

CITATION: Yee v. Telus International (Cda) Inc., 2026 ONSC 3165
COURT FILE NO.: CV-25-00735809-00CP
DATE: 20260602

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ALBERT YEE, Plaintiff

– and –

TELUS INTERNATIONAL (CDA) INC., (d/b/a/ TELUS DIGITAL EXPERIENCE), JEFF PURITT, VANESSA KANU, and GOPI CHANDE, Defendants

BEFORE: Justice E.M. Morgan

COUNSEL: *Albert Pelletier and Jon Bradford*, for the Plaintiff

Kathrine Kay, Dan Murdoch, and Mark Walli, for the Defendants

Charlotte Harnan and Michael Peerless, for the British Columbia plaintiffs

HEARD: May 22, 2026

MOTION FOR STAY OF PROCEEDINGS

I. Overview

[1] This motion arises in the context of a proposed global securities class action commenced in this Court by Statement of Claim on January 28, 2025 (the “Ontario Action”).

[2] The Plaintiff pleads causes of action for statutory secondary market misrepresentation under Part XXIII.1 of the Ontario *Securities Act*, RSO 1990, c., S.5 (“OSA”) along with common law negligent misrepresentation in omitting to disclose material facts relevant to its developing artificial intelligence (“AI”) products and services and thereby negligently reporting its *pro forma* revenues, profit margins, and earnings per share, beginning on February 9, 2023 when it released its audited annual financial statements and annual MD&A for the financial year 2022. The claim states that public corrections for these misrepresentations were issued on May 9, 2024 and August 2, 2024.

[3] The Defendants here seek a stay of proceedings. They move under section 5(6) of the *Class Proceedings Act*, 1992, SO 1992, c. 6 (“CPA”) to stay this action on the ground that it involves “the same or similar subject matter and some or all of the same class members” as another proposed global securities law class action. That action was commenced in the Supreme Court of British Columbia by Notice of Civil Claim and Petition for Leave to Commence an Action on December

12, 2024 [*Middleton v. TELUS International*, Court file S-248620] (the “BC Action”). The central allegations in the BC Action relate, for the most part, to the same representations and the same public corrections as the Ontario Action, although the causes of action, class period, and number of defendants differ in each.

[4] The Defendants’ motion to stay the proceedings is supported by the Plaintiff in the BC Action. One of the BC plaintiff’s lawyers provided an affidavit to the Defendants and was cross-examined by Plaintiff’s counsel. Two other lawyers for the BC Plaintiff appeared at the hearing of the motion. Their submissions consisted for the most part of responses to questions from the bench, which were helpful in giving me better perspective on the BC Action.

[5] The motion is apparently one of first impression; no other motion has yet been decided under section 5(6) and related provisions, which were enacted as amendments to the *CPA* in 2020. As Defendants’ counsel have pointed out, these sections were added to the *CPA* to address duplicative or overlapping multijurisdictional class proceedings brought in different Canadian provinces.

[6] The *CPA* makes this motion mandatory in terms of process, but requires a judgment call in terms of substance and confers discretion on the court in fashioning a remedy. That is, section 5(6) provides that the Court “**shall** determine whether it is **preferable** for some or all of the claims of some or all of the class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced in the other jurisdiction instead of the proceeding under this Act” [emphasis added]. Section 5(8) makes available a stay of proceedings as a remedy, while section 4.1 states that the Court to “**may** dispose of the proceeding in whole or in part, or narrow the issues to be determined or the evidence to be adduced in the proceeding” [emphasis added].

II. The parties and the actions to date

[7] The Defendants in the Ontario Action are Telus International (Cda) Inc. (hereinafter “Telus Digital”), which is now wholly owned by Telus Corporation but was formerly a publicly traded corporation listed on the New York Stock Exchange and the Toronto Stock Exchange (“TSX”). Also named as Defendants in the Ontario Act are Telus Digital’s former directors and officers Jeff Pruitt, Vanessa Kanu and Gopi Chande, who signed and certified the impugned documents as accurate and not containing misrepresentations.

