Translated from the original French

Economic Affairs Division

Date: July 20, 2021

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Record: SAE-M-298118-2006

Presiding Administrative Judges:

SUZANNE LÉVESQUE

MARIO ST-PIERRE

ZOE PATTON

CLAIRE O'BRIEN

TRACEY ARIAL ET ALS

Applicants

v.

FONDS D'AIDE AUX ACTIONS COLLECTIVES

Respondent

DECISION

1. Tracy Arial, Claire O’Brien, Erika Patton, Zoe Patton, Alex Tasciyan, Mathew Nucciaroni, and Vitto Deccico contest a decision[[1]](#footnote-1) by the Fonds d’aide aux actions collectives (the Fonds) refusing their application for financial assistance for a class action.
2. Their application for assistance, which could be for as much as $145,400, is for the authorization stage of a class action aiming to involve the members of a group that have, since 2013, purchased, leased, or used certain cellular telephones made or sold by Apple Canada Inc. (Apple) or Samsung Electronics Canada (Samsung).
3. The Fonds refused the application for financial assistance because it considered that two of the three criteria to award financial assistance under s. 23 of the *Act respecting the Fonds d’aide aux actions collectives*[[2]](#footnote-2) (*AFAAC*) had not been met, that is, the second criterion concerning the probable existence of a right, and the third criterion concerning the probability that the class action will be brought.
4. With respect to applying the criteria of the *AFAAC*, the applicants argue that the Fonds’s decision contains errors of law and of fact that demonstrate the Fonds’s misunderstanding of the nature of their class action.
5. The issue in dispute[[3]](#footnote-3) is the following: Were the criteria to award financial assistance set out under s. 23 *AFAAC* met?
6. The Tribunal concludes that all the criteria for awarding financial assistance set out in s. 23 *AFAAC* are met and, accordingly, grants the proceeding, sets aside the Fonds’s decision, and orders it to grant the assistance after agreement with the attorney for the applicants in accordance with s. 25 *AFAAC*.

BACKGROUND

1. On September 4, 2019, the applicants filed an application in the Superior Court for authorization to institute a class action and to appoint a representative.
2. On November 15, 2019, the Fonds received an application for financial assistance for the authorization stage of the class action with an amended application dated November 4, 2019.
3. On December 15, 2019, the applicants gave the Fonds additional information including a second application that had been amended that day.
4. In that application, the applicants sought the authorization to institute on their own behalf and on that of the class members an action for compensatory damages, punitive damages, and for an injunction to sanction some of Apple and Samsung’s business practices.[[4]](#footnote-4)
5. On February 24, 2020, the Fonds held a hearing on the application for financial assistance at the authorization stage, which was attended by counsel for the applicants, the applicants Tracy Arial, Zoe Patton, Clair O’Brien, and their expert Pedro Gregorio, an engineer.
6. On April 16, 2020, the Fonds rendered its decision refusing the application for financial assistance.[[5]](#footnote-5)
7. On June 18, 2020, the Superior Court granted in part the applications of Apple and Samsung to present evidence and authorized the production of certain exhibits.[[6]](#footnote-6)
8. On June 23, 2020, the applicants filed a proceeding before the Tribunal contesting the Fonds’s decision. They amended that proceeding on October 30, 2020.
9. Finally, on August 13, 2020, the applicants once again amended their application before the Superior Court with regard to, *inter alia*, the definition of the class, specifying that the persons concerned must reside in the province of Quebec.

ANALYSIS

*1) Nature of the proceeding before the Tribunal*

1. The applicants’ proceeding is based on s. 35 of the *AFAAC*, which establishes the possibility of contesting a decision of the Fonds before the Tribunal.
2. The Fonds is of the view that since the Supreme Court of Canada’s judgment in *Vavilov*,[[7]](#footnote-7) this proceeding is an appeal from an administrative decision that is subject to the standard of review applicable to appeals. Thus, the questions of mixed fact and law raised in this proceeding could not justify the Tribunal’s intervention absent a palpable and overriding error in the Fonds’s decision.
3. This argument is based principally on paragraphs 17 and 37 of that judgment, which can be summarized in these few lines:

[37] It should therefore be recognized that, where the legislature has provided for an appeal from an administrative decision to a court, a court hearing such an appeal is to apply appellate standards of review to the decision.[[8]](#footnote-8)

[Emphasis added.]

1. The Supreme Court therefore identified three conditions to apply the appellate standard of review: it must be an appeal to a court from an administrative decision. Obviously, the Fonds is an administrative body, but two requirements must still be met, that is, “an appeal” and “to a court”.
2. In that leading case, the Supreme Court insisted on the importance of being guided by the legislature’s intention. It sought this intention, in particular, in its use of the word “appeal” in various contexts and concluded that, by doing so, the legislature intended to subject the proceeding to the appellate standard of review.[[9]](#footnote-9) Let us examine the context and vocabulary used in s. 35 *AFAAC*.
3. When this provision was adopted in 1978, the legislature created a Division III titled “appeal” that provided under s. 35 that citizens “may appeal from the decision of the Fonds to the Provincial Court”. [[10]](#footnote-10) A first amendment replaced that court with the Court of Québec,[[11]](#footnote-11) but it was only when the *Act respecting administrative justice*[[12]](#footnote-12) (*AAJ*) was adopted in 1997 that the current s. 35 appeared.[[13]](#footnote-13)
4. In the context of that comprehensive, integrated reform of Quebec administrative justice, the legislature created a new tribunal to hear the many proceedings formed against administrative authorities, to the exclusion, in some cases, of the courts of justice.[[14]](#footnote-14)
5. In this proceeding, the Tribunal has before it the contestation of a decision that it may confirm, vary, or quash, or still yet, make the decision which, in its opinion, should have been made initially.[[15]](#footnote-15)
6. Each time it provides the possibility of contesting a decision, the *AAJ* uses the word “proceedings”, including where the proceeding used in this instance is concerned.[[16]](#footnote-16) There is a single exception, in section 159 *AAJ*, which provides for an “appeal” to the Court of Québec from some decisions rendered by the Tribunal.
7. As part of this vast reform, section 35 *AFAAC* also provides for the filing of a “proceeding” against a decision of the Fonds.
8. As the Supreme Court indicated in *Vavilov*, the language chosen is the best expression of legislative intent. When it created this proceeding before this Tribunal, the legislature stopped characterizing it as an appeal, to reserve that word for proceedings brought only before courts of justice.
9. The Supreme Court also made that distinction in *Vavilov*. Appeals that require the standard of review argued by the Fonds are those brought before the courts of justice. This Tribunal is not a court of justice. The Court of Appeal decided that it was so,[[17]](#footnote-17) and this Tribunal is not included in the *Courts of Justice Act*.[[18]](#footnote-18)
10. This observation is enough to find that the proceeding filed by the Fonds with this Tribunal is not an appeal subject to the standard of review adopted in *Vavilov*.
11. This Tribunal also notes, at the Fonds’s suggestion, that scholarly commentary and the case law have regularly chosen the word “appeal” to identify proceedings brought before an administrative tribunal. But, as the Supreme Court recalled,[[19]](#footnote-19) the context in which this word is used is important. An appeal to a court of justice and an administrative appeal are two different concepts. Here is an illustration drawn from a judgment of the Court of Appeal in 1989, which in turn, repeated this quote:

The application to the Board for review is not an appeal in the usual sense; it is not a trial of the first decision; it is like a trial de novo, or rather ab origine because there is no hearing at all before the assessor.[[20]](#footnote-20)

1. Two eminent administrative law professors, who are also the authors of reports that were used as the genesis for the *AAJ*, expressed themselves on the true nature of the “appeal” before this Tribunal. Professor Ouellette wrote the following:

[translation]

But the Tribunal administratif du Québec is not in the same situation as a court of appeal: it does not hear an appeal, but a “proceeding” and one that is of first instance; it must base its decision on its own record and on the evidence, not merely on the information that was put together by the public servants who made the initial administrative decision.

