prevalent view is that direct conversations between defendants and class members should take place either in the presence of class counsel or with specific approval by the court.[33]

[59] Of course, defendant can communicate directly and without constraint with members who have opted out of the group.[34]

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31 *Code of Professional Conduct of Lawyers*, *supra*, note 11, s. 120; *Association des amis du Patro Lokal de Saint-Hyacinthe* c. *Frères maristes*, *supra*, note 15, paras. 12 to 14

32 *Bernard c. Collège Charles-Lemoyne de Longueuil*, supra, note 15, paras. 47, 52 and 56; *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2013 ONCA 279; *ALS Society of Essex County v. Corporation of the City of Windsor*, 2016 ONSC 676, paras. 36 to 39 (motion for permission to appeal dismissed, March 24 2016, 2016 ONSC 1929 (C.Div. Ont.); *Durling v. Sunrise Propane Energy Group Inc.*, 2012 ONSC 6328, para. 39.

33 *Bernard c. Collège Charles-Lemoyne de Longueuil*, supra, note 15, para. 38; *Association des amis du Patro Lokal de Saint-Hyacinthe* c. *Frères maristes*, *supra*, note 15, paras. 40 to 44; N. *Turenne Brique et pierre inc.* c. *FTQ-Construction*, 2016 QCCS 1688, paras. 11, 12 and 20 (Leave to appeal refused, 2016 QCCA 998); Maxime NASR et Victoria SANSCARTIER, *supra*, note 10, pp. 140; Michael A. EIZENGA and Christiaan A. JORDAAN, supra, note 9, p. 6.

34 Maxime NASR et Victoria SANSCARTIER, *supra*, note 10, p. 140.

1.1.3 Summary

[60] In August 2022, Justice Perrell summarized the applicable Ontario jurisprudence regarding communications with putative or existing class members.[35] The principles he developed are, for the most part, in line with Quebec authorities on the issue and are reiterated here (references omitted) with the appropriate adjustments made to adapt them to the Quebec context:

> 60.1. Both before and after authorization, the court can exercise its discretion and impose conditions on communications between the parties, counsel and class members to ensure the integrity of the class action process and the protection of class member's rights.
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> 60.2. An order restricting communication by the parties to class members prior to authorization is extraordinary. However, if communication by a party to a class member is inaccurate, intimidating, or coercive, or is made for some other improper purpose aimed at undermining the class action process, the court will, on the motion of a party or a class member supported by evidence, intervene to ensure the fair determination of the class proceeding.
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> 60.3. Absent evidence of inappropriate behaviour, class counsel, defendant's counsel and the defendant personally are entitled to communicate with putative class members as if they were non-parties and the court should refrain from interfering with such communications unless it is demonstrated that intervention is required to safeguard the integrity of the class proceeding.
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> 60.4. When the authorization of the class action is pending and the defendant or defendant's counsel is communicating with class members to make settlement offers, the court may issue directions to ensure that putative class members are well informed prior to accepting a settlement. For example, the court could use its inherent jurisdiction or its powers under art. 581 C.C.P. to order the defendant to advise putative class members of the filing of the motion to authorize a class action and inform them of the nature of the class proceeding. The court could also insist that any settlement offer indicate that the signing of a release could deprive the potential class member of the benefits of a class action judgment or settlement.
>
> 60.5. Courts must be extremely vigilant with regards to communications during the pivotal opting-out period. The Court must balance the preservation of the integrity of the class action mechanism and the parties' freedom of expression.

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[35] *Nardi* v. *Sorin Group Deutschland, GMBH*, 2022 ONSC 4766, para. 55.

60.6. After the expiry of the opt-out period, the status of class members is very close to that of a party to the proceedings. At that stage, the duty of class counsel to protect the interests of all class members is unambiguous. All members enjoy the same rights regardless of how involved they wish to be in the proceedings. Communications between class counsel and the class members should remain as unrestricted as possible as long as they are for a "legitimate purpose".

60.7. At this point in time, Defendants' counsel's right to communicate with class members is restricted by the provisions of the *Code of Professional Conduct of Lawyers* that deal with communications between counsel and a known represented party.

60.8. After the opt-out period has expired, direct communications between defendants and confirmed class members should only take place either in the presence of class counsel or with specific approval by the court. Such restrictions are justified to avoid affecting the balance of power between the parties and reducing the effectiveness of the class action mechanism to facilitate access to justice, modify harmful behaviour and conserve judicial resources.

1.2 Discussion

[61] Applying the above principles, the Court finds no reason to restrict or supervise communications between Class Counsel and the Class Members.

[62] Defendants have invoked no precedent to support the opt-in measure they wish to put in place for communications between Class Counsel and the Class Members after the opt-out period has expired. Class actions in Quebec are based on the opt-out principle. Anyone who has failed to exclude themselves prior to the deadline is a member of the class and is bound by an eventual judgment of the court.

[63] The class action has been authorized and the delay to opt out has passed. The Class is now defined.

[64] Justice Moore has already issued orders to secure the confidentiality of personal information. His November 29, 2019 judgment also contains the following conclusions to ensure that the purpose of the communication is well understood and that non-Members do not receive communications:

> ORDERS Plaintiff's Counsel of Record to indicate clearly in every communication with the individuals listed on Quebec Residents List that their Personal Information was obtained pursuant to an order of this Court in connection with this class action and to cite the court file number;

> ORDERS that when Plaintiff's Counsel of Record communicates within an individual listed on the Quebec Residents List and learns that the individual is not a member of the present class action, Plaintiff's Counsel of Record will stop communicating with that individual;

[65] Defendants have provided no evidence of abuse or impropriety. On the contrary, the Court of Appeal specifically mentioned that the contact information of Members could be useful to Class Counsel to contact them in view of preparing for the trial on the common issues.[36]

[66] Defendants' argument that communication by Class Counsel could be confusing or could interfere with the recall in place is speculative and unsupported by any evidence.

[67] The Recall has been in place for seven years. Aside from the initial recall notices, no meaningful communication has occurred between Samsung and the Class Members. The risk of confusion is thus minimal.

[68] Therefore, the Defendants' motion to issue directions to curtail the use of personal information belonging to Class Members is dismissed.

2. <u>How Should the Objections Made During the Examination of Mr. Martino Be Decided?</u>

and

3. <u>Should Plaintiffs Be Entitled to Proceed with Additional Examinations of Samsung Representatives?</u>

[69] These two issues will be dealt with together.

[70] Plaintiffs seek answers to questions and documents objected to during the examination of Mr. Martino.