[8] The class period in the Ontario Action is February 9, 2023 to August 1, 2024. The Ontario Plaintiff, Albert P.T. Yee, purchased a total of 14,400 Telus Digital subordinate voting shares during the Ontario class period and held them until after the final public corrective on August 2, 2024. He suffered a loss of over \$20,000.

[9] In correspondence with the Court and between counsel during May 2025, the Plaintiff’s motions for leave to proceed under the *OSA* and certification under the *CPA* were booked to be heard together over 4 days commencing some 17 months later, on October 19, 2026. Plaintiffs’ counsel served their combined motion record 7 months later, on December 18, 2025, leaving 10 months to go until the hearing. Three months later, on March 3, 2026, Plaintiff’s counsel requested a case conference to set a timetable for leading to the hearing of the two motions. The case conference was booked for April 1, 2026.

[10] Two days before the April 1st case conference, Defendants’ counsel indicated for the first time that the Defendants planned to bring a stay motion. The scheduling of that motion, along with the already scheduled leave/certification hearing, was discussed at the case conference, the endorsement for which states:

The motion dates for leave and certification set for October 19-22, 2026 remain fixed, unless there is a stay of proceedings as a result of the May 22, 2026 motion. If there is no stay, the responding record is to be served by Defendants’ counsel by June 30, 2026.

[11] Turning to the BC Action, it advances statutory causes of action for secondary market misrepresentation under s. 140.3 the British Columbia *Securities Act*, RSBC 1996, c. 418 (“BCSA”), common law negligent misrepresentation, and oppression under s. 227 of the *Business Corporations Act*, SBC 2002, c. 57 (the “BCBCA”). It also alleges failures to make timely disclosure of not just material facts, but material changes with respect to its developing AI industry products and services. The BC Action pleads that the class period begins one week later than the proposed Ontario class period, on February 16, 2023, during an investor conference call that took place on that date.

[12] The defendants in the BC Action are Telus Digital, Jeff Pruitt, Vanessa Kanu and Gopi Chande, as well as twelve additional individuals who were directors or officers of Telus Digital but who did not certify the alleged impugned documents as accurate. The B.C. plaintiff, Kayne Michael Middleton, purchased a total of 69.1299 shares of Telus Digital during the BC class period for a total of \$1,042.63. Mr. Middleton sold all of his shares on June 10, 2024, prior to the final alleged public corrective disclosure.

[13] On August 6, 2025, the BC case management judge, Justice Loo, heard a motion by the Defendants with respect to sequencing of the leave and certification matters. The Defendants took the position that the B.C. statutory scheme requires the leave question to be decided first before the motion for certification.

[14] Justice Loo’s decision in the sequencing motion was released on August 21, 2025, in which he held that the two motions would be heard together: *Middleton v TELUS International*, 2025 BCSC 1611. On September 19, 2025, the Defendants in the BC Action filed a Notice of Appeal of the sequencing decision. Leave to appeal was granted on December 11, 2025. The appeal has not yet been heard by the B.C. Court of Appeal.

[15] Plaintiff’s counsel has provided a chart conveniently setting out the comparative features of the two actions:

Category	Ontario Action	BC Action
Causes of Action	1) Statutory secondary market liability 2) Common law negligent misrepresentation	1) Statutory secondary market liability 2) Common law negligent misrepresentation 3) Oppression under s. 227 of the <i>BCBCA</i>
Allegations under Statutory Cause of Action	Release of documents containing misrepresentations by omitting material facts	Release of documents containing misrepresentations by omitting material facts and failure to make timely disclosure of material changes
Defendants	Telus Digital, directors and officers who signed and certified the alleged impugned documents as being accurate	Telus Digital, full suite of directors and officers
Class Definition	Class (OSA Statutory): all beneficial owner entities and persons, other than Excluded Persons, who acquired TIXT's subordinate voting shares during the Class Period and who held some or all of those shares until after the release of at least one of the Public Corrective Disclosures; Class (Common Law): all Canadian beneficial owner entities and persons, other than Excluded Persons, who acquired TIXT's subordinate shares and who held some or all of those shares until after the release of at least one of the Public Corrective Disclosures.	All persons and entities who acquired one or more of Telus' subordinate voting shares between February 16, 2023 and August 1, 2024, inclusive, and held all or a portion of these subordinate voting shares at any moment between May 9, 2024 and August 1, 2024, inclusive (the "Class Period") other than Excluded Persons.
Class Period Start	February 9, 2023	February 16, 2023
First Impugned Document	Core Document: audited annual financial statements, annual MD&A, 4Q and FY2022 results released February 9, 2023	Non-Core Document: Analyst/Investor Day Call dated February 16, 2023
Public Corrective Disclosures	May 9, 2024 August 2, 2024	May 9, 2024 August 2, 2024