…

In this case, the jurisdiction to “make the decision which, in its opinion, should have been made initially” resembles a Dupont v. Inglish type review; it corresponds exactly to that of the initial decision-maker, should concern all the elements of the case – subject to a provision in the particular enabling statute that might reduce the scope of the proceeding – and allow the records to be updated.[[21]](#footnote-21)

1. More recently, Professor Garant reiterated the power of the Tribunal to substitute itself for that of the initial decision-maker:

[translation]

These provisions, especially section 15 of the Act respecting Administrative Justice have given rise to a controversy on what has been referred to as the Tribunal’s power of substitution. The case law has stated that appeals in procedural law should not be confused with appeals in administrative law or other forms of contestation that are referred to as review proceedings. In a 1995 judgment, the Court of Appeal of Quebec, relying on the Supreme Court, recalled that such a tribunal proceeds de novo when reviewing the initial decision.

…

As the TAQ deems, I believe that there is an argument to be made that an appellate review in administrative law before an administrative tribunal is both a review of lawfulness and of appropriateness, when the initial administrative decision-maker had a discretionary power, unless the legislature has issued express restrictions.[[22]](#footnote-22)

1. The legislature has not placed any limits or restrictions on the *de novo* jurisdiction of this Tribunal to intervene in a decision of the Fonds.[[23]](#footnote-23) However, should the Tribunal decide that the applicant is entitled to the assistance, it must order the Fonds to grant the assistance after agreement with the applicant or the applicant’s attorney, in accordance with s. 25 *AFAAC*.[[24]](#footnote-24)
2. As the Court of Appeal recently stated, there are therefore three types of review within the “institutional design”[[25]](#footnote-25) chosen by the legislature. There is the judicial review, the appeal, and finally, the *de novo* proceeding,[[26]](#footnote-26) presented here in decreasing order of deference owed to the impugned decision.
3. In short, an “administrative appeal” must be distinguished from an “appeal before a court of justice”. Only the latter is subject to the standard of review stated by the Supreme Court in *Vavilov*. That is because the administrative appeal is a fully jurisdictional review of a citizen’s legal situation on the merits. As a general rule, as in this case, the Tribunal’s *de novo* jurisdiction does not consist in analyzing whether the contested decision is vitiated in any way, but rather to make the necessary decision in light of the circumstances in terms of lawfulness and appropriateness.
4. This administrative review is performed without deference, first because this Tribunal is part of the executive branch[[27]](#footnote-27) of the State and is not, therefore, subject to the principles arising from the separation of powers.[[28]](#footnote-28)
5. There can also be no deference when this Tribunal substitutes itself for the initial decision-maker. It exercises the same powers as the initial decision-maker and is not required to show any deference.
6. How could there be deference when this Tribunal can admit evidence and hear any grounds of law or of fact that are relevant to the contestation?[[29]](#footnote-29)
7. Finally, deference is justified principally because it is not up to an appellate court to retry the case heard by the initial decision-maker. The Fonds acknowledges that it does not hold hearings and that it may, in some cases but without being compelled to do so, allow citizens to present observations. Many of the Fonds’s decisions are made without any observations being provided beforehand. This Tribunal cannot therefore show deference for a process that does not guarantee that citizens have the right to be heard. This Tribunal is the actual jurisdictional first instance where facts and law are debated.[[30]](#footnote-30)
8. Without deciding the issue, it should be added that three applicants testified before the Tribunal about their feeling of not having been adequately heard by the Fonds.
9. The Tribunal therefore concludes, at this time, that it need not need take into account the applicable appellate standards or defer to the Fonds’s decision. It may intervene if it deems it justified in the circumstances, by lawfulness or appropriateness, according to the criteria set out in the *AFAAC*.

***2) Subsequent facts***

1. Because the status of representative has not yet been ascribed to the applicants, section 23 *AFAAC* sets out three criteria for financial assistance to be issued, which themselves include some sub-criteria for application:

(1) that the class action cannot be brought or continued without the Fonds’s financial assistance;

(2) that the Fonds may consider the probable existence of the right the applicants intend to assert; and

(3) the probability that the class action will be brought.

1. This third criterion requires an examination of the composition of the group concerned by the class action, as will be discussed below. This assessment raises a preliminary issue, however, that should be analyzed now because it is related to the previous issue on the nature of the proceeding filed.
2. In its reasons for refusal dated April 16, 2020, the Fonds emphasized the vagueness of the description of the group concerned, particularly with respect to the element of connection to the province of Quebec. The Fonds asks the following question: (e) must persons have purchased/leased or used the telephone in Quebec or must they reside there?[[31]](#footnote-31)
3. On August 13, 2020, the applicants once again amended their application for authorization to institute a class action filed before the Superior Court. An amendment was brought, in particular, to the description of the group to specify that the persons concerned must have been “at any time residing” in the province of Quebec. References to Canada, which created confusion according to the Fonds, were also struck.
4. This begs the following question: Can this Tribunal consider these amendments that are subsequent to the Fonds’s decision?
5. The Fonds answers that the Tribunal should not because the Fonds, when making a decision, should not assume that any deficiencies will later be remedied by the applicants or the Superior Court. It is of the view that this Tribunal must rule on the merits of the Fonds’s decision, based on the facts that were at the Fonds’s disposal at the time.
6. First, the Tribunal wishes to point out that the correction brought here does not concern an issue with the description of the group due to individual issues, contrary to what was prevalent in the case on which the Fonds relies.[[32]](#footnote-32) Also, this Tribunal has previously stated the following on the possible amendment of a group in the context of an authorization granted by the Superior Court:

[translation]

[118] As for the composition of the group itself, art. 1005(a) C.C.P. provides that the Superior Court, if it grants the motion, describes the group whose members will be bound by the judgment. Moreover, art. 1022 C.C.P. allows the Superior Court, even while hearing the proceeding, to change or divide the group. The Tribunal therefore deems it inappropriate not to order the payment of assistance on the ground that the composition of the group could change.[[33]](#footnote-33)

