

**FEDERAL COURT**

BETWEEN:

**ROGERS MEDIA INC.  
ROGERS COMMUNICATIONS INC.  
BCE INC.  
BELL MEDIA INC.  
CTV SPECIALTY TELEVISION ENTERPRISES INC.  
THE SPORTS NETWORK INC.  
LE RESEAU DES SPORTS (RDS) INC.  
GROUPE TVA INC.**

Plaintiffs

-and-

**JOHN DOE 1  
JOHN DOE 2  
OTHER UNIDENTIFIED PERSONS WHO OPERATE UNAUTHORIZED STREAMING  
SERVERS PROVIDING ACCESS TO NHL LIVE GAMES IN CANADA**

Defendants

-and-

**BELL CANADA  
BRAGG COMMUNICATIONS INC. dba EASTLINK  
COGECO CONNEXION INC.  
DISTRIBUTEL COMMUNICATIONS LIMITED  
EBOX TELECOMMUNICATIONS INC.  
FIDO SOLUTIONS INC.  
ROGERS COMMUNICATIONS CANADA INC.  
SASKATCHEWAN TELECOMMUNICATIONS  
SHAW COMMUNICATIONS INC.  
TEKSAVYY SOLUTIONS INC.  
TELUS COMMUNICATIONS INC.  
VIDEOTRON LTD.  
2251723 ONTARIO INC. dba VMEDIA**

Third Party Respondents

-and-

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY  
AND PUBLIC INTEREST CLINIC**

Intervener

**AFFIDAVIT OF SARAH FARRUGIA  
(Public Version)**

I, Sarah Farrugia, of the City of Toronto, in the Province of Ontario, Canada,  
SOLEMNLY AFFIRM THAT:

1. I am Vice President, Business Intelligence and Retention, at Bell Canada the parent of the Plaintiffs Bell Media Inc., CTV Specialty Television Enterprises Inc., The Sports Network Inc., and Le Réseau des Sports (RDS) Inc. (together the “**Bell Plaintiffs**”) in this matter. I have held my current position at Bell Canada since February 2022.
2. In my current position as Vice President, Business Intelligence and Retention, at Bell Canada my main responsibilities and duties include business intelligence, loyalty, and retention for all consumer segments.
3. Prior to my current position, I was Vice President, Content and Business Intelligence at Bell Canada from December 2017 to February 2022. In that position, I was responsible for the acquisition of all Bell TV content, which includes linear, transactional content, and partnerships with subscription on-demand services. In addition, I was responsible for the design and implementation of all our TV packages. Finally, I led the Bell Residential and Small Business (BRSB) business intelligence team, encompassing reporting, analytics, and campaign implementation.
4. I swore a first affidavit in this proceeding on June 29, 2021, in the context of a motion by the Plaintiffs, including the Bell Plaintiffs, for a live and dynamic “site blocking order” (“**First Affidavit**”). The Order sought in that case aimed to enjoin Canadian Internet Service Providers (“**ISPs**”) to block or attempt to block their subscribers’ access to Internet servers that provide access to infringing live streams of National Hockey League (“**NHL**”) games for the 2021-2022 NHL season.
5. It is my understanding that this motion was granted by Order of Mr. Justice Pentney dated May 27, 2022 (the “**2021-2022 Order**”). I understand that the 2021-2022 Order was implemented during the 2022 NHL playoffs and terminated following the last game of the playoffs (i.e., the Stanley Cup final) on June 26, 2022.
6. I also swore a second affidavit on October 20, 2022, in the context of a motion by the Plaintiffs to obtain a live and dynamic site blocking Order for the 2022-2023 NHL season

(“**Second Affidavit**”), which I understand was issued by Associate Chief Justice Gagné on November 21, 2022 (the “**2022-2023 Order**”).

7. Pursuant to the reporting obligation required by paragraph 32 of the 2022-2023 Order, I swore a third affidavit on February 14, 2023 (“**Third Affidavit**”).

8. I am authorized to sign the present affidavit on behalf of Bell Canada and the Bell Plaintiffs.

9. I have personal knowledge of all the facts stated in this affidavit, unless indicated otherwise.

**I. BELL’S IMPLEMENTATION OF SITE BLOCKING DURING THE 2022-2023 NHL SEASON**

10. Bell Canada implemented the 2022-2023 Order from November 25, 2022, until the end of the 2022-2023 NHL season on June 13, 2023 (final game of the NHL playoffs).