Representative Plaintiff Share Ownership	14,400 shares purchased during the Class Period and sold on August 4, 2024	69.1299 shares purchased during Class Period and sold on June 10, 2024
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III. The considerations for a stay of proceedings

[16] As Justice Kalajdzic recently pointed out in *Pavlioglu v. FinanceIt Canada Inc.*, 2026 ONSC 1416, at para. 57, “The discretion to grant a stay is highly dependent on the facts of each particular case. The discretion is to be exercised sparingly, keeping in mind that the burden to show that a stay should be granted is on the party seeking the stay.” Under sections 5(6)-(8) of the *CPA*, the Court must analyze overlapping class proceedings arising in multiple Canadian jurisdictions guided by the objectives and the relevant factors set out in sections 5(7)(a) and (b). It is against these objectives and factors that the moving party’s burden is to be measured.

[17] As already indicated, section 5(8) grants the Court discretion to consider all relevant factors in assessing a request for a stay of proceedings or make any orders it considers appropriate. This set of newly enacted provisions are self-evidently not akin to a mandatory stay provision such as in provincial arbitration statutes, where the Court is for the most part required to grant a stay in favour of an arbitration agreement: *Peace River Hydro Partners v. Petrowest Corp.*, [2022] 3 SCR 265, at para. 88.

[18] The 2020 amendments to the *CPA* favour judicial economy in reducing redundant litigation across the provinces. That said, there is no automatic presumption that a duplicate class action must be stayed. The court must measure its intervention against the objectives and considerations set out in section 5(7).

[19] Accordingly, consolidating like proceedings in one provincial jurisdiction may have the effect of easing the burden on defendants. That is one of the objectives of the legislation and, not surprisingly, is the one most emphasized by Defendants’ counsel. But the other side of the coin is that the interests of all parties must be given due consideration, which means that the interests of the putative class in Ontario must be kept in mind as well.

[20] The most obvious objective of the legislation is, of course, to economize and reduce the volume of litigation by eliminating duplication where possible. But the objectives and considerations in section 5(7), taken as a whole, make it clear that the goal of economizing must be accomplished without weakening any claims or running counter to parties’ rights.

[21] Since it is the Defendant that is, and will likely always be, the moving party who has marshalled the arguments for eliminating one jurisdiction, it is important for the analysis to balance those interests and as against the interests of the Plaintiff and putative class. Certainly, it is imperative to avoid what Divisional Court has labelled a “reverse auction” or, more colloquially, a race to the bottom, where a defendant seeks to stay the proceeding in Ontario not for judicial economy but for a potentially more favourable result – i.e. in order to engage a less capable plaintiff and class, or an easier or more slowly moving contest in another jurisdiction: *Kirsh v. Bristol-Myers Squibb*, 2021 ONSC 6190, at para. 63.