1. The Tribunal agrees with this point of view, considering in particular that the new *Code of Civil Procedure*[[34]](#footnote-34) (C.C.P.) also confers on the Superior Court the power to describe the class concerned by a possible judgment.[[35]](#footnote-35) That leaves the question of whether the Tribunal has jurisdiction to take into consideration the amendments that the Fonds could not have been aware of when it made its decision.
2. As explained above, this Tribunal has before it a *de novo* proceeding contesting the decision made by the Fonds.[[36]](#footnote-36) It is therefore authorized to substitute itself for the Fonds, by relying on all the elements of the case after having allowed the parties to update their files.[[37]](#footnote-37)
3. This update of the file before the Tribunal is possible when the legislature has expressed, whether explicitly or not, its will to extend the initial decision-making process by creating a proceeding before the Tribunal, the last level of the executive branch of the State. Professor Ouellette wrote the following after recalling the distinction between an appeal on the record exercised by courts and a *de novo* type revision:

[translation]

Indeed, if the legislature granted an external review mechanism with a hearing before a body that is reputed to be more independent and competent, it is because it wanted a more in-depth viva voce hearing that was more complete, by an administrative tribunal having the best information. In fact, remedial statutes are interpreted rather liberally.

In the same vein, the admissibility into evidence of facts that did not exist when the initial decision was made but that happened subsequently also depends on the wording and purpose of the stature, the jurisdiction of the body, and the scope of its powers. The interpreter must ask whether the legislature considered the external review to be an extension or a supplement of the initial decision-making process. If the answer is affirmative and the remedy is granted equally in the interest of the administration and the public as that of the citizen, the relevant facts that did not exist when the initial decision was made may be admitted.[[38]](#footnote-38)

1. The Court of Appeal has often repeated the objective of maintaining a continuous decision-making process, without steps that compromise access to justice. It states that the citizen should not have to file several proceedings before obtaining a decision that takes into consideration all the relevant information. Here are a few excerpts of its reasons to that effect.
2. In *C.A.L.P. c. Turbide*,[[39]](#footnote-39) the Court wrote the following:

[translation]

Appeals filed before the appellant under the Act respecting industrial accidents and occupational diseases, R.S.Q., c. A-3.001, s. 359, are **de novo** appeals that allow it to update the files to avoid a multiplication of costly and unnecessary proceedings (See the judgment of this Court in Société canadienne des postes c. Morency, [1989] R.J.Q. 2300 (C.A.); Chaput c. Société des transports de la Communauté urbaine de Montréal, [1992] R.J.Q. 1774 (C.A.).

1. The Court of Appeal expressed this same concern in a case that called into question the Tribunal’s jurisdiction to decide an application that had not been presented to the first decision-maker, based on expert reports and evidence not adduced at the start. Characterizing itself as an [translation] “appellate tribunal”, the Tribunal had concluded that it did not have jurisdiction to decide an element that had not already been decided by the body in question. The Court of Appeal rejected this approach, giving the following reasons written by the Honourable Lorne Giroux, J.A.:

[translation]

[50] According s. 15 of the AAJ, when the TAQ hears a file, it may confirm, vary, or quash the decision contested before it and, if appropriate, make the decision which, in its opinion, should have been made initially. Absent a particular legislative text that would limit its powers by circumscribing the issues that may be the subject of proceedings to contest, Professor Villaggi writes that the TAQ [translation] “has the same powers and the same discretionary power as the initial decision-maker, and its decision concerns all the elements of the file that are contested, insofar as the issues raised should have been addressed by the body”.

[51] By declaring itself to be without jurisdiction to decide this question, the TAQ distanced itself from the objectives of quality, promptness, and accessibility assigned to administrative justice in the preliminary provision of the AAJ. Nor did it take into account the flexibility of the procedures and evidentiary rules applicable to the claim-processing scheme as noted in the AAJ and the Regulation respecting the processing of a claim.

[52] Adopting such a rigid and inflexible position can only lead to a sterile back and forth between the various decision-making levels and a harmful extension of delays to compensate victims as has already been demonstrated by our Court on the jurisdiction of the former Commission des affaires sociales in Société canadienne des postes c. Morency.[[40]](#footnote-40)

[Emphasis added.]

1. Finally, in a different context, the Court of Appeal recently recalled that multi-stage administrative processes collide head on with the effectiveness and promptness of administrative justice, frustrating litigants and ignoring the fundamental principles of administrative law.[[41]](#footnote-41)
2. Applying these principles to this case, the Tribunal is of the view that the legislature entrusted it with the jurisdiction to decide the rights of the applicants to receive financial assistance for their class action, following a continuous decision-making process. Considering the rules specific to the exercise of its jurisdictional functions and those applicable to evidence and procedure before the Tribunal, it is better equipped to ultimately decide the lawfulness and appropriateness of awarding financial assistance to the applicants, based on the applicable criteria.
3. It would be contrary to the principles of promptness and accessibility of administrative justice[[42]](#footnote-42) to require the applicants to file a new application before the Fonds each time they improve their proceedings before the Superior Court to take into account the progress of the file. Such back and forth before the body would unduly delay a final decision that must be rendered quickly[[43]](#footnote-43) and would only frustrate citizens, without improving the quality of justice that would be ensured in the end by the decision of this Tribunal.
4. The intent to avoid multiplying applications before the Fonds is very clear. In fact, as stated by its counsel during the hearing, the body subscribes to this objective when it retroactively finances proceedings instituted by a citizen who initially received a refusal from the Fonds, but whose class action proceedings are later authorized by the Superior Court. The Fonds then revisits its decision due to a subsequent fact arising from the Superior Court’s decision.
5. Given the legislative context applicable to this case, the Tribunal, respectfully, does not agree with the opinion that the evidence before it should only be used to understand the situation that prevailed at the time the initial decision was made. The mechanics applicable to Retraite Québec in *Piché*,[[44]](#footnote-44) which allow it in practice to review its decisions when the beneficiary’s situation changes,[[45]](#footnote-45) have no equivalent in our context and also explain why the criterion accepted in that decision is difficult to transpose.
6. For the Tribunal, the *de novo* jurisdiction that confers upon it the same powers as those of the initial decision-maker, is exercised when it hears the case for the purpose of making the best decision based on all the information available at the time. That is why in *J.R. c. Société de l’assurance automobile du Québec (SAAQ)*,[[46]](#footnote-46) the Court of Appeal indicated that this Tribunal should rule on evidence of a permanent impairment noted for the first time in an expert report subsequent to the decision of the SAAQ’s compensation officer. At no point did the Court state or require that evidence be adduced that this impairments existed at the time of the first decision. The contrary would be sterile inflexibility and would not do justice to the citizen.
7. The same rule appears from the Court of Appeal’s judgment in *Université de Montréal c. Zompa*.[[47]](#footnote-47) The Université’s Comité de révision, which exercised *de novo* jurisdiction, heard evidence of Ms. Zompa’s fraudulent conduct after the contested decision. This situation did not exist at the time of the initial decision. The Comité was nevertheless well founded to rely on this evidence to increase the sanction imposed. Referring to the oft-quoted opinion of Professor Villaggi, the Court of Appeal concluded that [translation] “the decision-maker may hear facts subsequent to the first decision insofar as they are relevant and clearly connected to the original decision”.[[48]](#footnote-48)
8. Drawing inspiration from the remarks of Professor Villaggi, the Tribunal is of the opinion that, insofar as the rules of procedural fairness are respected, evidence of relevant subsequent facts is possible if adducing them into the record does not transform the dispute raised in the original application.[[49]](#footnote-49) To be restricted to the situation that prevailed when the initial decision was made would be contrary to the fundamental principles of administrative law and the mission entrusted to this Tribunal.
9. The relevance of the amendments brought by the applicants to their subsequent application for authorization and their clear connection with the Fonds’ decision were not contested by its counsel. In any event, these amendments answer the Fonds’ questions and are directly related to its analysis. They are therefore admissible in evidence before the Tribunal, which must consider them to assess whether or not the applicants’ application for financial assistance should be accepted.