11. I understand that pursuant to paragraphs 32 and 33 of the 2022-2023 Order, the Plaintiffs must serve and file affidavit evidence with the Court consisting of:

- a) a confidential list of all IP addresses that were notified for blocking pursuant to the 2022-2023 Order, with dates and times on which they were required to be blocked;
- b) the details of any complaints received from any third party, including customers of the Third Party Respondents;
- c) any material technical issues encountered with the implementation of the 2022-2023 Order; and
- d) any relevant available data pertaining to the effectiveness of the 2022-2023 Order.

12. I understand that the Plaintiffs’ Agent Friend MTS Limited (“**FMTS**”) will provide an affidavit to report on point a) above. In the present affidavit, I provide the information available to Bell Canada to report on points b) to d).

**A. *Complaints and technical issues***

13. As of the date of this affidavit, Bell Canada did not receive any complaints nor experience any material technical issues with respect to the implementation of the 2022-2023 Order.

14. I have also inquired with the Bell Plaintiffs and can confirm that they did not receive any complaints nor experience any material technical issues with respect to the implementation of the 2022-2023 Order.

***B. Monitoring data from the 2022- 2023 NHL season and assessment of the 2022-2023 Order's effectiveness***

15. The Bell Plaintiffs are mindful that the public and the Court have an interest in confirming whether or not live and dynamic site blocking orders such as the 2022-2023 Order are effective.

16. During the blocking period for the 2022-2023 NHL season, Bell Canada made active efforts to monitor the effectiveness of the blocking, notably to fulfill its reporting obligations pursuant to paragraph 33 of the 2022-2023 Order.

**A large number of Bell Canada residential Internet subscribers attempted to access blocked IP addresses**

17. It is important to note that Bell Canada cannot measure the number of subscribers trying to access IP addresses while they are blocked. This is because IP address blocking is implemented at the core router level by routing the traffic to the blocked IP addresses to “nowhere” instead of the intended destination. The routers are not capable of keeping track of the traffic that is sent to “nowhere”.

18. In this context, Bell Canada implemented the first block of Streaming Servers approximately 15 minutes after the start of each NHL game and, as a result, was able to measure traffic and subscribers who attempted to reach the IP addresses associated with these Streaming Servers during the first 15 minutes after the start of each relevant NHL game.

19. To measure the traffic and subscribers, we analyzed the number of subscribers who accessed the last list of the blocked IP addresses from the day before the game(s), which is likely to understate the results as it does not include additional IP addresses identified during the day of the game(s). This analysis was performed on an aggregate and anonymized basis, based on a sampling of a portion of Bell Canada's network.

20. Bell Canada's analysis shows that between November 25, 2022 (when the blocking began), and June 13, 2023 (the last game of the 2023 NHL Stanley Cup final), at least [REDACTED] unique

wireline residential subscribers (each typically corresponding to one household) from its Quebec and Ontario subscriber base alone accessed at least one of the targeted IP addresses during the first 15 minutes after the start of each relevant NHL game.

21. It is important to note that this figure understates the number of subscribers who attempted to access blocked IP addresses for the following reasons:

- a) Bell Canada's experience with live sports content, including NHL games, is that total viewership increases throughout a game and is much higher towards the end of the game than at the start of the game. Since Bell Canada was only able to collect information on the number of subscribers accessing the blocked IP address before the blocking was implemented during the first approx. 15 minutes of any given NHL game, the confirmed number of unique subscribers very likely vastly understates the total number of unique subscribers impacted by the blocking. Anyone who tried to access one of the blocked IP addresses after the blocking was implemented does not appear in the data reported above but will still have been prevented from accessing an infringing stream of the game.
- b) The sample only covered the Quebec and Ontario subscriber base, but the blocking also applied to Bell Canada subscribers in other regions (Manitoba and Atlantic Canada);
- c) It is likely that a large number of the [REDACTED] unique subscribers attempted to access blocked IP addresses during multiple games, such that the figure understates the number of infringing accesses to content that were blocked as a result of the 2022-2023 Order, even among just these confirmed unique subscribers.
- d) Due to the way Bell Canada's systems are configured, the analysis was performed based on the last list of blocked IP addresses from the previous day. As such, subscribers who attempted to access IP addresses identified for blocking for the first time during the day of the analysis were not accounted for.