[71] They wish to re-examine Mr. Martino on these answers and documents as well as on the subject authorized by the Court of Appeal. They ask that they be granted a period of five to seven hours to do so.

[72] Defendants do not object to the re-examination authorized by the Court of Appeal, but they wish to limit the examination of Mr. Martino to three hours.

[73] Finally, Plaintiffs seek leave to re-examine a representative of Samsung Electronics on the issue of corporate knowledge of a potential defect in the Washers. Defendants contest this request.

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[36] *Option Consommateurs* c. *Samsung Electronics Canada Inc.*, *supra*, note 5, paras. 36 and 37.

1.3 Applicable Law

[74] The undersigned recently summarized the principles which should guide the court when it is called upon to adjudicate objections or document requests made during the pre-trial phase of a class action.[37]

[75] These principles are reiterated here.

1.3.1 General Principles

[76] Examinations for discovery and document requests are essential elements of the exploratory phase in civil matters. Their goal is to facilitate the search for truth which remains the "ultimate aim" of any civil or criminal trial. Early disclosure of evidence also ensures that trials are conducted fairly and efficiently. Finally, it allows the parties to evaluate the strength of their respective cases and encourages out of court settlements.[38]

[77] Therefore, the court should encourage the fullest and earliest possible disclosure of evidence. Such disclosure is in line with the duty of transparency and cooperation required for the sound management of proceedings and a fair judicial debate, as opposed to a trial by ambush (articles 19 and 20 C.C.P.).[39]

[78] A witness may refrain from answering when an objection is made on the grounds of privilege or because a "substantial and legitimate interest" would be compromised by answering.[40] This later notion must be interpreted restrictively. If the court finds that a "substantial and legitimate" interest exists, but that the implied undertaking of confidentiality or some other means of protection or control may resolve the disclosure issue, it must dismiss the objection.[41]

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37 *Letarte* c. *Bayer Inc.*, 2023 QCCS 296.

38 *Imperial Oil* v. *Jacques*, 2014 SCC 66, paras. 24 to 26; *Glegg* v. *Smith & Nephew Inc.*, 2005 SCC 31, para. 22.

39 *Imperial Oil* v. *Jacques*, *supra*, note 38, para. 28; *Grid Solutions Canada* c. *Murphy*, 2019 QCCA 1141, para. 6; *Société financière Manuvie* c. *D'Alessandro*, 2014 QCCA 2332, para. 22 (Discontinuance of the motion for leave to appeal to the Supreme Court (S.C. Can., 2015-06-26) 36309); *Sotramont Gatineau Inc.* c. *Original Baked Quality Pita Dips Inc.*, 2020 QCCS 143; *Envac Systèmes Canada inc.* c. *Montréal (Ville de)*, 2016 QCCS 1931, para. 27; Denis FERLAND and Benoît EMERY, *Précis de procédure civile du Québec*, 6th ed., Montréal, Éditions Yvon Blais, 2020, volume 1, para. 1-1336.

40 Arts. 12 and 228 C.C.P.

41 *Sierra Club du Canada* c. *Canada (Minister of Finances)*, 2002 CSC 41, paras. 49, 50, 51 and 55; *Ministère des Travaux publics et Services gouvernementaux Canada* c. *David S. Laflamme Construction inc.*, 2017 QCCA 96, para. 6; *CMC Électronique inc.* c. *Procureure générale du Québec*, 2020 QCCS 124, para. 27; *Nolicam Location de camions inc.* c. *Budget Rent A Car Licensor*, 2019 QCCS 747, para. 6; *Siciliano* c. *Éditions La Presse ltée*, 2016 QCCS 3702, paras. 24 and 29 (Out of court settlement (C.A., 2016-06-23) 500-09-026076-166); *Luxme International Ltd.* c. *Lasnier*, 2016 QCCS 6389, paras.10 and 11.

[79] Generally, when an objection does not invoke a fundamental right or a substantial and legitimate interest, the witness is required to answer. This is the case for example when the objection is based on lack of relevance.[42]

[80] Nonetheless, while the right to pre-trial disclosure must be interpreted broadly, it is not unlimited. The court may put an end to an examination when it considers it "excessive or unnecessary".[43] Parties must respect the principle of proportionality and their conduct must facilitate the progress of the proceedings rather than having them delayed, complicated, or even jeopardized by the introduction of evidence that does not assist in establishing the rights being advanced (articles 18 and 19 C.C.P.). Fishing expeditions, repeated demands and indiscriminate searches are not allowed. The court has discretion to refuse disclosure of information when complying with the request would require the analysis of a disproportionate number of documents, an excessive number of hours or impose disproportionate costs. The court may also reduce the financial and administrative burden on the party from whom documents are requested by imposing reasonable constraints.[44]

[81] It is generally accepted that courts should not order witnesses to perform analytical work or force them to prepare a document that does not exist as is, especially when the analysis or preparation would require significant effort and the information requested is not available in the desired format.[45] However, disclosure can be ordered when the information can be prepared with relative ease and by following simple procedures.[46]

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42 Art. 228 C.C.P.

43 Art. 230 C.C.P.

44 *Imperial Oil* v. *Jacques*, *supra*, note 38, paras. 31 and 85; *Grid Solutions Canada* c. *Murphy*, *supra*, note 39, paras. 6 and 7; *Duguay* c. *Compagnie General Motors du Canada*, 2019 QCCA 1058, para. 8; *Digital Shape Technologies inc.* c. *Comte*, 2018 QCCA 955, para. 7; *Lanteigne* c. *Société des Casinos du Québec*, 2022 QCCS 4752, paras. 40 and 49; *Gestion Guy St-Louis inc.* c. *Caisse Desjardins de Brome-Missisquoi*, 2022 QCCS 1273, paras. 1, 2 and 33 to 39; *Option Consommateurs* c. *Société des loteries du Québec (Loto-Québec)*, 2021 QCCS 244, paras. 22 and 23; *Union des consommateurs* c. *Bell Canada*, 2019 QCCS 3756, paras. 23 to 25; *Kloda* c. *CIBC World Markets Inc. (CIBC Wood Gundy)*, 2019 QCCS 761, paras 16 to 19; *Nolicam Location de camions inc.* c. *Budget Rent A Car Licensor*, *supra*, note 41, paras. 6 and 16; *A.* c. *Frères du Sacré-Coeur*, 2019 QCCS 258, para. 28; *Axxess International courtiers en douanes inc.* c. *Boulay,* 2018 QCCS 5363, para. 50; *Sintra inc. (région Estrie)* c. *Ville de Lac-Mégantic*, 2017 QCCS 4477, para. 30; *Charland* c. *Hydro-Québec*, 2017 QCCS 2623, paras. 13, 39 and 46 (Permission to appeal denied, 2017 QCCA 1707); *Association professionnelle des audioprothésistes du Québec* c. *Procureure générale du Québec*, 2017 QCCS 1960, para. 10 (Motion for permission to appeal dismissed, 2017 QCCA 1112); *Distributions d'acier de Montréal* c. *Tubes Olympia ltée*, 2016 QCCS 1635, para. 4.