*3) Applicable law*

1. As previously mentioned, the Fonds must consider an application for financial assistance based on three criteria set out in the second paragraph of s. 23 *AFAAC*:

(1) whether the class action may be brought or continued without the assistance sought;

(2) if the status of representative has not yet been ascribed to the applicant, the Fonds assesses the probable existence of the right the applicant intends to assert; and

(3) the probability that the class action will be brought.

1. In this case, the first criterion concerning the applicants’ financial capacity has been met.[[50]](#footnote-50)
2. Thus, only the second and third criteria under s. 23 *AFAAC* are in dispute. According to the legislature’s intention and the case law,[[51]](#footnote-51) these two criteria are likened to the criteria under art. 575 C.C.P., which apply at the authorization stage of the class action:

**575.** The court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that

(1) the claims of the members of the class raise identical, similar or related issues of law or fact;

(2) the facts alleged appear to justify the conclusions sought;

(3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and

(4) the class member appointed as representative plaintiff is in a position to properly represent the class members.

1. Specifically, the second criterion of s. 23 *AFAAC*, concerning the probable existence of the right corresponds to the second criterion of art. 575 C.C.P., to wit, that the facts alleged appear to justify the conclusions sought.
2. At the authorization stage of a class action, the Superior Court plays a filtering role and must merely ensure that the applicant meets the criteria of art. 575 C.C.P., for which there is a low threshold. It is a procedural decision, and the burden imposed on the applicant at that stage is to establish an arguable case. The allegations of fact on which the proceeding relies must not be vague, general, or imprecise.[[52]](#footnote-52)
3. In other words, by analogy with that of the Superior Court, the Tribunal’s role is to set aside only those proceedings that are frivolous, clearly unfounded, or untenable. The applicant must demonstrate the possibility of prevailing on the merits, but not that this possibility is realistic or reasonable. The legal syllogism proposed must therefore be tenable. The probable existence of a right must be established. The facts alleged must be assumed to be true, if they are sufficiently precise. Vague allegations must absolutely be supported by some documentary evidence to meet the condition of establishing an arguable case.[[53]](#footnote-53)
4. The third criterion of s. 23 *AFAAC*, the probability that the class action will be brought, corresponds to the three other criteria of art. 575 (1), (3), and (4) C.C.P.
5. In this case, the first sub-criterion, that the claims of the members of the class raise identical, similar, or related issues of law or fact (575(1) C.C.P.) has been met.[[54]](#footnote-54)
6. Thus, only the third and fourth sub-criteria are in dispute, that is, that the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings (575(3) C.C.P.) and that the class member appointed as representative plaintiff is in a position to properly represent the class members (575(4) C.C.P.).
7. Specifically, the third sub-criterion dictates that the composition of the class meets a certain level of precision, rationality, and objectivity.[[55]](#footnote-55)
8. The fourth sub-criterion regarding the proper representation of the class members is assessed according to three factors: the interest in the suit, competence, and the absence of a conflict of interest with the class members.[[56]](#footnote-56) These factors must be interpreted liberally, and no proposed representative should be excluded unless his or her interest or competence is such that the case could not possibly proceed fairly.[[57]](#footnote-57)
9. Finally, the failure to meet just one of the three criteria under s. 23 *AFAAC* is enough to prevent financial assistance from being granted.[[58]](#footnote-58)

*4) Criteria of s. 23 AFAAC*

1. With respect to the application of the criteria of s. 23 *AFAAC*, the applicants argue that the Fonds’s decision contains several errors of law and of fact that demonstrate its misunderstanding of the nature of the proposed class action.[[59]](#footnote-59)
2. In short, they argue that their proceeding is based on three syllogisms, following the publication of an article in the Chicago Tribune:[[60]](#footnote-60)

(i) that some Apple and Samsung cell phones emit radio frequencies beyond the 1.6 watt/kilogram limit established by the Federal Communications Commission (FCC) and, consequently, these are misrepresentations, and Apple and Samsung are well aware of the situation;

(ii) that at a distance of 2 millimetres or less, the radio frequencies exceed this limit by up to five times; and

(iii) that this causes serious damage to the health of humans and the environment, which constitutes a failure to respect fundamental rights and the Charters, justifying the award of punitive damages.[[61]](#footnote-61)

1. We note that the Superior Court also accepted that this class action appears to have been triggered by an article published on August 22, 2019, in the Chicago Tribune newspaper.[[62]](#footnote-62) In fact, an investigative team submitted 12 telephones to an independent laboratory, the RF Exposure Lab, which issued a report finding that the radiation emitted exceeded the levels declared and authorized with respect to Apple and Samsung devices. This investigation was consistent with studies and news reports that revealed “similar fraudulent testing by Defendants”. Put simply, Apple and Samsung allegedly rigged the tests to thwart the standards, that is, 1.6 watt/kilogram, governed in the United States by the FCC.
2. The Superior Court indicated that the applicants claim compensatory damages of $13,000 per class member, per year, plus the reimbursement of “medical monitoring”, punitive damages, and the reimbursement of expert and investigation fees. They also ask that Apple and Samsung be ordered to reduce the radiation emitted by their cell phones to prescribed levels, deliver a software patch to the class members to correct the radiation levels of their devices, and distribute notices to users on the dangers of radiation emitted by the cell phones at issue.
3. As previously stated, the Fonds refused the application for financial assistance because it considered that the applicants had failed to demonstrate the probable existence of a right and the probability that the class action would be brought.

