COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-026947-176
(500-06-000615-126)

DATE: October 18, 2018

CORAM: THE HONOURABLE **LOUIS ROCHETTE, J.A.**
MARK SCHRAGER, J.A.
PATRICK HEALY, J.A.

MAXIME BELLEY
APPELLANT – Plaintiff

v.

TD AUTO FINANCE SERVICES INC. / SERVICES DE FINANCEMENT AUTO TD INC.
RESPONDENT – Defendant

JUDGMENT

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[1] On appeal from the judgment rendered on June 16, 2017 by the Superior Court, District of Montreal (the Honourable Justice Louis Lacoursière), ordering disclosure of a list of registered class members and their province of residence.

[2] For the reasons of Justice Schrager with which Justices Rochette and Healy concur, **THE COURT:**

[3] **DISMISSES** the appeal with legal costs.

LOUIS ROCHETTE, J.A.

MARK SCHRAGER, J.A.

PATRICK HEALY, J.A.

Mtre David Assor
LEX GROUP INC.
For Appellant

Mtre Laurent Nahmiash
DENTONS CANADA
For Respondent

Date of hearing: August 30, 2018

REASONS OF SCHRAGER, J.A.

[4] This is an appeal from a judgment rendered in the course of proceedings on June 16, 2017, by the Superior Court, District of Montreal (the Honourable Justice Louis Lacoursière), granting in part the Respondent's motion for disclosure of documents pertaining to the registered class members, and ordering the Appellant to provide the Respondent with a copy of the complete and updated list of "registered" class members, together with their province of residence.[1]

I- CONTEXT

[5] Maxime Belley (the **"Appellant"**) is the representative in a class action against TD Auto Finance Inc./Services de financement auto TD inc. (the **"Respondent"**).

[6] In 2008, a data tape containing personal and financial information of approximately 240,000 of the Respondent's clients was lost or stolen (the **"data tape loss"**). A class action authorization motion filed with respect to the alleged negligent disclosure of the information contained on the data tape was dismissed on March 15, 2012 because the Appellant could neither demonstrate a compensable loss nor adequately represent the proposed group members.[2]

[7] On May 22, 2012, a second-class action authorization motion was filed with respect to the same data tape loss by the Appellant, who alleged having been subject to fraud and identity theft following the disclosure of his personal information.

[8] By mutual consent, the matter was referred to Justice Lacoursière, who had dismissed the first class action authorization motion.

[9] On January 19, 2015, Justice Lacoursière authorized the institution of the class action on behalf of the following class:[3]

> All persons (including their estates, executors, or personal representatives), consumers, corporations, firms, businesses, and other organizations (subject to Article 999 C.C.P.), in all of Canada (subsidiarily in Quebec), whose personal information was stored or saved on a Data Tape, which was lost by Respondent

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1 *Belley v. TD Auto Finance Services Inc./Services de financement auto TD inc.*, 2017 QCCS 2668 [Judgment under appeal].

2 *Mazzonna v. DaimlerChrysler Financial Services Canada Inc./Services financiers DaimlerChrysler inc.*, 2012 QCCS 958 [*Mazzonna*].

3 *Belley v. TD Auto Finance Services Inc./Services de financement auto TD inc.*, 2015 QCCS 168. Leave to appeal denied: *TD Auto Finance Services Inc./Services de financement auto TD inc. v. Belley*, 2015 QCCA 1255.

> while in transit on or about March 12, 2008, or any other group to be determined by the Court (the "Group").

[10] By February 28, 2016, notices of the class action authorization had been disseminated by press releases, French and English newspapers, Facebook ads and radio ads. The potential class members were given class counsel's website to seek information about the class action.[4]

[11] No class member opted out, but a number of class members contacted the Appellant's counsel through his website.

[12] On December 23, 2016, the Appellant filed his originating application seeking judgment on the merits of the class action.

[13] On March 20, 2017, the Respondent filed an application for the disclosure of documents pertaining to the registered class members, requesting "copies of the Class Plaintiff's complete and updated list of registered class members, their registered forms as well as any claim supporting documentation which they have provided to Class Counsel".

II- JUDGMENT UNDER APPEAL

[14] As indicated above, the judgment orders the Appellant to disclose to the Respondent a copy of the complete and updated list of "registered" class members, together with their province of residence.