[22] In making a determination under section 5(6) of the *CPA* as to whether it is preferable to have some or all of the issues in the Ontario Action resolved in the BC Action, the framework for the analysis is set out in section 5(7):

(7) In making a determination under subsection (6), the court shall,

(a) be guided by the following objectives:

- (i) ensuring that the interests of all parties in each of the applicable jurisdictions are given due consideration,
- (ii) ensuring that the ends of justice are served,
- (iii) avoiding irreconcilable judgments where possible,
- (iv) promoting judicial economy; and

(b) consider all relevant factors, including,

- (i) the alleged basis of liability in each of the proceedings, and any differences in the laws of each applicable jurisdiction respecting such liability and any available relief,
- (ii) the stage each proceeding has reached,
- (iii) the plan required to be produced for the purposes of each proceeding, including the viability of the plan and the available capacity and resources for advancing the proceeding on behalf of the class,
- (iv) the location of class members and representative plaintiffs in each proceeding, including the ability of a representative plaintiff to participate in a proceeding and to represent the interests of class members,
- (v) the location of evidence and witnesses, and
- (vi) the ease of enforceability in each applicable jurisdiction.

a) The objectives of a section 5(6) motion

[23] Turning first to the objectives of the legislation set out in s. 5(7)(a), Defendants' counsel characterize the four stated objectives as inexorably favouring a stay of the Ontario Action – and, as a matter of policy, any Ontario action where a similar one exists elsewhere – as a way of consolidating the national claims into one forum. They cite the BC Supreme Court in *N&C Transportation Ltd. v. Navistar International Corporation*, 2021 BCSC 2046, at para. 46-47, aff'd 2022 BCCA 164, for the proposition that “these objectives generally favour a single multi-

jurisdictional class proceeding” because “potentially competing class actions” are “antithetical to the concept of judicial economy” and create “the specter of inconsistent and/or irreconcilable judgments.”

[24] But while a BC court may have expressed that characterization under its own legislation, it is not a complete, and therefore not an accurate, summary of Ontario’s legislative objectives as set out in s. 5(7)(a). The two objectives stressed by the Defendants and the BC court are in the Ontario legislation balanced by two further objectives: “(i) ensuring that the interests of **all parties** in each of the applicable jurisdictions are given due consideration, (ii) ensuring that the ends of justice are served” [emphasis added].

[25] These objectives call for a consideration not just of process but of substance. The need to economize the litigation is to be weighed against not only the access afforded the parties – and, in particular, the class – but the version of justice to which they will accede.

[26] Accordingly, “[e]ven where a class proceeding has been certified elsewhere” – let alone where it is delayed due to a sequencing or other procedural battle – “parallel proceedings may be permitted to continue”: *Silver v Imax Corporation*, 2009 CanLII 72334, at para 133. Justice Perell has observed that “...where there are rival national class actions, there is the unseemly prospect that the defendant may be able to...rely on the releases [or a stay] in one class action to fend off a rival national class action”: *Kutlu v Laboratorios Leon Farma, S.A.*, 2015 ONSC 7117, at para 10. The objectives as set out in s. 5(7)(a) strive to prevent that approach by combining process concerns for judicial economy with substantive concerns about justice for the parties.

[27] The BC Action has been delayed by a sequencing motion and now an appeal of the sequencing decision. How and when it will proceed is at the moment unknown. The Ontario Action, by contrast, has already had a case conference endorsement setting the date for leave and certification motions. The Plaintiff’s entire motion record for both motions has been served, and a timeline has been established for the Defendants’ responding record.

[28] The Defendants seek, as an alternative remedy, a re-scheduling of the leave/certification hearing, which will be addressed later in these reasons. Regardless of that request, it is evident that the Ontario Action has proceeded, and is likely to proceed, more expeditiously than the BC Action. As the Alberta court observed in *Kohler v. Apotex Inc.*, 2015 ABQB 610, at para. 43, “The potential to be included in a separate out-of-province action at some unknown time is no reason to preclude the Plaintiffs from pursuing their properly-filed, ongoing action in Alberta.”

[29] Indeed, the British Columbia court has itself reasoned that where there are parallel class actions across the country, proceeding with a scheduled certification motion in one province fosters judicial economy more than deferring to an unpredictable appeal that has stalled progress in another province: *Gomel v. Ticketmaster Canada LLP*, 2019 BCSC 2178, at para. 68. Circumstances vary from case to case; as the BC Court has put it, judicial economy and “comity between courts does not require a stay of all actions in BC in these unique circumstances.