*(a) Second criterion of s. 23 AFAAC: probable existence of a right*

1. The Fonds deems that the allegations of fact in the application for authorization are vague, general, and imprecise, and closer to opinion and hypothesis, preventing the existence of an arguable case from being established.[[63]](#footnote-63) It also considers that the allegations do not establish *prima facie* the demonstration of a fault, damage, and a causal connection.[[64]](#footnote-64) Finally, the legal syllogisms are neither clear, nor supported, according to the Fonds.[[65]](#footnote-65)
2. The Fonds submits that the probable existence of a right must appear from the proceeding. Searching for the probable existence of a right should not become a blind search for any cause of action, whether or not it is arguable. According to art. 99 C.C.P., a pleading must be clear, precise, concise, and presented in logical order.[[66]](#footnote-66)
3. First, the Tribunal notes that the applicants’ application, with its 233 paragraphs spread over 49 pages that include several opinions and excerpts from case law peppering the allegations of fact, is not an example of a clear, precise, and concise pleading.
4. In fact, like the Fonds, the Superior Court stated that the application for authorization combined allegations of fact and lengthy arguments. It does not comply with art. 99 C.C.P. and would be perilous to summarize.[[67]](#footnote-67)
5. That said, the Fonds repeated the principle facts alleged in paragraph [39] of the decision:

• Apple’s advertising shows people holding Apple products in their hands, putting them in their pockets, or holding them in bed (paras. 23 to 27);

• Samsung’s advertising shows people using Samsung products near their bodies or to perform an ultrasound (paras. 29 to 31);

• The radio frequencies emitted may affect living organisms at lower levels than the national and international directives (para. 38);

• The “**largest study to date**” indicates that there is clear evidence of cancerous tumors in the hearts of **male rats** exposed to the radiofrequencies of cell phones (para. 39);

• Radiofrequencies were classified by the International Agency for Research on Cancer as **possibly** carcinogenic to humans (para. 42);

• The radio frequencies emitted by the Defendants’ cell phones are higher than the limits established by the “standards” (para. 2), by the “applicable guidelines” (para. 5), by “the final rule adopted by the ... FCC in 1996” (para. 44);

• The companies that test a new cell phone do so at a distance of 25 mm from the body depending on how the device is used (para. 46);

• Apple warned users of the iPhone 4 and iPhone 4s on their website to wear their cell phones at least 10 mm away from their bodies to ensure that exposure to radiofrequencies would be below the limits (para. 48);

• Tests were developed by RF Exposure Lab on a series of the Defendants’ telephones at the distances the manufacturers chose for their own tests, that is **5 to 15 mm**, (paras. 51 to 55) and revealed that the results were higher for distances between **2 and 5 mm** (para. 66);

•The “worst case adult testing” was performed by journalist Wendy Mesley on March 24, 2017, on an iPhone 7 and a Samsung Galaxy 7 “alleging” the failure to properly test and inform users of the “health risks” resulting from radiofrequency emissions. Brain, breast, and “other cancers” are increased (Exhibit P-3B) (para. 69a);

• The other series of tests is that of the “French Phonegate”, which indicates that European smart phones, including the iPhone 5, failed to meet the far more restrictive European standards (Exhibits P-3C and P-3D) (para. 69b);

• They allege that the Defendants did not give any warnings of the dangers and did not provide instructions on how to use the products safely (para. 96) and that they have made no effort to protect or warn the owners (paras. 124 and 131);

• The Defendants are intentionally misleading the users by assuring them that the telephones were properly tested and that they are safe for use near the body, at any hour of the day or night, despite knowing that exposure to radiofrequencies is linked to cancer and other health risks (paras. 123,139, 145, and said differently, at paras. 166–168, 170, 182, 186–187, and 196);

• The applicants were exposed to dangerous levels of radiofrequency that “could negatively affect their health” for years to come (paras. 127 and 135, and said differently, at paras. 141, 146, and 188);

• The applicants relied on the misrepresentations when they bought their telephones, which resulted in their having “suffered an injury-in-fact and lost money” (para. 155), “suffered ascertainable loss, injury-in-fact and/or actual damage” (para. 190), “overpaid for their smartphones, and/or their smartphone have suffered a diminution in value” (paras. 158 and 173); they “would have purchased or leased less expensive alternative cellphones that did not emit RF radiation exposure at unsafe levels” (paras. 160 and 175) and “would have taken steps to minimize their exposure” (para. 175);

1. The Fonds then summarized the application and the testimony heard at its hearing in paragraphs [40] to [42] of the decision:

[translation]

[40] Essentially, it appears from the Application for authorization and the testimony given at the hearing on February 24, 2020, that the applicants intend to present an action for compensatory and punitive damages to establish the following injurious acts:

(1)  Misrepresenting the results of the tests on the radiofrequency emissions;

(2)  Engaging in misleading advertising implying that it is safe to use the cellular phone models near the body;

(3)  Failing to sufficiently warn users of the dangers to their health of using cell phones near the body;

(4)  Emitting emissions or pollutants in violation of prescribed standards;

(5)  Having intentionally acted in violation of the standards.

[41] They base their actions mainly on the following provisions:

**(a)** 2, 8, 37, 53, 216, 223.1, 218, 219, 228, 238(a), 253, and 272 C.P.A.;

**(b)** 1457 C.C.Q.

**(c)** 19.1 and 22 E.Q.A.;

**(d)** 1, 6, 7, 24, 39, 46.1, and 49 of the Quebec Charter;

**(e)** 52, 74.01, 74.02, and 74.03(5) of the Competition Act.

[42] The damages sought are generally made up of monetary losses, “injury-in-fact”, and the risk of healthcare issues.