45 Jean-Claude ROYER and Catherine PICHÉ, *La preuve civile*, 6th ed., Montréal, Éditions Yvon Blais, 2020, para. 653; *Commission scolaire des Affluents* c. *Commission des droits de la personne et des droits de la jeunesse*, 2006 QCCA 81, para. 36; *Mutuelle du Canada (La), Cie d'assurance sur la vie* c. *Cie d'assurance-vie, Manufacturers*, [1987] R.D.J. 192 (C.A.), para. 5; *Entrepreneurs de construction Concordia inc.* c. *Régie des installations olympiques*, 2021 QCCS 3236, para. 34; *Duguay* c. *Compagnie General Motors du Canada*, 2019 QCCS 1297, para. 35 (Motion for permission to appeal dismissed, 2019 QCCA 1058).

46 *Charkaoui* c. *Canada (Procureur général)*, 2013 QCCS 7132, para. 39.

[82] A party who wishes to obtain communication of documents has the burden of showing that they are relevant and that the request respects the principle of proportionality.[47] However, since the judge who assesses relevance at a preliminary stage does not have the benefit of having heard all the evidence, the notion of relevance must be interpreted broadly and any doubt as to the relevance of a response must favour disclosure. At the pre-trial stage, a party must only demonstrate that disclosure of the information is useful, appropriate and likely to advance the debate based on an acceptable objective that it seeks to achieve. The assessment of relevance is a function of usefulness rather than necessity.[48]

[83] A party who wishes to oppose disclosure on the basis of privilege or a substantial interest has the burden of proving same.

[84] In summary, the court's role is to find the delicate balance between two equally important objectives.

84.1. On the one hand, we must facilitate the timely disclosure of evidence to facilitate the search for truth, ensure that trials are conducted fairly and efficiently and allow parties to rapidly evaluate the strength of their respective cases so that settlements are encouraged.

84.2. On the other hand, we must apply the principle of proportionality to protect access to justice, promote a fair and economical application of procedural rules and ensure that cases proceed smoothly rather than being delayed or complicated by the introduction of evidence that does not contribute to the resolution of the dispute.

1.3.2 Applying these General Principles in the Class Action Context

[85] Weighing these objectives in the context of class action proceedings requires that the Court consider the particular features of this procedure.

[86] Relevance is not appraised differently in class action proceedings. Nonetheless, as part of the authorization process, the class has been defined, the common questions and the conclusions have been identified. This preliminary judicial filter undoubtedly assists the Court in framing the dispute and making sure that the request falls within this frame.[49] Then again, relevance must be assessed with regard to the allegations of the proceeding, the common questions and conclusions not only as they apply to the class representative but as to the class as a whole. Given the special relationship between class counsel, the

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47 *Lanteigne* c. *Société des Casinos du Québec*, *supra*, note 44, paras. 59 and 60; *Kloda* c. *CIBC World Markets Inc. (CIBC Wood Gundy)*, *supra*, note 44, para. 16; *Lambert (Gestion Peggy)* c. *Écolait ltée*, 2017 QCCS 5429, paras. 28 to 31.

48 *Groupe TVA inc. c. Boulanger*, 2023 QCCA 687, para. 18; *Société financière Manuvie* c. *D'Alessandro*, *supra*, note 39, para. 22; *Siciliano* c. *Éditions La Presse ltée*, *supra*, note 41, para. 48.

49 *Lanteigne* c. *Société des Casinos du Québec*, *supra*, note 44, paras. 78 to 81.

class representative and the class members, the court must be mindful that much of the relevant evidence may not be in possession of the class representative. For example, information regarding claims of other class members often lies only in the hands of the defendant.[50]

1.3.3 Solicitor-client and Litigation Privilege

[87] Solicitor-client privilege protects communications:

87.1. between a client and his legal advisor;

87.2. whose purpose is to obtain or render a legal opinion; and

87.3. which the client intends to keep confidential.[51]

[88] The fact that legal advice is provided by corporate counsel does not affect the existence or the intensity of the privilege. However, the rule remains the same: advice given by lawyers on matters outside the solicitor-client relationship is not protected. Because of the range of functions occupied by in-house counsel, special scrutiny is warranted. In some cases, in-house are valued as much (if not or more) for their business sense as for their legal acumen. “No solicitor-client privilege attaches to advice on purely business matters even where it is provided by a lawyer”.[52]

[89] Any waiver of solicitor-client privilege must be voluntary, clear and emanate from the client.[53]

[90] Although exceptions exist, solicitor-client privilege is a principle of fundamental justice of the utmost importance.[54] To remain relevant, it “must remain as absolute as possible”.[55]

1.3.4 Litigation Privilege

[91] Litigation privilege is intended to create a “zone of privacy” in relation to pending or apprehended litigation.[56] It is not restricted to conversations between lawyer and client. It

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50 *Benamor* c. *Air Canada*, 2020 QCCA 1597, para. 42; *Sibiga* c. *Fido Solutions inc.*, 2016 QCCA 1299, paras. 62 and 76.

51 *Descôteaux et al.* v. *Mierzwinski*, [1982] 1 SCR 860, pp. 872 and 873; *Solosky* v. *The Queen*, [1980] 1 S.C.R. 821.

52 *Pritchard* v. *Ontario*, [2004] 1 S.C.R. 809, para. 21; *R.* v. *Campbell*, [1999] 1 S.C.R. 565, para. 50; *I.B.M. Canada Ltd.* c. *Xerox du Canada Ltée*, [1978] 1 C.F. 513 (C.A.F.), para 9.

53 *Glegg* v. *Smith & Nephew inc.*, *supra*, note 38, para. 18.

54 *Canada (Attorney General)* v. *Chambre des notaires du Québec*, 2016 SCC 20, para. 37.

55 *Lavallee, Rackel & Heintz* c. *Canada (Procureur général)*, 2002 CSC 61, para. 36.