[15] The judge commenced by addressing certain important preliminary notions. He defined "registered" members, a non-legal term, as "the list of members whose names appear on the list of members of the group filed in support of the originating motion for authorization or [the list of] members who have registered by Internet or otherwise with class counsel".[5] Following an overview of this Court's case law characterizing the juridical status of the post-authorization class members, he concluded that although "somewhat vague", their status is close to that of parties.[6]

[16] The analysis continues in terms of relevance and proportionality. Contrary to the Appellant's position, the judge found that the communication of the list of registered members was relevant:[7]

> [32] The Plaintiff himself has indeed filed a list of purported class members in support of his original application. This list includes the names, city and home province of the members, together with some comments from some members. The

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4 Judgment under appeal, *supra*, note 1, para. 8.
5 *Id.*, para. 21.
6 *Id.*, paras. 22-26.
7 *Id.*, paras. 27-34.

> Court fails to see how the communication of such a list is relevant at the authorization stage but would not be once the action has been authorized.
>
> [33] There is indeed an issue of proportionality here. The class proceeding announces a group of some 240,000 members. Without this being the only determining factor, there is a significant relevance to knowing how many people have registered on the website after a campaign to publicize the class action, through several serious means, including radio ads and a notice in the Globe and Mail, at a cost of approximately $100,000.
>
> [34] In the Court's view, the number of people who registered as a result of the Court authorized notices is relevant to assess the scope of the litigation. The Defendant, to prepare its defence, and the Court, as case management judge, are entitled to have this information.
>
> (Emphasis added)

[17] He then turned to the issue of professional secrecy raised by the Appellant. Referring to this Court's decision in *Filion v. Québec (Procureure générale)*,[8] the judge noted that registered members had established some form of attorney-client relationship and were protected by attorneys' ethical obligations. This protection, he concluded, did not cover the names and addresses of people who registered on class counsel's website; these people, in his opinion, had "obviously agreed, when they registered, to come out of anonymity and become 'virtual parties'".[9]

III- ISSUES

[18] The Appellant simply describes the issues in appeal by stating that the judge erred in concluding as he did. However, based on the judgment and the arguments presented by the parties, the issues can be articulated as follows:

1) Whether the trial judge erred in concluding that the disclosure of the list of registered members was relevant;

2) Whether the trial judge erred in concluding that the identity of members who registered was not protected by professional secrecy.

IV- APPELLANT'S POSITION

[19] The Appellant opens his arguments by stating that the judgment under appeal is an "attack on the professional secrecy to which the members who have registered on Class Counsel's website [...] are entitled to". In his view, the judge erred in concluding

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8 *Filion v. Québec (Procureure générale)*, 2015 QCCA 352 [*Filion*].

9 Judgment under appeal, *supra*, note 1, paras. 35-38.

that the names and provinces of residence of registered members could be communicated to the Respondent. He submits that the judge was correct to refer to this Court's decision in *Filion*, but erred by misinterpreting its facts and relying upon the dissenting opinion.

[20] The Appellant contends that this information is "clearly protected by attorney-client privilege, professional secrecy, litigation privilege and litigation work product, since the [registered members] all reached out to class counsel in the context of the present action". Class members, he argues, "have the rightful expectation to have their identity protected [and not] be forced out of the anonymity provided for by the *C.C.P.* and confirmed in *Filion*" at paragraph 34 and reiterated in *Blouin v. Parcs éoliens de la Seigneurie de Beaupré 2 et 3*.[10] The Appellant's counsel fears that divulging names will inhibit potential class members from coming forward and thus, defeat the purpose of class actions of promoting access to justice.

[21] The Appellant also challenges the trial judge's conclusion that there is significant relevance to knowing how many people have registered to assess the scope of the litigation and to permit the Respondent to prepare an adequate defence concerning the common issues of law or fact to be determined on a class-wide basis. He insists on Quebec's "opt-out" jurisdiction to question the relevance of knowing how many and if any members reached out to class counsel, adding that if it were relevant in law, Quebec would be an opt-in jurisdiction.

[22] The Appellant notes that the Respondent's intention stated in the case protocol is to apply for leave to depose class members and eventually apply to annul the authorization judgment. He reminds this Court that the Respondent already has the full list of 240,000 names and addresses of all the class members, which class counsel himself does not have.[11] He further argues that the list of registered members is not relevant for the circumstances for which Articles 587 and 588 *C.C.P.* exist. The examination of individual facts and claims is irrelevant at the pre-trial stage, and "the number of class members having contacted Class Counsel is not a reason for annulling the authorization".