1. Like the Fonds,[[68]](#footnote-68) the Tribunal is of the view that there are certain allegations of fact that are vague, general, and imprecise, particularly those relating to the third syllogism, that is, the serious injury to health.
2. Indeed, the facts alleged concerning the health issues of applicants Zoe Patton and Claire O’Brien reveal the weaknesses that will make it difficult to establish an arguable case in this respect.
3. During her testimony before the Tribunal, Zoe Patton confirmed that her physician was unable to connect her menstrual cycle issues to the use of her cell phone. As for Claire O’Brien, the facts alleged are based solely on her testimony that using the cell phone causes her stress.
4. However, the Tribunal considers that there are allegations of fact that make it possible to establish the existence of an arguable case regarding the first and second syllogisms.
5. Indeed, the facts alleged stating that cell phones emit radiofrequencies at levels that violate standards and that they are not safe to use as intended, contrary to the advertising promoting use near or against the body, are sufficiently precise and supported by documentary evidence to be assumed to be true.[[69]](#footnote-69)
6. Furthermore, the Tribunal notes certain errors in the Fonds’s decision on the analysis of the documents submitted.
7. First, contrary to what is stated in paragraph [46] of the Fonds’s decision, the applicants submitted exhibits P-3B, P-3C, and P-3D, which are in Excel and video format, on the USB key sent by their attorney in support of their application for financial assistance.
8. Second, in connection with paragraph [47] of the Fonds’s decision, the Tribunal is instead of the opinion that exhibit P-3G, the report prepared by expert Pedro Gregorio, contains concrete, precise, and palpable facts given that it was an analysis of tests performed on Apple and Samsung cell phones as reported in exhibits P-3A, P-3B, P-3C, and summarized in tables 2 and 3 by indicating in red the radiofrequency results at levels that violate the FCC standard.
9. Third, the Tribunal notes that the Fonds confused part of the information submitted, given paragraph [48] of the decision.
10. It is true that the facts alleged are not supported by exhibit P-3HB (”Certificate of Testing R&D SAR Evaluation” prepared by RF Exposure Lab), which does not contain the tables of results inserted in paragraph [66] of the application for authorization. In fact, these are tests performed on December 4, 2019, concerning the iPhone 11 Pro.
11. However, it cannot be found that paragraphs [51] to [66] of the application for authorization imply that they are the same results and that they originate from this exhibit, because these paragraphs refer only to exhibit P-3A. Exhibit P-3A is the Chicago Tribune article published on August 22, 2019, concerning the tests performed in 2018 on several Apple and Samsung cell phone models.
12. Finally, contrary to what is said in paragraph [49] of the Fonds’s decision, paragraph [66] of the amended application dated December 15, 2019, refers to the FCC’s 1.6 watt/kilogram limit.
13. Concerning this limit, given that the FCC does not have jurisdiction over Canadian territory and that the applicants do not expressly argue the Canadian standards, the Superior Court authorized the filing of the guidelines stated in a Health Canada document titled “Safety Code 6 (2015) / Code de sécurité 6 (2015)” and its “Fact Sheet - What is Safety Code 6?”. It therefore appears that the debate will take place from this perspective.[[70]](#footnote-70)
14. Also, while Apple and Samsung tried to reassure their Quebec buyers by erroneously alleging that American standards had been respected, their failure could constitute misrepresentations or misleading advertising despite their reference to standards that do not apply in Quebec.
15. It should be added that to assess the seriousness of the contemplated proceeding, this Tribunal must consider the presumptions from which the applicants might benefit to prove their arguments.[[71]](#footnote-71) One of them is that Apple and Samsung are presumed to know the risks and dangers created by their product.[[72]](#footnote-72) These manufacturers have the obligation to inform their users accordingly.[[73]](#footnote-73)
16. Considering that at the authorization stage of a class action, the threshold to apply art. 575(2) C.C.P., likened to the second criterion of s. 23 *AFAAC*, is low, the Tribunal is of the view that the application for authorization shows the probable existence of a right. Indeed, despite the weaknesses in the pleading, the Tribunal does not consider that it is necessary to characterize it as frivolous, unfounded, or untenable.
17. Thus, although the proceeding may have weaknesses in certain respects, particularly with respect to the serious damages to health, the applicants have nonetheless shown an arguable case, for example on the cell phones’ emission of radiofrequencies and the warnings about their use.
18. Even if the allegations of the third syllogism are not sufficiently precise to be considered, this will not necessarily have an impact on the conclusions in mandamus sought by the applicants. The right to specific performance exists in consumer protection, independently from a lack of prejudice.[[74]](#footnote-74) The applicants ask, among other things, that the two manufacturers be ordered to publicize warnings about the safe use of their cell phones. The right to such a remedy may be based on misrepresentations[[75]](#footnote-75) or on the manufacturer’s failure to warn consumers against the dangers related to the use of their device of which it could personally have been aware.[[76]](#footnote-76) The applicants’ allegations on this subject are sufficiently precise and are worth considering.
19. Purely hypothetically, if a single conclusion among those sought appeared arguable, it would be enough to confer the probable existence of a right to the proceeding.
20. It remains to be seen if that will be enough to also convince the Superior Court that the applicants have an arguable case.
21. Accordingly, the Tribunal considers that there is a probable existence of a right, which leads it to conclude that the applicants meet the second criterion of s. 23 *AFAAC*.

*(b) Third criterion of s. 23 AFAAC: the probability that the class action will be brought*

1. At the outset, the Fonds considers that the probability that the class action will be brought has not been shown with respect to the sub-criterion of the composition of the class (575(3) C.C.P.) because it lacks precision, rationality, and objectivity.[[77]](#footnote-77)
2. In particular, the Fonds alleges that the application for authorization includes several descriptions of the class concerned by the class action, including some that are incompatible or inconsistent among themselves. The application for authorization also does not establish a connection with Quebec.
3. It submits that paragraphs [64] and [65] of the decision clearly express the lack of precision, rationality, and objectivity of the description of the class concerned:

[translation]

[64] First, the connection to the province of Quebec is not clear: Do the persons have to have bought/leased or used the telephone in Quebec or must they reside there? The absence of a connection to the province of Quebec creates confusion, especially because the applicants often say in their Application for authorization that their action is “nationwide” and concerns “all persons in Canada”;

[65] How much time of telephone use or lease is required to be concerned by the class? One day? One month? If a person in the street borrows a passerby’s telephone, do they qualify? There is no temporal limit determining the starting point for the purchase, lease, or use. The period concerned by the class action is not defined.

1. According to the Fonds, identifying class members is problematic with the composition of the class suggested, in particular because anyone who used one of the telephones concerned in Quebec is a member of the class action, whether or not they reside there. It submits that there is no objective criteria or rational basis alleged that justifies including all these persons as class members.[[78]](#footnote-78)
2. First, the Fonds’s decision is based on the application for authorization to institute a class action, amended on December 15, 2019.
3. However, as previously stated, the amendment to the application from August 13, 2020, is admissible in evidence before the Tribunal.
4. Let us recall that this amendment concerns in particular the definition of the class to specify in the conclusions that the persons concerned must reside in the province of Quebec and to withdraw any references to Canada:

All persons at any time residing in the Province of Quebec who purchased, leased and/or used the Phones, namely, iPhone 5s, iPhone 5C, iPhone 6, iPhone 6s, iPhone 6s Plus, iPhone SE, iPhone 7, iPhone 7 plus, iPhone 8, iPhone 8 Plus, iPhone X, iPhone XR, iPhone XS, iPhone, XS M ax, iPhone 11, iPhone 11 Pro, iPhone 11 Pro Max, Samsung Galaxy S7, Samsung Galaxy S8, Samsung Galaxy S9, Samsung Galaxy J3, Samsung Galaxy S20 ... and all additional Samsung models sold from 2013 forward, and any other phones sold or marketed by Defendants from 2013 forward.