56 *Lizotte* v. *Aviva Insurance Company of Canada*, 2016 SCC 52, para. 20; *Blank* v. *Canada (Minister of Justice)*, 2006 SCC 39, para. 34.

applies to conversations between a party or his lawyer, on the one hand, and third parties, on the other.[57]

[92] Litigation privilege applies only to conversations or documents whose "principal purpose" is the preparation of litigation.[58]

[93] The intention that discussions or documents exchanged remain confidential is not a condition for the application of the privilege.[59]

[94] Unlike professional secrecy, litigation privilege is temporary. It expires at the same time as the litigation giving rise to it.[60]

[95] Moreover, like solicitor-client privilege, litigation privilege belongs to the party concerned, who may waive it. A waiver may be tacit, but it must be "voluntary, clear and obvious".[61]

1.4 Discussion

[96] The present case illustrates rather convincingly what can happen when the parties and their counsel lose track of their duty to safeguard the principle of proportionality and the need to cooperate to ensure that proceedings proceed efficiently.

[97] The original application to be authorized to file a class action was filed in October 2016. The class action was authorized by the Superior Court more than five years ago. The class action was filed in July 2018.

[98] Nonetheless, the parties are still bogged down in numerous pre-trial procedures.

[99] The Court must rule on the objections raised during the examination of Mr. Martino and on Plaintiff's request to re-examine Mr. Martino as well as another Samsung Electronics representative.

1.4.1 Objections based on Solicitor-Client and/or Litigation Privilege (O-38)

[100] The context of this objection is as follows:

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57 *Ibid*, paras. 27 and 32.

58 *Lizotte* v. *Aviva Insurance Company of Canada*, *supra*, note 56, paras. 19 and 23; *Lalande* c. *Compagnie d'arrimage de Québec ltée*, 2018 QCCA 683, para. 39; *Syndicat Lofts Wilson* c. *Constructions Reliance du Canada ltée*, 2017 QCCA 1082, paras. 7 to 9; *Compagnie d'assurances AIG du Canada* c. *Solmax International inc.*, 2016 QCCA 258, paras. 4 and 5.

59 Raymond DORAY, "Le devoir de confidentialité et le conflit d'intérêts" in École du Barreau du Québec, *Éthique, déontologie et pratique professionnelle*, volume 1 (2021-2022), Montréal, Éditions Yvon Blais, 2021 [online], p. 72; *Blank* v. *Canada (Minister of Justice)*, *supra*, note 56, para. 32.

60 *Ibid*, paras. 8 and 34.

61 *Union canadienne (L'), compagnie d'assurances* c. *St-Pierre*, 2012 QCCA 433, para. 51.

[101] The Recall was first announced on September 29, 2016.

[102] A few days before, on September 23, 2016, a meeting of what Samsung's counsel called the "Task force in charge of the recall" took place.

[103] The following people were present: Mr. Majithia, Vice-president Sales and Product Management for Samsung Canada, Mr. Warner Doell and Mr. Byoungsuk Choi (described as Business Lead); Mr. Jeff Van Damme, general counsel (identified as Legal Lead); Mr. Andy Coog and Mr. Frank Martino (identified as Service Lead); and Ms. Brenna Eller (identified as Communication Lead).

[104] Plaintiffs asked Mr. Martino to file the email that was circulated to convene the meeting.

[105] In response to the undertaking, Samsung provided a redacted version of a document which is the email in question with a document attached (FMU-44). Plaintiffs ask that they be provided with an unredacted version.

[106] The debate took place *ex parte* and *in camera*. Only counsel for Samsung and Samsung representatives were present. During the *ex parte* debate, the Court was provided with an unredacted version of the document.

[107] The Court notes that the redacted portions of the document are unlikely to feature prominently in any judgment on the merits of the class action. In the Court's view, there is nothing in the redacted sections that has a strong potential of swaying the trial judge one way or another.

[108] Nonetheless, the document is relevant in the generous sense that must be considered at the pre-trial stage.

[109] On the other hand, given the broad interpretation that must be given to solicitor-client privilege, the Court considers that the redacted portions of the documents on page 2 (Executive Summary), page 3 (Roles & Responsibilities), page 4 (SECA Total Cost for Label Solution) and page 5 under the heading Legal loosely relate to legal advice.

[110] The redacted portions of page 5 under the Public Relations and the Digital Appliance Division headings relate to business and communications advice that are not covered by solicitor-client privilege.

[111] Furthermore, the dominant purpose of this section of the table cannot be considered to be the preparation of litigation and is not protected by litigation privilege.

[112] Objection 38 is sustained except for the portions on page 5 under the Public Relations and the Digital Appliance Division headings.

1.4.2 Extracts of the Global Customer Integration Center ("**GCIC**") database

[113] The other objections concern extracts of the GCIC.

[114] Samsung maintains a worldwide database, the GCIC, in which it records interactions with its customers. Samsung Canada has access to the Canadian portion of the GCIC but can ask for access to relevant extracts of the Global database.

[115] Extracts of the GCIC have already been provided to Plaintiffs as well as to Health Canada in the context of the Recall.[62] However, the information was either incomplete, not up to date or limited to incidents that occurred after the Recall. Plaintiffs have asked that the extracts provided be updated to see if anything new was added in the records. They also asked that complete information be provided for each of the records already provided. Towards the end of the hearing, Plaintiffs stated that Objections 13, 14, 21, 22, 39, 40, 41, 42 and 45 could be replaced with an undertaking to provide a complete version of the GCIC.

[116] Samsung objected to providing more extracts of the GCIC on the basis that it would be improper to force them to create a document.

[117] It is true that courts have decided that it is improper to force a party to create documents or computer programs to provide information in the format requested by another party.[63]

[118] This being said, when an extract can be provided with relative ease, the restriction does not apply.[64]

[119] Here Mr. Martino testified that the process to provide extracts is relatively simple.[65]

[120] At the hearing, the Court made certain proposals to Samsung to try and conciliate the need for complete disclosure and the principle of proportionality:

[121] On June 8, 2023, Samsung wrote to the Court agreeing to provide:

121.1. An updated customer service interaction log for top detachments in Canada (U-6) as of May 2023 (with the redaction authorized by the Court of Appeal) but that would also include the interactions with the customers found in the GCIC (with the redaction authorized by the Court of Appeal); and

121.2. An updated customer service interaction log for Quebec residents as of May 2023 (updated U-10).

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62 Undertakings U-6 and U-10 to the examination of Mr. Majithia.
63 See note 45.
64 *Lussier* c. *Expedia Group Inc.*, 2019 QCCS 4927.
65 Examination of Mr. Frank Martino dated October 6, 2022, p. 178.