[30] This is not a case where proceeding in two jurisdiction is likely to sow “chaos and confusion”: *Asquith v. George Weston Limited*, 2018 BCSC 1557, at para. 78, quoting *Wilson v. Deputy International Ltd.*, 2018 BCSC 1192, at para. 92. In fact, Plaintiff’s counsel makes a strong

argument that under present circumstances allowing the Ontario Action to proceed on course will lend efficiency, clarity, and fairness to the similar, but not identical, claims in both jurisdictions. In this respect, I would adopt for the Ontario Action what Justice J.T. Eamon said for a class action in Alberta: “The fact other actions are not close to certification may justify Alberta residents seeking to access the Alberta Courts: *Britton v. Ford Motor Company of Canada*, 2021 ABQB 17, at para. 28.

[31] Needless to say, it is desirable to do everything possible to avoid not only duplication but different judgments on the same issues coming from different jurisdictions. That said, there is more than one way to approach the problem of judgments and/or settlements in multiple jurisdictions. In the first place, the risk of differing judgments is significantly reduced where one jurisdiction is far ahead of the other. Thus, for example, if the Ontario Action is granted leave to proceed and is certified before the BC Action can move out of the sequencing controversy, the overlapping class members will face a choice as to which action to pursue and which one to discontinue or stay.

[32] Similarly, if one or, for that matter, both actions result in recovery for the class either by judgment or settlement, there are mechanisms which the court can put in place to prevent double recovery. This was laid out for the parties in a similar situation in *Palmer v. Attorney General of Canada*, 2026 ONSC 927, at paras. 119-120:

[119] ...Recovery in one jurisdiction’s action may necessitate opting out of the other jurisdiction’s action; but that is a considerable way down the road.

[120] It will be for the Court ‘in the event of a future settlement or judgment to keep in mind that no class member should get ‘two bites at the apple’ against any defendant’: *Badesha v. Cronos Group, Inc.*, 2023 ONSC 5678, at para. 85, citing *Silver v. Imax Corporation* (2013), 2013 ONSC 6751, 117 OR (3d) 616, at para. 31 (SCJ). For now, however, neither action is preferable to the other, and both can proceed in parallel.

[33] From a practical perspective, two actions can, in the right case, proceed on parallel tracks. One of them will resolve first by trial or by settlement. At that point, the matter will present various ways to conclude in both jurisdictions. The burden on the Defendants will ultimately resolve in one jurisdiction or the other.

[34] The British Columbia Supreme Court expressed this very point in *Asquith, supra*, at para. 78. In that case, the roles were reversed, and a BC judge had to consider a stay in favour of a similar action in Ontario: “...I have found that there are legitimate and substantive differences between the Asquith and David Actions, I find that it is not unfair to the defendants to defend an action in BC at the same time they defend the David Action in Ontario, and that comity between courts does not require a stay of all actions in BC in these unique circumstances.”

b) Relevant factors in a section 5(6) motion

[35] Turning now to the factors for consideration in s. 5(7)(b), it appears on the surface that there are only minor differences in the liability theories pursued in the Ontario Action and the BC Action. Indeed, at first glance one might conclude that the BC Action, which names more

individual defendants and adds an additional cause of action not pleaded in the Ontario Action, covers more bases, and presents more of a challenge to the Defendants, than the Ontario Action.

[36] That, however, would be to misjudge the negative effect of pleading more than one can or needs to prove. A glance at the chart reproduced in the section above shows that the claim in the Ontario Action presents two causes of action: secondary market liability under the *OSA* and common law negligent misrepresentation. The BC Action likewise pleads secondary market liability under the *BCSA* and common law negligent misrepresentation, but adds a third cause of action in shareholder oppression under s. 227 of the *BCBCA*. It is Plaintiff's counsel's view that this additional claim adds nothing to the BC plaintiff's case.

[37] In my view, the oppression claim in the BC Action is, at the minimum, an extra piece of baggage that is not needed to haul the freight that the class requires. More than that, however, it is a potential liability to the plaintiffs and class in the BC Action. While I am in no position to conclusively opine on the BC claim, the prospect that the oppression claim subtracts rather than adds to the BC Action is visible even at this early stage.