V- ANALYSIS

Relevance

[23] The Respondent presented its application to obtain the list of names pursuant to Article 169 *C.C.P.*:

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10 *Filion*, *supra*, note 8, para. 34; *Blouin v. Parcs éoliens de la Seigneurie de Beaupré 2 et 3*, 2017 QCCS 4654, para. 33 (citing *Filion*) [*Blouin*].

11 Judgment under appeal, *supra*, note 1, para. 7.

169. A party may apply to the court for any measure conducive to the orderly conduct of the proceeding.	**169.** Une partie peut demander au tribunal toute mesure propre à assurer le bon déroulement de l'instance.
A party may also apply to the court for an order directing another party to provide particulars as to the allegations made in the application or the defence, disclose a document to the party or strike immaterial allegations.	Elle peut aussi demander au tribunal d'ordonner à une autre partie de fournir des précisions sur des allégations de la demande ou de la défense ou de lui communiquer un document, ou encore de procéder à la radiation d'allégations non pertinentes.
(...)	[...]

(Emphasis added)

[24] The trial judge correctly found that the criterion for production was relevance and not whether the Appellant intended to rely on the list at trial.[12] He analyzed that relevance in paragraphs 32 to 34 of the judgment, quoted above.

[25] The test of relevance at the pre-trial stage is given a wide berth; it is not difficult to satisfy.[13]

[26] As the Appellant indicated, the Respondent made it clear that its motion for communication was motivated by its intention to apply for leave to depose class members and eventually to apply to annul the authorization judgment.[14] Counsel wrote that the information sought would be useful to resolve the common questions raised by the class action, notably to ascertain whether any real losses were suffered by the class members, to have an idea of the size of the group, and to verify whether a class action is proportionate and still justified given the responses of class members.[15]

[27] The list of registered members or the comments they share with class counsel is not really conclusive with regard to such matters since in Quebec, members need not opt-in as the published notice announced. However, it cannot be said that the members who

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12 Judgment under appeal, *supra*, note 1, paras. 27-28 referring to *Envac Systems Canada inc. v. Montreal (Ville de)*, 2016 QCCS 1931.

13 *Desmarteau v. Ontario Lottery and Gaming Corporation*, 2013 QCCA 2090, paras. 42-45; *Bouchard-Cannon v. Canada (Procureur général)*, 2012 QCCA 1241; *Corp. McKesson Canada v. Losier*, J.E. 2004-1035, 2004 CanLII 9409, para. 22 (C.A.).

14 Application for the Communication of Documents pertaining to the Registered Class Members, March 20, 2017, paras. 11-18; Copy of March 1, 2017, email from the Respondent-Defendant's counsel to the Motion Judge, together with its proposed protocol, p. 134.

15 Application for the Communication of Documents pertaining to the Registered Class Members, March 20, 2017, paras. 11-18.

did contact class counsel and their experience would have no relevance to the determination of the matter on the merits.

[28] Given the low threshold of relevance at the pre-trial stage, deference is due to the judge's decision. The Appellant has not convinced me of any error in his determination of the relevance of the disclosure of the names and whereabouts of the "registered" class members.

Privilege / professional secrecy

[29] After a thorough overview of the Canadian and American jurisprudence, the author Jasminka Kalajdzic came to the conclusion that an attorney-client relationship exists between the class counsel and the post-authorization class members, but that the scope of the class counsel's ethical obligations is still undefined:[16]

> The post-certification status of class members is a bit clearer. Virtually all courts recognize that a solicitor-client relationship exists between class counsel and the class at that point in the litigation. The scope of that relationship, however, remains amorphous and "an area under development." One judge has held that class counsel is not an agent of the class and that there is not a contractual relationship between them - even if counsel owes fiduciary duties to class members. According to another judge, however, the class is the client, to which is owed all of the obligations that flow from a traditional lawyer-client relationship. The case law has not yet explained how the full panoply of these obligations can be met vis-à-vis a large, diffuse group of people with potentially conflicting interests, many of whom may not even be known to counsel. (Citations omitted)

[30] In Quebec, this Court has determined that post-authorization class members are plaintiffs, and although they are not formally parties to the proceedings, they have the status of a quasi-party. There is only one legal category of class member. Although the distinction between "registered" and "unregistered" class members has no foundation in law, it has an incidence in the relations with the class counsel. Indeed, registered members have established some form of attorney-client relationship and are protected by attorneys' ethical obligations.[17] The judge appears to have been sensitive to this since he ordered disclosure of names and province of origin only and not any of the information that such members would have communicated to the class counsel.