[122] The Court will pray act of this undertaking.

[123] However, Plaintiffs maintain their request that Samsung provide extracts of the Global database which concern all top detachment or excessive vibration events worldwide.

[124] They submit that the worldwide information is required in order to test the credibility of Samsung's witnesses as to the companies' corporate knowledge.

[125] The information is certainly relevant according to the broad interpretation to be given at the pre-trial stage. This being said the relevance of the information differs according to whether the information concerns class members or other Samsung customers.

[126] Information regarding the Washers purchased by Class Members is of fundamental relevance to the questions at issue in this trial.

[127] However, while information regarding worldwide events on the Washers subject of this Class Action may indeed be marginally relevant to the Defendants' corporate knowledge, this request is overly broad. Even if a fact is logically relevant, a court retains the right to refuse otherwise admissible evidence when its probative value is low and the evidence risks: a) causing confusion with regard to the issues in dispute; b) unduly prejudicing a party, a witness or a third party; or c) if it involves an inordinate amount of time which is not commensurate with its probative value.[66] This is the case here. Opening the door to information about worldwide washer incidents would likely lead to confusion and distract from the primary focus of the debate. It would prolong the trial in Quebec without a measurable benefit to the Class.[67]

[128] Samsung will be ordered to provide an extract in electronic format of the GCIC which contains all information that Samsung possesses with regard to top detachment or excessive vibration Washer incidents involving Members of the Class. This information will be provided without redaction.

[129] Regarding corporate knowledge, Samsung has offered to provide a table in the same format as the one included at page 20 of Exhibit R-5 for the US and Canada (the only countries for which a recall is in place).

[130] The issue of corporate knowledge is not limited to the countries for which a recall is in place. As such, Samsung will be ordered to provide a table in the same format as the one included at page 20 of Exhibit R-5 for those countries in which the Washer models included in the Class definition were sold. However instead of "Sales Quantity", the

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66 J.-C. ROYER and C. PICHÉ, *supra*, note 45, para. 218; Claude MARSEILLE, *La règle de la pertinence en droit de la preuve civile québécois*, Cowansville, Éditions Yvon Blais, 2004, paras. 41 and following; *R.* c. *Mohan*, 1994 CanLII 80 (SCC), [1994] 2 R.C.S. 9; *9217-4887 Québec inc.* c. *Yves Rocher Amérique du Nord inc.*, 2016 QCCS 5123, para. 32; *Thouin* c. *Ultramar ltée*, 2014 QCCS 3946, para. 9.

67 *A* c. *Watch Tower Bible and Tract Society of Canada*, 2018 QCCS 5182, para. 23.

column will refer to “Excessive vibration or top detachment incidents”. Samsung will be allowed, if it wishes to do so, to separate “Excessive vibration” incidents from “Top detachment” incidents.

1.4.3 Objections Related to the Purchase Price of the Washers (Objection 29/U-39) and the Proofs of Purchase of the Washers (Objection 35/U-42)

[131] In its plea,[68] Samsung alleges that in the context of the Recall, as an alternative to the in-home servicing, it offered consumers the option to replace their Washer with a new Samsung washer and receive a rebate on the purchase price of the new machine.

[132] Samsung submits that, if this court finds that Class Members suffered harm, the rebate provides a more than reasonable compensation to consumers based on the estimated purchase price that the consumer paid for the Washer and depreciation. In support of that allegation, Samsung filed a rebate chart (Exhibit D-13). As the chart makes clear the amount of the rebate was not based on the recommended retail price (“**RRP**”) but on the estimated purchase price (“**EPP**”) which is 25% lower.

[133] Plaintiffs have asked why a 25% discount is applied to the RPP. After initially objecting to the request on the basis of relevance, Samsung provided a partial answer but maintained the objection.

[134] The question is relevant. Objection 29 is dismissed.

[135] Samsung was also asked to communicate all proofs of purchase in its possession.

[136] Samsung objected on the basis of relevance and proportionality.

[137] The question is certainly relevant as the adequacy of the rebate can only be determined in relation to the purchase price of the Washer.

[138] With regard to proportionality, Samsung initially provided no evidence to support its argument on the difficulty to fulfill the request. In fact, one notes that proof of purchase is one of the acronyms used in the database.[69] At the hearing the Court indicated to Samsung that it was inclined to order disclosure of all Class Member proofs of purchase that Samsung had in its possession unless a sworn statement was provided to support the allegation of difficulty.

[139] After the hearing, Samsung communicated a sworn declaration of Mr. Frank Martino. Mr. Martino explains that it is not possible to do an automatic search of the CGIC for attachments or invoices. Therefore, in order to provide a copy of the proofs of purchase, an employee would have to analyze each individual record and identify if there

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68 Paras. 119 and 120.
69 Undertaking U-51.

is a responsive document attached to the record. Samsung Canada estimates that this could take 4,622 hours, only for the records included in Undertaking U-10.[70]

[140] Upon receipt of the sworn declaration, Plaintiffs asked to cross-examine Mr. Martino on his declaration. Samsung agreed to postpone adjudication of this issue until Mr. Martino could be cross-examined on his sworn declaration.

[141] This being said, the Court has previously ordered disclosure in electronic format of the GCIC database which contains all information that Defendants possess with regard to top detachment or excessive vibration Washer incidents involving Members of the Class. As the proofs of purchase may well be included part of the customer record included in the database, the objection is probably moot as is the need to cross-examine Mr. Martino on his sworn declaration.

[142] If indeed the complete record of each Class Member includes attachments, Objection 35 will be considered moot and the undertaking 42 will be considered answered. In such case, there will be no need to examine Mr. Martino on his sworn declaration of June 8, 2023.

1.4.4 Re-examinations of Mr. Martino and of a Samsung Electronics Representative

[143] Plaintiffs have already examined three Samsung representatives:

143.1. Mr. Anand Majithia on March 30, 2021;

143.2. Mr. Sungjong Kim on April 1, 2021;

143.3. Mr. Frank Martino on October 6, 2022.

[144] Plaintiffs' counsel concedes that each of these examinations exceeded the statutory five-hour limit. When a party wishes to examine more than one witness, some have opined that the five-hour maximum applies to the total duration of all depositions rather than to each one.[71]

[145] Yet, Class Counsel ask that they be authorized to re-examine Mr. Martino for another five to seven hours "as provided by the *Code of civil procedure*"[72] and to re-examine Mr. Kim for another three hours.