[38] There is, of course, considerable overlap between the oppression claim and the misrepresentation claim, but the overlap is not complete and oppression claims bring their own substantive requirements and elements of proof. And for all that it adds an additional challenge for the BC plaintiff, all of the remedies sought in the BC Action are available under the other two causes of action without the need to resort to the oppression claim. In comparing the two claims, the BC Action appears to have thrown in the metaphorical kitchen sink by inserting a cumbersome shareholder oppression claim that adds burden for no discernable benefit.

[39] Much the same can be said about the addition in the BC Action of numerous individual defendants beyond those corporate officers who certified the financial statements and MD&As at issue in the claim. The Ontario Action appears to be intentionally slim and trim, naming only the Telus Digital and three individuals: the Chief Executive Officer of Telus Digital during the class period, the Chief Financial Officer during the class period until March 31, 2024, and the Chief Financial Officer during the class period after March 31, 2024. The Ontario pleading states that these three corporate officers certified the accuracy of each of the financial statements or MD&As released during the class period, thereby exposing themselves as individuals to claims under section 138.3(1)(c) of the *OSA* (or the equivalent s. 140.3(1)(c) of the *BCSA*).

[40] As previously indicated, the BC Action names an additional twelve individual defendants who were directors of Telus Digital during the class period. None of these additional defendants is alleged to have certified the impugned documents as accurate and not containing misrepresentations. The claims against them may or may not be upheld on some theory of liability, but, again, the burden of establishing the involvement and possible liability of each will fall on the plaintiff in an effort that appears to outweigh any discernible benefit. The naming of extra defendants in this type of case is at best a mixed strategy, which can be counter-productive and, overall, runs counter to the goal of efficiency at which the relevant sections of the *CPA* are aimed:

[20] ...This [adding extra corporate directors as personal defendants] will give the Plaintiffs increased opportunity for discovery, although it is not at all certain that anything fruitful will come of that extra effort. Increased opportunities for

discovery can be spun by counsel as a positive feature of an action, but discovery of yet one more deponent is a waste of time and resources if nothing is actually discovered.

[21] Likewise, it is not certain – in fact, at this point it is somewhat doubtful – that naming these extra directors will add anything to the liability or damages calculus of the claims. In fact, at this stage it is unclear whether any cause of action can be sustained against the extra directors.

Dziedziejko v. Canopy Growth Corporation, 2023 ONSC 6318, at paras. 20-21.

[41] It has been pointed out in the context of carriage motions that, “streamlined actions encouraged by the factors to be taken account of under s. 13.1(4) are intended to foster access to justice, not to eliminate it ...”: *Parkin v. The Toronto-Dominion Bank*, 2025 ONSC 1201, at para. 73, quoting *Dziedziejko*, at para. 32. The same holds true in the present context of inter-provincial contests. In pleading causes of action and in naming defendants, more is not necessarily better; in fact, it can be burdensome, distracting, and potentially detrimental, to the claim.

[42] The stage of the two proceedings currently favours the Ontario Action. It has advanced further along its path than the BC Action. Importantly, the Plaintiff in the Ontario Action has already served a complete motion record for both leave and certification. And while the Defendant has not yet done so, a timetable to the two motions has been set and the Defendants are presumably engaged in the process in adherence to that timetable. Defendants’ counsel has in the course of the present motion reiterated a request to hear the leave motion before the certification motion, which will be discussed later in these reasons; but the fact is that the Ontario Action is well underway to its most substantive stages, while the BC Action is delayed by preliminary procedural matters.

[43] I also note that there are substantive ramifications to the fact that the BC class period, which begins with Telus Digital’s Analyst/Investor Day conference call on February 16, 2023, is one week shorter than in Ontario. The Ontario class period begins on February 9, 2023, when Telus Digital released its annual financial statements, annual MD&A, 4th Quarter and full year 2022 results. Under s. 138.4(1) of the OSA and s. 140.4(1) of the BCSA, where a claim alleges misrepresentations in non-core documents, there is an extra burden of proof on a plaintiff to show actual knowledge. This will amount to a substantial challenge in the BC Action that does not exist in the Ontario Action.