1. It is clear that these amendments answer the Fonds’s questions.
2. Furthermore, the Tribunal notes that this description of the class corresponds to the one accepted by the Superior Court in its judgment rendered on June 18, 2020, with regard to the presentation of evidence, despite the fact that the amendment of the application was filed subsequently.
3. Indeed, the Court stated that: [translation] “This class action seeks to involve a group of Quebec residents who have, since 2013, purchased, leased, or used certain cellular telephones manufactured or sold: - by Apple Canada Inc.; or - Samsung Electronics Canada”.[[79]](#footnote-79)
4. To conclude, as the applicants point out, it is a class similar to the one in a class action for damages against Apple recently authorized by the Superior Court.[[80]](#footnote-80)

[translation]

[95] **APPOINTS** the applicants and **ASCRIBES** to them the status of representative for the purpose of bringing these class actions on behalf of the groups described hereinafter:

Apple rechargeable batteries group:

Every consumer who, since December 29, 2014, has purchased an Apple product, including an iPhone, Apple Watch, iPad, iPod and/or MacBook equipped with a rechargeable battery;

AppleCare group:

Every consumer who, since December 20, 2015, has purchased “AppleCare” and/or “AppleCare +” for an Apple product, including an iPhone, Apple Watch, iPad, iPod and/or MacBook and who were not informed of their legal warranty under the Consumer Protection Act at the time of purchase;

1. Accordingly, the Tribunal considers that the description of the group is sufficiently precise, rational and objective.
2. Second, the Fonds considers that the probability that the class action will be brought has not been demonstrated with regard to the sub-criterion of the proper representation of the members (575(4) C.C.P.), because in the absence of an interest in the suit, the applicants cannot be considered to be appropriate representatives of the members of the class action.[[81]](#footnote-81)
3. In other words, the Fonds is of the view that the applicants have no interest in the suit because they have failed to prove the probable existence of a right, that is, the existence of an arguable case. Accordingly, granting them the status of representative would be unfair to the other members of the group, who might have an arguable case.
4. The Fonds’s refusal with respect to this sub-criterion therefore rests entirely on the absence of interest in the suit. However, given that the Tribunal, contrary to the Fonds, considers that the applicants have demonstrated the probable existence of a right, this sole ground of refusal is now without merit.
5. Accordingly, the Tribunal considers that the applicants can properly represent the members.
6. In the circumstances, the Tribunal concludes that the applicants meet the third criterion of s. 23 *AFAAC*, that is the probability that the class action will be brought.
7. In closing, the applicants also allege other grounds of contestation, that is, the violation of the right to be heard, including the language of the hearing,[[82]](#footnote-82) the obligation to provide reasons and the insufficiency of the reasons,[[83]](#footnote-83) as well as the non-compliance with the provisions of the *AAJ* and the Quebec *Charter*.[[84]](#footnote-84) Considering the Tribunal’s conclusion regarding s. 23 *AFAAC*, it is not necessary to rule on these other grounds.
8. In short, The Tribunal concludes that all the criteria for awarding financial assistance set out in s. 23 *AFAAC* are met and, accordingly, grants the proceeding, sets aside the decision of the Fonds, and orders it to grant the assistance after agreement with the attorney for the applicants in accordance with s. 25 *AFAAC*.

**FOR THESE REASONS, the Tribunal:**

**GRANTS** the proceeding;

**SETS ASIDE** decision number 054-2020 rendered on April 16, 2020, by the Fonds d’aide aux actions collectives; and

**ORDERS** theFonds to grant the assistance after agreement with the attorney for the applicants in accordance with s. 25 *AFAAC*.

SUZANNE LÉVESQUE, a.j.t.a.q.

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|  | MARIO ST-PIERRE, a.j.t.a.q. |