[146] Without deciding if the five-hour maximum applies to the total duration of all depositions rather than to each one, it appears clear that, at the very least, the maximum duration must apply to the total duration of an examination as well as any re-examination

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70 Sworn declaration of Frank Martino, dated June 8, 2023, paras. 5 to 9.
71 *Adams* c. *Noël*, 2019 QCCS 210, para. 10.
72 Case management notice of May 18, 2023, para. 30.

of the same witness. As the Minister's commentary makes clear, the time limit was put in place to promote accessibility to justice by reducing the time and costs associated with legal proceedings. In this spirit, it is quite clear that a party cannot be allowed to examine for four hours, suspend its examination until undertakings are received and objections adjudicated and then re-examine for another four hours. Thus, any additional examinations must take into consideration the time already spent.

[147] Mr. Martino has already been examined for more than five hours.

[148] The Court of Appeal has authorized an examination of Mr. Martino on one limited subject: "interactions between Samsung Canada and Class members in the context of the Recall".

[149] This can take place.

[150] The Court of Appeal's decision regarding unredacted versions of undertakings U-6, U-10, U-11 and U-12 to include the names and contact information of the consumers does not require a re-examination of Mr. Martino. The same comment applies to undertaking U-17 which concerns the records of the 4,694 class members who benefitted from the extended warranty under the recall program. In fact, Plaintiffs did not ask Justice Moore or the Court of Appeal to be allowed to re-examine on this information.

[151] Similarly, there is no need to allow further questioning on documents that may be received further to the present judgment. Answers to objected questions or undertakings can be provided in writing as is the usual practice. The information ordered to be disclosed will speak for itself. Any further questions can be put to the witnesses at trial.

[152] Finally, the Court is conscious of its duty to ensure that the present case proceeds efficiently. It is worth repeating that five years have elapsed since the class action was authorised. In the current circumstances, Plaintiffs' request that they be first allowed to obtain additional documents and then proceed with a re-examination is not reasonable. The significant delays incurred so far are likely to seriously affect the capacity of the parties to present evidence in support of their case and more importantly will undoubtedly have an impact on the ability of individual Class Members to file a claim in the event of a favourable judgment. The phrase "justice delayed is justice denied" applies just as well to class actions as it does to other claims.[73]

[153] Defendants have agreed to an examination of Mr. Martino for a maximum of three hours.

[154] This appears more than reasonable.

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[73] *M.G.* c. *Association Selwyn House*, 2009 QCCS 989, para. 27.

[155] If the extract of the GCIC regarding Class Members includes attachments, the examination of Mr. Martino will be limited to the additional subject allowed by the Court of Appeal. If not, it may also cover Mr. Martino's sworn declaration of June 8, 2023.

[156] In support of their request to re-examine a Samsung Electronics representative, Plaintiffs allege that Samsung witnesses mentioned that they were first made aware of a potential issue regarding the Washers via a US television news report in 2015.

[157] As part of the pre-trial disclosure mentioned above, Plaintiffs obtained extracts of Samsung's GCIC database concerning Washer incidents. According to Plaintiffs, this database confirms that customers complained of top detachment events as early as 2011.

[158] Plaintiffs wish to confront Samsung's witnesses with such incidents to attack their statements as to corporate knowledge.

[159] Again, the extracts of the GCIC database as well as the table of excessive vibration global top detachment ordered to be produced by the present judgment will speak for themselves.

[160] The purpose of pre-trial disclosure is to obtain the opposing party's version and documents that support it. Impeaching witnesses or attacking their credibility is an objective best accomplished before the trial judge.[74]

[161] Plaintiffs' requests to re-examine Mr. Martino on other issues than the subject authorized by the Court of Appeal and to examine a representative of Samsung Electronics is dismissed.

4. HAS SAMSUNG MET THE BURDEN TO SHOW A VALID CAUSE TO SUMMARILY DISMISS THE PRÉVOST REPORT?

1.5 Applicable Law

[162] A party wishing to admit expert opinion evidence must first satisfy four criteria:

162.1. the evidence must be relevant;

162.2. the expert opinion must assist the trier of fact;

162.3. the expert opinion must not violate an exclusionary rule; and

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[74] *Atelier d'usinage G.D. inc.* c. *Produits d'énergie du Canada inc.*, [1994] R.D.J. 172 (C.A.), para. 17; *Thibault* c. *Franchises Salvatore GA inc.*, 2009 QCCS 1584, paras. 35 and 36; *Beaulieu* c. *Landry*, 2006 QCCS 633, paras. 8 and 9; *Rousseau* c. *Optimum assurances agricole Inc.*, 2005 CanLII 16771 (QC CS), para. 19.

162.4. the expert must be qualified.[75]

[163] Secondly, the party must show that the probative value of the report outweighs its potential prejudicial effect.[76]

1.5.1 Relevance and usefulness

[164] The purpose of an expert opinion is to "enlighten the court and assist it in the evaluation of evidence".[77]

[165] While the expert may assist the court, he must not substitute himself for the judge in assessing the evidence.[78] The C.C.P. clearly states that "[t]he expert's conclusions are not binding on the court or on the parties, unless the parties declare that they accept them".[79] Thus, as a general rule, the expert should refrain from giving or formulating an opinion on the scope or credibility of certain evidence or on conclusions of fact or law that do not require specific technical or scientific knowledge.[80]

[166] He must also refrain from giving a legal opinion.[81] However, the mere fact that the expert opines on questions of liability does not make him a usurper of the judge's role.[82]

1.5.2 The absence of any rule of exclusion, particularly with regard to lack of independence or partiality

[167] The expert's role to enlighten the court "overrides the parties' interests". "Experts must fulfill their mission objectively, impartially and thoroughly".[83]

[168] The trial judge is the gatekeeper of the expert's independence and impartiality. A person "who is unable or unwilling to comply with this duty is not qualified to give expert opinion evidence and should not be permitted to do so".[84] Thus, the impartiality of an

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75 *White Burgess Langille Inman* v. *Abbott and Haliburton Co.*, 2015 SCC 23, para. 19; *Mouvement laïque québécois* v. *Saguenay (City),* 2015 SCC 16, para. 106; *Cinar Corporation* v. *Robinson*, 2013 SCC 73, para. 49; *R.* c. *Mohan*, [1994] 2 R.C.S. 9, pp. 20 to 25; *Ouellet* v. *Compagnie de chemin de fer Canadien Pacifique*, 2020 QCCS 1005, para. 20.