### **No material increase in the use of VPNs during the implementation of the Order**

22. Since it has previously been suggested that Virtual Private Network (“VPN”) services could potentially be used by subscribers to circumvent orders such as the 2022-2023 Order, Bell Canada also ran an analysis on its network on an aggregated basis to verify whether there was an increase in VPN usage on Bell Canada’s network, either in general or more specifically for the subscribers that accessed at least one blocked IP address during the 2022-2023 NHL season.

23. VPN usage regularly fluctuates from month to month based on factors such as the extent to which customers are connected to employer’s networks while working from home (which is by far the most common use of VPNs). That said, there does not appear to have been any increase – and certainly no material increase – in VPN usage in response to the implementation of the 2022-2023 Order.

24. Bell Canada compared VPN usage in two 30-day windows during the 2022-2023 NHL season when the blocking was in place (January 17 to February 15, 2023; and April 21 to May 20, 2023) with VPN usage in a 30-day window immediately after the end of the 2023 NHL Stanley Cup final when the blocking was no longer in place (June 14 to July 13, 2023). VPN usage amongst the Bell Canada subscribers who have accessed at least one blocked IP address during the 2022-2023 season remained largely the same during these three game windows, with the percentage of these subscribers using VPNs varying at most by 1.6%, and the maximum variation in average per-user VPN traffic of at most 0.02 GB (a trivial amount of data).

25. Bell Canada has therefore not noticed a widespread adoption of VPN services to circumvent the 2022-2023 Order.

### **New subscription to legitimate television services**

26. In addition to being an ISP, Bell Canada is also a broadcasting distribution undertaking (“BDU”) selling television subscriptions, including packages with Bell Media’s TSN and RDS sports stations, Rogers Media Inc.’s Sportsnet television stations, and Groupe TVA Inc.’s TVA Sports television stations.

27. Through queries conducted on an aggregated basis, Bell Canada was able to establish some correlation between the blocking and subscriptions to its legitimate television services. However,

due to its systems configuration, Bell Canada was only able to perform this analysis during the months of May and June 2023. During that period, Bell Canada has noted that of the unique subscribers who accessed a blocked IP address at least once, at least [REDACTED] of them newly signed up for a television subscription package containing the TSN/RDS stations, Sportsnet stations and/or TVA Sports stations. It is likely that this number heavily understates the actual number of households that subscribed to legitimate television services are a result of the blocking for a number of reasons, including:

- a) The analysis relied on the sampling of unique households who attempted to access a blocked IP address at least once, which is already understated as explained at paragraph 21 above.
- b) Bell Canada is only in a position to determine whether users become subscribers to its own television services, and this data therefore does not account for customers who subscribe to Bell Canada's Internet services but subscribe to a different BDU for television services, and vice-versa.
- c) The data only reflects a sample taken during approximately two months at the very end of the 2022-2023 NHL season, and therefore does not account for those who may have subscribed to Bell Canada's television services at any point prior. It can reasonably be expected that more users would have subscribed to television services earlier in the season, when users first realized that unauthorized streams of NHL content was being blocked (and would be blocked for the rest of the season) but that they could access that content through a legitimate television service.

28. The above figure should therefore not be taken as an indication of the magnitude of the impact of the 2022-2023 Order on subscriptions to legitimate television services, but rather as an indication that implementation of the 2022-2023 Order did in fact drive users to subscribe to legitimate television services.

29. Ultimately, Bell Canada considers that the 2022-2023 Order has been effective.

SOLEMNLY AFFIRMED before me, through videoconference, in accordance with O. Reg. 431/20 Administering Oath or Declaration Remotely, in the City of Toronto, in the Province of Ontario, this 14<sup>th</sup> day of August 2023.



\_\_\_\_\_  
Commissioner for Taking Affidavits, etc.  
Hane Chung, Law Society of Ontario  
#66858M

AND I HAVE ELECTRONICALLY SIGNED



\_\_\_\_\_  
SARAH FARRUGIA