[31] It is difficult to define the content of a lawyer's obligation of confidentiality on a generalized or abstract basis. The obligation is not always the same and its determination

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16 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.*, 1-37, p. 24.

17 *Société des loteries du Québec v. Brochu*, 2006 QCCA 1117, para. 33 and ff.; *Imperial Tobacco Canada Ltd. v. Létourneau*, 2012 QCCA 2013, paras. 39-40; *Filion*, *supra*, note 8, para. 48. Also : Luc Chamberland (dir.), *Le Grand collectif, Code de procédure civile commentaires et annotations*, 2nd ed. vol. 2, Cowansville, Yvon Blais, 2017, art. 587 (Yves Lauzon); Catherine Piché, *Le règlement à l'amiable de l'action collective*, Cowansville, Yvons Blais, 2014, p. 98-103.

is contextual. On the matter, the Supreme Court of Canada has determined that professional secrecy, however important, does have its limits, as not every aspect of relations between a lawyer and a client is necessarily confidential.[18] Indeed, "it is not the capacity in which the person is party to the communication that gives rise to the privilege. It is the context in which the communication takes place that justifies characterizing it as privileged".[19]

[32] As noted by the Respondent, the courts have repeatedly recognized that professional secrecy, even in the context of a class action, only extends to the communications or information intended to be confidential:[20]

> (...) privilege can only be claimed document by document, with each document being required to meet the criteria for the privilege—(i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties. (...)

[33] The content of the protected information or communications thus may vary according to circumstances.[21] For instance, the name of a client, in certain cases, may be protected by professional secrecy, when in other cases it will not be the object of such protection.

[34] Protection of the client's name by attorney-client privilege appears to be more the exception than the general rule.[22] Because a client's name may be privileged, the information is presumed confidential subject to rebuttal if demonstrated that the

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18 *Foster Wheeler Power Co. v. Société intermunicipale de gestion et d'élimination des déchets (SIGED) inc.*, 2004 SCC 18, paras. 27 and 37. Also *Solosky v. The Queen*, [1980] 1 S.C.R. 821, p. 829 [*Solosky*]; *Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink*, 2002 SCC 61, para. 22.

19 *Maranda v. Richer*, 2003 SCC 67, para. 42 [*Maranda*].

20 *Solosky*, *supra*, note 18, p. 837. See also *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*, 2010 QCCS 4759, paras. 16-21 (Leave to appeal dismissed: *Imperial Tobacco Canada Ltd. v. Létourneau*, 2010 QCCA 2312) [*Conseil québécois sur le tabac* (2010)]; *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*, 2011 QCCS 4090, paras. 5-7, (This portion of the judgment was not challenged on appeal: *Imperial Tobacco Canada Ltd. v. Létourneau*, 2012 QCCA 2013, paras. 13-14) [*Conseil québécois sur le tabac* (2011)]; *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31, para. 16, [2004] 1 S.C.R. 809; *Brochu v. Québec (Société des loteries)*, J.E. 2005-1606, 2005 CanLII 29434, para. 33 (C.S.).

21 *Kalogerakis v. Commission scolaire des Patriotes*, 2017 QCCA 1253, paras. 30-37; *Canada (Procureur général) v. Chambre des notaires du Québec*, 2014 QCCA 552, paras. 46-50; *Association de protection des épargnants et investisseurs du Québec (APEIQ) v. Corporation Nortel Networks*, 2007 QCCA 1208, paras. 41-49.

22 *Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink*, 2002 SCC 61, paras. 28 and 80, [2002] 3 S.C.R. 209 (per Lebel, J., dissenting, but not on this point); *Pearl v. Bissegger* (C.A., 1985-10-02), J.E. 85-1043, [1985] C.A. 695, paras. 43-46; *Autorité des marchés financiers v. Mount Real Corporation*, 2006 QCCQ 14479, paras. 30-37 ("Absent exceptional circumstances, the identity of the lawyer's client is not protected by the solicitor-client privilege"); *R. v. Tate*, 2016 QCCS 5046, paras. 26-42 (for an overview of the case law on the matter). Also Adam Dodek, *Solicitor-Client Privilege*, LexisNexis Canada Inc., Markham, 2014, paras. 5.24 to 5.38.