76 *White Burgess Langille Inman* c. *Abbott and Haliburton Co*., *supra*, note 75, paras. 19 and 20.

77 Art. 231 C.C.P.

78 *Wightman* c. *Widdrington (Succession de)*, 2009 QCCA 1890, para. 12; *Ouellet* c. *Compagnie de chemin de fer Canadien Pacifique*, *supra*, note 75, paras. 57, 61 and 67.

79 Art. 238 C.C.P.

80 *Déry* c. *Fournier*, 2010 QCCA 254, para. 2; *Ouellet* c. *Compagnie de chemin de fer Canadien Pacifique*, *supra*, note 75, para. 58.

81 *Compagnie d'assurances St-Paul/St-Paul Marine & Fire Insurance Company* v. *SNC-Lavalin inc.*, 2011 QCCA 1551, para. 34 (Appeal dismissed, 2014 QCCA 2109).

82 *Collège d'enseignement général et professionnel Lionel-Groulx* v. *Monette*, 2015 QCCS 3067, para. 30.

83 Art. 22 C.C.P.

84 *White Burgess Langille Inman* c. *Abbott and Haliburton Co.*, *supra*, note 75, paras. 1, 2 and 10.

expert is no longer a simple question of credibility to be attached to the expert report. It affects the admissibility of the report itself. [85]

[169] On the other hand, for expert testimony to be inadmissible, there must be more than a mere appearance of partiality. “The question is not whether a reasonable person would consider that the expert is not independent. Rather, what must be determined is whether the expert’s lack of independence renders him or her incapable of giving an impartial opinion in the specific circumstances of the case”.[86]

1.5.3 Qualification of the expert

[170] The expert must be “qualified […] in the area or matter concerned”.[87]

[171] There must be a direct connection between the expert’s qualifications and the subject matter of his opinion.

[172] An expert’s testimony on matters outside his field of expertise has little probative value.[88] In extreme cases, this can lead to the dismissal of the report or certain parts of it.[89]

1.5.4 Dismissal of an Expert Report at a Preliminary Stage

[173] Article 241 C.C.P. specifically provides for the preliminary dismissal of an expert report prior to the trial. This article sets out three potential grounds for dismissing a report before trial: 1) irregularity of the report; 2) substantial error; or 3) bias.[90]

[174] The request must be made within ten days of learning of the cause for dismissal, although this time limit is not mandatory.[91]

[175] Article 241 C.C.P. must be read in conjunction with article 294 C.C.P., which prevents a party from invoking the irregularity, substantial error, or partiality of the expert at trial if it knew about the issue before then.

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85 *Ibid*, paras. 34, 40 and 45.

86 *Mouvement laïque québécois* c. *Saguenay (City)*, *supra*, note 75, para. 106.

87 Art. 231 C.C.P.

88 *Québec (Procureur général)* c. *Brossard*, J.E. 2002-359 (C.A.), para. 29; *9221-9039 Québec Inc.* c. *Courts Ltd.*, 2015 QCCS 3471, para. 34.

89 Art. 237 C.C.P.; *Moreau* v. *Moreau (Succession de Moreau)*, 2020 QCCS 2369, para. 8 (Application for leave dismissed, 2020 QCCA 1538); *Syndicat des copropriétaires du Westmount Square* v. *Royal & Sun Alliance du Canada, société d'assurances*, 2020 QCCS 1079, para. 56; *Adjovi Adingni* c. *Chokki*, 2019 QCCS 5199, paras. 12 and 19.

90 *Cardinal* v. *Bonnaud*, 2018 QCCA 1357, para. 32.

91 *Sintra inc.* v. *Ville de Léry*, 2020 QCCS 1562, paras. 13 to 15 (Appeal dismissed, 2021 QCCA 861); *Ville de Montréal* v. *Propriétés Bullion Inc.*, 2017 QCCS 1187, paras. 31 to 35 (Motion for permission to appeal dismissed, 2017 QCCA 1051).

[176] Thus, the debate on the irregularity of the report, substantial error or partiality must generally take place before the hearing.[92]

[177] A judge who seized with a motion to dismiss an expert's report based on article 241 C.C.P. must exercise his role as gatekeeper of the sound and efficient management of proceedings in accordance with the principle of proportionality (articles 9 and 18 C.C.P.).[93]

[178] Nevertheless, the court must not always rule on the admissibility of an expert report at a preliminary stage. The burden in this regard remains heavy.

[179] While accepting that the introduction of article 241 C.C.P. is intended to limit costs and unnecessary delays, the Court of Appeal warns that an overly generous application of the article could have the opposite effect.[94]

[180] The Court notes that there are times when the trial judge will be in a better position to rule (for example, when the objection concerns the partiality, relevance, usefulness or probative value of the report). It is therefore sometimes wise to refer the matter to the trial court. Indeed, it may be dangerous to exclude expert evidence at a preliminary stage, without having had the benefit of full evidence enabling the judge to weigh the necessity or relevance of the expert report. Caution is called for.[95] The purpose of article 241 C.C.P. is not to allow a party to put the credibility of the expert witness or the probative value of his testimony on trial prior to the hearing.[96] A motion to dismiss under article 241 C.C.P. should not be used as an opportunity to deprive a party of its right to be heard and the court should only dismiss a report at a preliminary stage if, on its face, the report is of such little probative value that it is obvious that its usefulness is outweighed by its prejudicial effect.[97]

[181] The cause of irregularity, substantial errors or partiality must render the expert's report clearly inadmissible, and not be related to the probative value of the expert's testimony, which question is best left to the trial judge.[98] "[E]xclusion at the threshold stage of the analysis should occur only in very clear cases in which the proposed expert is unable or unwilling to provide the court with fair, objective and non-partisan evidence. Anything less than clear unwillingness or inability to do so should not lead to exclusion, but be taken into account in the overall weighing of costs and benefits of receiving the

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92 *Excavations Payette ltée* v. *Ville de Montréal*, 2022 QCCA 1393, para. 22; *Procureure générale du Québec* c. *Centrale des syndicats démocratiques*, 2018 QCCA 1622, paras. 8 and 9; *Cardinal* c. *Bonnaud*, *supra*, note 90, para. 55.

93 *Excavations Payette ltée* v. *Ville de Montréal*, *supra*, note 92, para. 24.

94 *Cardinal* c. *Bonnaud*, *supra*, note 90, para. 33.

