

**CITATION:** Emond v. Google LLC, 2019 ONSC 6584  
**COURT FILE NO:** CV-18-590521-00CP  
**DATE:** 20191114

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Glenn Emond and Graeme MacQueen, Plaintiffs

– AND –

Google LLC, Defendant

**BEFORE:** E.M. Morgan J.

**COUNSEL:** *Douglas Lennox*, for the Plaintiffs

*Sarah Armstrong*, for the Defendant

**HEARD:** November 14, 2019

**CERTIFICATION MOTION**

[1] The Plaintiffs allege that the Defendant intentionally invaded their privacy and that of all Android phone users by accessing and collecting their location history without consent. They seek to certify the action under s. 5 of the *Class Proceedings Act, 1992*, SO 1992, c 6 (“CPA”) for the purposes of a potential settlement.

[2] The action is accompanied by two companion actions in other provinces: *Warner v Google LLC*, No. S-1711066 (Vancouver) in the British Columbia Supreme Court and *Lima v Google LLC*, No. 500-06-000941-183 (Montreal) in the Quebec Superior Court. Both of those actions have been managed cooperatively by the parties.

[3] In addition to having the action certified for settlement purposes, the Plaintiffs seek to be appointed as representative Plaintiffs for the Ontario class for the purposes of settlement approval. They also seek to have the form and content of the proposed notice of certification and settlement hearing approved and to obtain an Order that the settlement hearing is to be held on a date to be determined that is at least 30 days after the publication of notice. The Defendants raise no objection to any of these steps, and the motion is proceeding on consent.

[4] In December 2018, a mediation session was held in Vancouver. At that meeting, a proposed national settlement of the claims at issue in all three actions was reached. That proposal has now been reduced to a written agreement (“Settlement Agreement”).

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[5] If all the courts in each of the three provinces grant certification/authorization, notice of the proposed settlement will be published within 30 days of the latest of those orders, as set out in s. 5 of the Settlement Agreement. The form of notice is attached as a schedule to the Settlement Agreement.

[6] The notice will advise of an opt-out period of 45 days. Sixty days after publication of the notice, second hearings are proposed in each of the three provinces seeking approval of the settlement itself. Accordingly, the merits of the Settlement Agreement are not before the Court today.

[7] The main cause of action pleaded in the Statement of Claim is intrusion upon seclusion. This appears to me appropriate to the context of a privacy breach alleged against a technology company. As Sharpe JA observed in *Jones v Tsige*, 2012 ONCA 32, para 66, "The right to informational privacy closely tracks the same interest that would be protected by a cause of action of intrusion upon seclusion..."

[8] There is certainly an identifiable class of two or more persons. Indeed, given the prevalence of Android phones the class is likely to be a large one. The Settlement Agreement was concluded on behalf of an Ontario class defined as follows:

All Ontario residents who used a smartphone running the Android operating system in Canada between January 1, 2017 and December 31, 2017, except included in the BC Class, the Quebec Class and any person who opts out of any of the Proceedings or are otherwise excluded under the definition of 'Class Members or Class'.

[9] Further, all Android phone users share the problem identified in the Statement of Claim. That common issue agreed upon by all counsel for settlement purposes is "whether between January 1, 2017 and December 31, 2017 Class members' Cell ID was transmitted to Google and, as a result, Google breached any right protected under common law or under any federal or provincial legislation".

[10] Given the unwieldy size of the class and the commonality of the issue, a class proceeding is without a doubt the preferable procedure for addressing this issue.

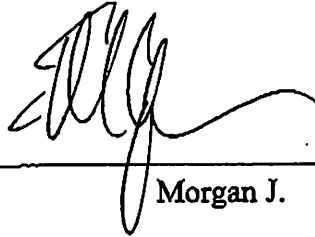
[11] I have no hesitation in concluding that the two representative Plaintiffs will fairly and adequately represent the interests of the class. They have both been fully engaged in the proceedings to date, and have professional backgrounds which indicate that they are fully conversant with the issues in the litigation. Neither of them appears to have any conflict of interest with the class.

[12] Under the circumstances, I am not particularly concerned about a litigation plan. The proposed Settlement Agreement constitutes a working litigation plan for present purposes.

[13] In the draft certification Order, counsel have appended the Settlement Agreement which, in turn, provides for all of the relevant notice periods. It also explains the opt-out provision. It does all of this in a clearly communicated way, tailored appropriately to the circumstances of this case.

[14] For the purposes of the proposed settlement, the claim is hereby certified under s. 5 of the *CPA* and the notice of settlement hearing is approved.

**Date:** November 14, 2019



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Morgan J.

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