"disclosure of the information will not violate the confidentiality of the client/solicitor relationship by revealing directly or indirectly any communication protected by the privilege" and that "the requested information is not linked to the merits of the case and its disclosure would not prejudice the client".[23]

[35] In *Maranda v. Richer*,[24] which arose in the context of criminal proceedings concerning a search warrant served on a law firm, the Supreme Court noted that to bring such information "within the ambit of professional privilege, (...) some rational connection with the objective of the privilege would have to be identified".[25]

[36] In my view, the trial judge did not commit a reviewable error in concluding that in the case at bar, the list of registered members was not protected by professional secrecy.

[37] The trial judge was of the view that the class members voluntarily came out of anonymity when they registered and became "virtual parties" to the proceedings[26] and that, as such, did not have the expectation that this information would remain confidential.

[38] The case law touching specifically on the issue is sparse. However, in *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*,[27] the Superior Court, evaluating the defendant's request to obtain the list of registered members in the class action together with information pertaining to their smoking habits, concluded similarly. Applying the criteria established by the Supreme Court in *Solosky*,[28] it was held that registering with class counsel constituted a communication between a client and an attorney, which entailed the seeking of advice and hence fulfilled the first two criteria (i.e. – 1) communication; 2) seeking advice). The Superior Court, however, concluded that it was difficult to imagine that the "voluntary registration" through the counsel's website, confirming a willingness to be represented by said counsel could have been made with the intention that the members' participation remain confidential:[29]

> [21] Il est difficile d'imaginer, dans un recours collectif basé sur les dommages causés par la cigarette, qu'il était l'intention des membres que leurs habitudes et expériences comme fumeurs demeurent secrètes. En l'absence d'une preuve ou même d'une allégation à cet effet, le Tribunal se doit de conclure que la troisième

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23 *R. v. Cunningham*, 2010 SCC 10, paras. 25-31, [2010] 1 S.C.R. 331; *Ontario (Ministry of the Attorney General) v. Ontario (Assistant Information and Privacy Commissioner)*, 251 DLR (4th) 65, 2005 CanLII 6045, paras. 9-12 (C.A. Ont.); *Legal Services Society v. British Columbia (Information and Privacy Commissioner)*, 2003 BCCA 278, paras. 37-38.

24 *Maranda*, *supra*, note 19.

25 *Maranda*, *supra*, note 19, para. 49.

26 Judgment under appeal, *supra*, note 1, para. 38.

27 *Conseil québécois sur le tabac* (2010), *supra*, note 20, paras. 16-21. Also *Conseil québécois sur le tabac* (2011), *supra*, note 20, paras. 1-7.

28 *Solosky*, *supra*, note 18, p. 837.

29 *Conseil québécois sur le tabac* (2010), *supra*, note 20, para. 22. Also *Conseil québécois sur le tabac* (2011), *supra*, note 20, paras. 1-6.

> condition n'est pas rencontrée. Le secret professionnel n'empêcherait donc pas la divulgation de l'information.

[39] No element in the case at bar leads to the conclusion that the information was intended to remain confidential, and thus addressing the third *Solosky* criterion. There is no proof that the members had such expectation when they registered, as was the case in *Dubé v. Nissan Canada Finance, division de Nissan Canada inc.*[30] There, class counsel had assured the members that their information would remain confidential and thus, the judge refused the requested communication. Disclosure of the names of the members was refused since the defendants already had a complete list of members being people they had contracted with.

[40] Nor are we told that any registered member requested that his or her identity remain confidential, as in *Centre de la communauté sourde du Montréal métropolitain v. Clercs de Saint-Viateur du Canada*, where the desire for privacy of victims of sexual abuse was respected by refusing disclosure of their names after authorization but prior to the trial.[31] In the case at bar, the published notice inviting members to contact class counsel "for further information" and "if possible provide your e-mail or other address" makes no mention of confidentiality. Indeed, the Appellant only argues that the information in fact was confidential in that it was never viewed by or accessible to the public.

[41] It should be underlined that where a potential member communicates with class counsel and clearly indicates that his or her name not be disclosed, counsel cannot communicate the name. Where class counsel invites contact indicating that communication will be dealt with confidentiality, this is not, in my view, necessarily conclusive that the identity of the member is confidential. This determination would have to be made in context, on a case-by-case basis, applying the *Solosky* criteria. What is certain is that where class counsel contends that a class member's identity is confidential, he cannot disclose it at any stage in the proceeding for any purpose without a clear and specific waiver from each class member whose identity he proposes to divulge.