Mtre Charles O'Brien

Lorax Litigation

Counsel for the applicants

Mtre Lory Beauregard and Mtre Kloé Sévigny

Counsel for the respondent

1. Decision number 054-2020 dated April 16, 2020. [↑](#footnote-ref-1)
2. CQLR, c. F-3.2.0.1.1. [↑](#footnote-ref-2)
3. The parties determined the issue in dispute during the case management conference held on February 17, 2021. [↑](#footnote-ref-3)
4. Paragraphs [16] and [18] of the contested decision. [↑](#footnote-ref-4)
5. The English translation of the decision was sent on July 7, 2020. [↑](#footnote-ref-5)
6. *Arial* *c. Apple Canada inc.*, 2019 QCCS 1932. [↑](#footnote-ref-6)
7. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII). [↑](#footnote-ref-7)
8. *Ibid*. at para. 37. [↑](#footnote-ref-8)
9. *Supra* note 7 at paras. 33 and 44. [↑](#footnote-ref-9)
10. SQ 1978, c. 8, s. 35. [↑](#footnote-ref-10)
11. SQ 1988, c. 21, s. 66. [↑](#footnote-ref-11)
12. CQLR, c. J-3. [↑](#footnote-ref-12)
13. SQ 1997, c. 43, s. 558. [↑](#footnote-ref-13)
14. Section 14 *AAJ*. [↑](#footnote-ref-14)
15. Section 15 *AAJ*. [↑](#footnote-ref-15)
16. Section 36 and Schedule IV *AAJ*, which refers to the *AFAAC* at para. 18. [↑](#footnote-ref-16)
17. *Québec* *c. Barreau de Montréal,* 2001 CanLII 20651 (QC CA) at para. 106. [↑](#footnote-ref-17)
18. CQLR, c. T-16. [↑](#footnote-ref-18)
19. *Supra* note 7 at paras. 44–45. [↑](#footnote-ref-19)
20. *Société canadienne des postes c. Morency*, 1989 CanLII 904 (QC CA). [↑](#footnote-ref-20)
21. Yves Ouellette, *Les tribunaux administratifs au Canada—procédure et preuve,* (Montreal: Thémis, 1997) at 37–38 (citations omitted). [↑](#footnote-ref-21)
22. Patrice Garant, *La justice invisible ou méconnue-propos sur la justice et la justice administrative,* (Montreal: Yvon Blais, 2014) at 126–127. [↑](#footnote-ref-22)
23. Unlike s. 21.4 of the *Act respecting the preservation of agricultural land and agricultural activities* (CQLR, c. P-41.1), for example. [↑](#footnote-ref-23)
24. Section 37 *AFAAC*. [↑](#footnote-ref-24)
25. *Supra* note 7 at para. 36. [↑](#footnote-ref-25)
26. *M.O. c. Société de l’assurance automobile du Québec*, 2021 QCCA 177 at paras. 21–22. [↑](#footnote-ref-26)
27. *Association des juges administratifs de la Commission des lésions professionnelles c. Québec (Procureur général*), 2013 QCCA 1690 at para. 24. [↑](#footnote-ref-27)
28. *Kozlowski c. Ministère du Développement durable, de l’Environnement, de la Faune et des Parcs*, 2014 QCTAQ 02892 at para. 523; *Z.I. c. Centre de la petite enfance A*, 2020 QCTAQ 05155 at para. 40. [↑](#footnote-ref-28)
29. Section 137 *AAJ*. [↑](#footnote-ref-29)
30. *Kozlowski c. Ministère du Développement durable, de l’Environnement, de la Faune et des Parcs*, *supra* note 28 at para. 519. [↑](#footnote-ref-30)
31. Paragraph [64] of the contested decision. [↑](#footnote-ref-31)
32. *Anahit Cilinger c. Fonds d’aide aux recours collectifs*, 2002 CanLII 55264 (QC TAQ). [↑](#footnote-ref-32)
33. *Andrew G. George* c. *FAAC,* 2002 CanLII 55213 (QC TAQ). [↑](#footnote-ref-33)
34. CQLR, c. C-25.01, formerly art. 1003 C.C.P. [↑](#footnote-ref-34)
35. Article 576 C.C.P. [↑](#footnote-ref-35)
36. Section 15 *AAJ*. [↑](#footnote-ref-36)
37. Yves Ouellette, quoted in para. 16, *supra* at note 21. [↑](#footnote-ref-37)
38. *Supra*, note 20 at 302. [↑](#footnote-ref-38)
39. J.E. 97-1734 (CA) [↑](#footnote-ref-39)
40. *J.R. c. Société de l'assurance automobile du Québec,* 2011 QCCA 1595. [↑](#footnote-ref-40)
41. *Supra* note 7 at paras. 65–66. [↑](#footnote-ref-41)
42. Section 1 *AAJ*. [↑](#footnote-ref-42)
43. Section 23 *AFAAC* provides that the decision must be rendered within the month that follows the application. [↑](#footnote-ref-43)
44. *Piché c. Tribunal administratif du Québec et Retraite Québec*, decision of the Superior Court dated March 26, 2021, in file No. 200-17-031469-208; *C.G. c. Retraite Québec*, 2017 QCTAQ 091171 at para. 29. [↑](#footnote-ref-44)
45. Mechanism drawn from the application of ss. 95.2, 143.0.2, 26, and 147 of the *Act respecting the Québec Pension Plan*, CQLR, c. R-9. See for example, *R.G. c. Retraite Québec*, 2019 CanLII 50668 (QC TAQ). [↑](#footnote-ref-45)
46. *Supra* note 40. [↑](#footnote-ref-46)
47. 2005 QCCA 250. [↑](#footnote-ref-47)
48. *Ibid*. at para. 96. [↑](#footnote-ref-48)
49. Mtre Isabelle St-Jean, Mtre Jean-Yves Brière & Mtre Jean-Pierre Villaggi, Collection de droit 2019-2020, vol. 8, *La justice administrative* (Yvon Blais). [↑](#footnote-ref-49)
50. Paragraphs [23] to [26] of the contested decision. [↑](#footnote-ref-50)
51. Journal des débats Commissions Parlementaires, Troisième session - Législateur, Commission permanente de la justice, Étude du projet de loi no. 39 - Loi sur les recours collectifs, June 1, 1978, No. 102 at B-3914–B.3915; *George c. Fonds d'aide aux recours collectifs*, TAQ SAE-M-0715540-0111, May 3, 2002 at para. 37; *Durand c. Fonds d'aide aux actions collectives*, 2016 QCTAQ 11559 at para. 32; *Andrew G. George c. Fonds d’aide aux recours collectifs*, TAQ SAE-M-099732-0412, July 8, 2005, at para. 13. [↑](#footnote-ref-51)
52. *Infineon Technologies AG* *and Infineon Technologies North America Corp v. Option consommateurs,* 2013 SCC 59 (CanLII) at paras. 59 and 67. [↑](#footnote-ref-52)
53. *L’Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35 (CanLII) at paras. 56 to 60. [↑](#footnote-ref-53)
54. Paragraphs [58] to [60] of the contested decision. [↑](#footnote-ref-54)
55. *George c. Québec (Procureur général)*, 2006 QCCA 1204 at para. 40. [↑](#footnote-ref-55)
56. *L’Oratoire Saint-Joseph du Mont-Royal v. J.J.*, *supra* note 52 at para. 32. [↑](#footnote-ref-56)
57. *Infineon Technologies AG and Infineon Technologies North America Corp v. Option consommateurs*, *supra* note 51 at para. 149. [↑](#footnote-ref-57)
58. *Andrew G. George c. Fonds d’aide aux recours collectifs*, July 8, 2005, *supra* note 50 at para. 15. [↑](#footnote-ref-58)
59. See paragraphs 7 to 9 of the originating application amended on October 30, 2020. [↑](#footnote-ref-59)
60. P-3A. [↑](#footnote-ref-60)
61. Applicants’ notes and authorities dated May 5, 2021. [↑](#footnote-ref-61)
62. *Supra* note 6 at paras. 17–23. [↑](#footnote-ref-62)
63. See paragraphs 35, 39, 42–43, 45, and 48–51 of the contested decision and also the email dated June 10, 2021, from Mtre Lory Beauregard. [↑](#footnote-ref-63)
64. See paragraphs 33–34. 39, 42–44, 49–52, and 54–56 of the contested decision. [↑](#footnote-ref-64)
65. See paragraph 53 of the contested decision. [↑](#footnote-ref-65)
66. *EI-Hachem c. Décary,* 2012 QCCA 2071 at paras. 10 to 12. [↑](#footnote-ref-66)
67. *Supra* note 6 at paras. 15 and 16. [↑](#footnote-ref-67)
68. Paragraphs 44 and 52 of the contested decision. [↑](#footnote-ref-68)
69. P-3A, P-3B, P-3C, P-3D, P-3F, and P-3G. [↑](#footnote-ref-69)
70. *Supra* note 6 at para. 32 to 37 [↑](#footnote-ref-70)
71. *Atchom Makoma c. Procureure général du Québec,* 2019 QCCS 3583 at para. 24. [↑](#footnote-ref-71)
72. Section 53 of the Consumer Protection Act, CQLR, c. P-40.1 (*CPA*). See *Horecki c. Beaver Lumber Co*., [1992] RJQ 1763 at 1768–1769. [↑](#footnote-ref-72)
73. Section 53 *CPA*. See *Hollis v. Dow Corning Corp.*, [1995] 4 SCC 634. [↑](#footnote-ref-73)
74. Section 272 *CPA* [↑](#footnote-ref-74)
75. Sections 219 to 221 and 238 *CPA*. [↑](#footnote-ref-75)
76. *Supra* note 72. [↑](#footnote-ref-76)
77. See paragraphs 17 and 61–66 of the contested decision. [↑](#footnote-ref-77)
78. *Pollués de Montréal-Trudeau (LPDMT) c. Aéroports de Montréal (ADM),* 2021 QCCS 367 at paras. 145–147. [↑](#footnote-ref-78)
79. *Supra* note 6 at para. 1. [↑](#footnote-ref-79)
80. *Badaoui c. Apple Canada inc.*, 2019 QCCS 2930. [↑](#footnote-ref-80)
81. See paragraphs 69–70 of the contested decision. [↑](#footnote-ref-81)
82. See paragraphs 7(b), (e), (i), 9(a), 13, 19, and 8, 9(a), (m), and 10 of the application for review. [↑](#footnote-ref-82)
83. See paragraphs 7(g), 9(e), (g), (h), (i), (j), 10, 11, 15, and 17 of the application for review. [↑](#footnote-ref-83)
84. See paragraphs 7(c), (d), (f), (h), (i), (j), (k), (1), 9(b), (c), 12 to 14, 16 to 18, and 20 of the application for review. [↑](#footnote-ref-84)