95 *Excavations Payette ltée* v. *Ville de Montréal*, *supra*, note 92, para. 24; *L.M.* c. *J.M.*, 2019 QCCA 2185, para. 29.

96 *Post* c. *Media QMI inc. (Le Journal de Montréal)*, 2017 QCCS 1212, para. 8.

97 *Excavations Payette ltée* c. *Ville de Montréal*, *supra*, note 92, paras. 31 and 56.

98 *Perron* v. *Charl-Pol Saguenay inc.*, 2017 QCCS 740, para. 15; *9180-3676 Québec inc.* v. *Caisse Desjardins des Versants du Mont-Royal*, 2018 QCCA 2075, para. 11.

evidence".[99] If the assessment of the potential usefulness of the expert's report requires an in-depth examination of the evidence and the credibility of the expert, the trial judge will be in a better position to carry out this exercise, which is more a matter of assessing the weight of the evidence than determining its admissibility.[100]

1.6 Discussion

[182] On December 23, 2022, Defendants filed the expert report of Mr. Michael Mulvey (the "**Mulvey Report**"). Mr. Mulvey is an expert in marketing and consumer behaviour.

[183] The Mulvey Report answers four questions:

> Q1 - Are North American consumer purchasing decisions related to washing machines affected by the availability of a bedding wash+spin cycle, and if so, how and to what extent is the bedding wash+spin cycle relevant for consumers?
>
> Q2 - Are North American consumer purchasing decisions related to washing machines affected by the remaining moisture content of laundry following wash+spin, and if so, how and to what extent is it relevant for consumers?
>
> Q3 - What conclusions, if any, can be drawn about how often consumers use different wash+spin cycles on modern washing machines or their frequency of use of any specific cycle?
>
> Q4 – To what extent do consumers appreciate the broader consequences (i.e. environmental impact) of a product recall of a washing machine?
>
> Q5 – Regarding the Recall in this case, what effect would knowledge of those consequences have on consumer satisfaction with the product recall?

[184] On March 23, 2023, Plaintiffs filed the Prévost Report. The stated purpose of the report is to contest the methodology of the Mulvey Report.

[185] Defendants ask that the Prévost Report be dismissed because Mr. Prévost has no expertise in the area of consumer behaviour.

[186] Mr. Prévost is a professor in the Department of Political Science at the Université du Québec à Montréal. He obtained a doctorate in 1990 and has benefited from additional training in data analysis, including two stays at the Essex Summer School in Social Science Data Collection and Analysis. He lists research methodology as one of his areas of specialization.[101]

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99 *White Burgess Langille Inman* v. *Abbott and Haliburton Co.*, *supra*, note 75, para. 49.

100 *Barkat* v. *Fonds d'assurance responsabilité professionnelle du Barreau du Québec*, 2022 QCCA 1749, para. 12; *Cardinal* v. *Bonnaud*, *supra*, note 90, paras. 67 and 68; *Centre de services scolaire de Montréal* v. *Société d'assurance générale Northbridge*, 2023 QCCS 1068, paras. 36 to 39.

101 Prévost Report, para. 1.

[187] Part of his work and publications is devoted to the construction and evaluation of research tools and statistical indicators.[102] He has taught several courses on general methodology, research methods and statistical analysis.[103]

[188] While it may be true that Mr. Prévost's experience in consumer behaviour is limited, that is not the subject of his report. The Prévost Report comments on the research methodology which led to the Mulvey Report. In this area, Mr. Prévost's expertise appears significant.

[189] Thus, this is not a case where the subject matter of the expertise is so clearly beyond the scope of the expert's knowledge to justify its dismissal.

[190] Samsung's argument with regard to hearsay must also fail. Experts are allowed to rely on hearsay evidence in their report as long as the underlying evidence is presented at trial.[104]

[191] The weight to be assessed to the Prévost Report is best left to the trial judge.

FOR THESE REASONS, THE COURT:

[192] **DISMISSES** Defendants' motion to issue directions to curtail the use of personal information belonging to Class Members;

[193] **DISMISSES** objection no. 29;

[194] With regard to objection no. 38, **ORDERS** Defendants to provide a version of undertaking U-44 which does not redact the text appearing at page 5 under the Public Relations and the Digital Appliance Division headings;

[195] With regard to objections no. 13, 14, 21, 22, 39, 40, 41, 42 and 45, **ORDERS** Defendants to provide an extract in electronic format of the Global Customer Interaction Center ("**GCIC**") database which contains all information that Defendants possess with regard to top detachment or excessive vibration Washer incidents involving Class Members;

[196] **PRAYS ACT** of Defendants undertaking to provide:

196.1. An updated customer service interaction log for top detachments in Canada (U-6) as of May 2023 (with the redaction authorized by the Court of Appeal) but that would also include the interactions with the customers found in the GCIC (with the redaction authorized by the Court of Appeal); and

196.2. An updated customer service interaction log for Quebec residents as of May

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102 Prévost Report, para. 2.
103 Prévost Report, para. 4.
104 *9168-2823 Québec inc. c. La Capitale, Assurances générales*, 2017 QCCS 6396, paras. 28 and 29.

2023 (updated U-10).

[197] With regard to corporate knowledge, **ORDERS** Defendants to provide a table in the same format as the one included at page 20 of Exhibit R-5 for the Washer models included in the Class definition, which instead of "Sales Quantity", identifies the number of Washers that experienced "Excessive vibration or top detachment incidents" and **ALLOWS** Defendants, if they wish to, to separate "Excessive vibration" incidents from "Top detachment" incidents;

[198] **ORDERS** that all the above information be provided within the next thirty days;

[199] **ORDERS** that Mr. Frank Martino may be re-examined on "interactions between Samsung Canada and Class members in the context of the Recall" (as well as on his sworn declaration of June 8, 2023 but only if the extract of the GCIC ordered to be produced above does not include proofs of purchases) for a maximum period of three hours and that this examination take place within thirty days of the present judgment;

[200] **DISMISSES** Plaintiffs request to proceed with an examination of a Samsung Electronics' representative;

[201] **DISMISSES** Defendants' motion to dismiss the expert report of Mr. Jean-Guy Prévost;

[202] **ORDERS** the parties to submit a signed new case protocol to the Court within thirty days of the present judgment;

[203] **THE WHOLE** without costs.

Martin Sheehan

Signature numérique de Martin Sheehan
Date : 2023.07.03 10:11:59 -04'00'

MARTIN F. SHEEHAN, J.S.C.

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