[42] Here, counsel's position presents an internal contradiction. How can he maintain that members who registered had an expectation that their identity remain secret when, at the authorization stage, he filed a list of potential members who had contacted him directly or other attorneys in a related prior case seeking class action authorization?[32] Moreover, as indicated, the notice he published inviting members to contact him makes no mention that their identity will be kept in confidence. Clearly, class counsel did not consider that members, by registering, had an expectation of confidentiality. I do not believe on balance that members who registered held any such belief either.

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30 *Dubé v. Nissan Canada Finance, division de Nissan Canada inc.*, 2010 QCCS 2653, paras. 9-14.

31 *Centre de la communauté sourde du Montréal métropolitain v. Clercs de Saint-Viateur du Canada*, 2013 QCCS 4919, paras. 40-47.

32 *Mazzonna*, *supra*, note 2.

[43] Furthermore, I agree with the trial judge that registered class members "cannot expect complete anonymity".[33] In principle, in civil matters, legal proceedings are public. Thus, the names of the parties become public information once formal court proceedings are commenced. Exceptions can exist subject to authorization of the court.[34] I question whether there exists as some have observed,[35] a principle of anonymity of members in a class action. Rather, anonymity of class members is merely a consequence of the nature of class proceedings and the procedural dynamic in which they are conducted.[36] Indeed, it is the difficulty or impracticability to contact and obtain mandates from individuals that is one of the criteria for the authorization of class proceedings.[37] There is no proof or other reason to conclude that the possibility that "registered" class members might be deposed pre-trial by the Respondent would inhibit them from coming forward. It merits repeating that the rule is that court proceedings are open and parties have a right to access relevant information.[38]

[44] The Respondent has stated its intention to apply for leave to depose class members. Article 587 *C.C.P.* foresees the possibility for such examination of class members with leave of the court. Obviously, if the Respondent may examine then it may know the names of the class members. This is not consistent with the view that the names are privileged information or some principle that class members have a right to anonymity.

[45] On a proper reading of the reasons for judgment in *Filion*, there is no authority for the anonymity of class members *per se*. The *dicta* of the majority refers to relative anonymity.[39] Disclosure of the list of registered members was refused by the Court in *Filion* because the stated purpose of the defendant was to meet with and interview class members who had not registered. Such a meeting (i.e. without the court's permission) was deemed contrary to "le droit relatif à la norme de l'anonymat et à la quiétude qui vient avec le fait d'être membre d'un groupe".[40] Since class members were considered as "quasi-clients", it would be inappropriate for the opposing party's attorneys to meet with them.[41] Thus, in *Filion*, because the purpose of the disclosure of the list of names of registered members was not proper, communication was refused.

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33 Judgment under appeal, *supra*, note 1, paras. 38-39.

34 Art. 11-13 *C.C.P.*; *Foster Wheeler Power Co. v. Société intermunicipale de gestion et d'élimination des déchets (SIGED) inc.*, 2004 SCC 18, para. 38, [2004] 1 S.C.R. 456; *Grenier v. Procureure générale du Québec*, 2018 QCCA 266, para. 48; *B.B. v. Québec (Procureur général)*, J.E. 98-227, 1997 CanLII 10220 (C.A.); Luc Chamberland (dir.) *Le Grand collectif, Code de procédure civile commentaires et annotations*, 2nd ed. vol. 2, Cowansville, Yvon Blais, 2017, p. 2418, art. 571.

35 See for example *Blouin*, *supra*, note 10, para. 33.

36 *Filion*, *supra*, note 8, para. 33.

37 Article 575 (3) *C.C.P.*

38 Article 12 *C.C.P.*

39 *Filion*, *supra*, note 8, para. 32.

40 *Filion*, *supra*, note 8, para. 54.

41 *Id.*, para. 55.

[46] In the present case, the Respondent has the full list of 240,000 potential class members whose information was stolen. It seeks the list of registered members to obtain an idea of the scope of the action (deemed relevant by the judge) with the stated intention of potentially seeking court leave to depose all or some of the "registered" class members presumably to ascertain what, if any damages they may have suffered resulting from the data tape loss. This is not an improper purpose as was present in *Filion*. The Respondent has undertaken before the judge not to contact members without court leave.

[47] Consequently, I see no error in the judge's treatment of professional secrecy nor his application of the judgment of this Court in *Filion*.

[48] I note that the judge was mindful that only the names and provinces of residence (since the class action is national in scope) were to be divulged. Any of the information communicated by the registered members to class counsel through the website was rightfully considered as privileged communication.

[49] Accordingly, and for all the foregoing reasons, I would confirm the judgment and, as such, propose that the appeal be dismissed with legal costs.

MARK SCHRAGER, J.A.