

# Ontario Superior Court provides direction on proper conduct in carriage motions

June 05, 2020

In [Del Giudice v. Thompson, 2020 ONSC 2676](#), the Ontario Superior Court of Justice recently provided important guidance on how carriage motions ought to be prepared and argued.

## Background and decision

This case concerns a data breach that is alleged to have compromised the personal and confidential information of an estimated six million Canadian Capital One customers in 2019. Several proposed national class actions were commenced across Canada, including two in Ontario, which gave rise to the carriage motion. One consortium represented plaintiff Rina Del Giudice, and the competing consortium represented plaintiff David Slapinski. Justice Perell held that it was in the best interests of the putative class that the Del Giudice action be granted carriage, rather than the Slapinski action, because its case theory had prompted it to join two relevant parties as defendants.

In reaching this conclusion, Justice Perell offered “faint praise” to the consortia prosecuting both actions as he was satisfied that either consortium would have fulfilled their responsibilities to the class.

He was critical, however, of the fact that the putative class counsel did not retain external independent counsel to prepare the materials and argue the motion, as he has previously recommended that counsel do on carriage motions. The motion materials, he stated, caused him to “grimace” and “gag” as the prose was “prolix, tedious, whiningly-polemic, conceited, pompously preachy, wanting in objectivity, and grossly overstated.” Further, the pleadings contained a number of “egregious violations” of the rules of pleading and failed to concisely state the material facts.

Finally, though the Del Giudice action was successful in winning carriage, class counsel in that action had failed to comply with the case management timetable prompting Justice Perell to invite the Slapinski class counsel to make submissions on whether costs ought to be imposed against the Del Giudice counsel personally.

## Takeaway

While the carriage decision itself is not groundbreaking, the decision provides important direction to class counsel on proper conduct in carriage motions. Justice Perell made it clear that drafting pleadings to please class members or “vilify the defendants in the media” is unprofessional and “disappointing.”

Instead, lawyers involved in a carriage motion should: (i) consider retaining independent counsel to argue the carriage motion on their behalf; (ii) avoid overstating their case or engaging in excessive rhetoric (which is never good advocacy); and (iii) give careful consideration to their theory of the case, which may be determinative of the motion.

By

[Erin VanderVeer](#)

Expertise

[Disputes, Class Action Defence](#)

---

### BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3  
T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9  
T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2  
T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4  
T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3  
T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from

BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.