[44] The plan for advancing the action to trial is certainly more efficient and effective in the streamlined Ontario Action than any plan will be in the somewhat bloated BC Action. Examining for discovery twelve extra individual defendants in a corporate case may superficially seem like an advantage in that it will produce a greater quantity of evidence; but it will be a long and expensive process on all sides, without any guarantee that something useful will come of it.

[45] The Ontario Plaintiff’s litigation plan is in the record as it was already prepared as part of the certification evidence. As expected, it reflects the efficiencies embodied by the Ontario Action pleading. Since the BC Action is not as advanced as the Ontario Action, I have not seen an actual litigation plan relating to the BC Action. But experience teaches that an overburdened pleading

invariably leads to an overburdened litigation plan, to the detriment of the goal of access to justice and the imperative of making the litigation economically rational.

[46] The location of shareholders during the class period can potentially be estimated, but it is less clear cut. As far as one can tell from the evidence in the record (which on this issue is not complete), the largest number of shareholders – or, at least, several million shareholders – appear to be located in Ontario. Admittedly, however, the record does not establish a precise number, and the evidence on the comparative number of shareholders in British Columbia is lacking.

[47] One of the Plaintiff’s affiants has pulled data from a Bloomberg terminal. The data shows that the largest institutional shareholders of Telus Digital during the class period were Ontario-based funds, each representing several million investors. This comes as little surprise given that Telus Digital trades in Canada on the TSX and not on any British Columbia or western Canada-based exchange.

[48] Plaintiff’s counsel submits that these millions of Ontario-based investors deserve the benefit of the OSA’s overarching policies, as stated by the Ontario Securities Commission: “to provide protection to investors from unfair, improper or fraudulent practices; to foster fair, efficient and competitive capital markets and confidence in capital markets; to foster capital formation; and to contribute to the stability of the financial system and the reduction of systemic risk”: Ontario Securities Commission - Board of Directors, Public Appointments Secretariat, accessed May 29, 2026, <Ontario Securities Commission - Board of Directors - Public Appointments Secretariat, <<https://www.pas.gov.on.ca/Home/Agency/242>>. Litigating the case outside of Ontario and under another province’s securities legislation and case law might or might not be efficient, but it would not fulfill the OSA’s regulatory promise.

[49] The rest of the section 5(7)(b) factors – location and effectiveness of the representative plaintiff, location of evidence and witnesses, and ease of enforceability in each applicable jurisdiction – are *forum non conveniens* type of considerations. I can observe at this point that at least one of the factors listed in s. 5(7)(b) – “(vi) the ease of enforceability in each applicable jurisdiction” – is a non-issue under the circumstances. Canadian provinces give full faith and credit to the judgements of each other’s courts, most frequently supported by reciprocal enforcement legislation: *Morguard Investments Ltd. v. De Savoye*, [1990] 3 SCR 1077. Ontario and British Columbia will doubtless recognize and enforce each other’s judgments.

[50] Before exploring the other listed *forum non conveniens* factors, it is necessary to recall that these factors are not to be tallied up in a mechanical way, as if three factors connecting the matter to jurisdiction A beats two factors connecting it to jurisdiction B. As the doctrine’s Latin name suggests, the analysis is about convenience to the parties; and in that respect, the assessment of various geographic factors tying a jurisdiction to the case must genuinely be about convenience. Thus, the weight attributed to these factors is highly contextual and is necessarily discretionary for the Court: *Club Resorts Ltd. v. Van Breda*, [2012] 1 SCR 572, at para. 105.

[51] The convenience or inconvenience of any one location must be assessed in the context of the actual parties and the actual case. If I can be forgiven for an extreme hypothetical example, Toronto would likely not be an inconvenient forum for a lawsuit against an airline that needed to bring a pilot as a witness from Montreal; by contrast, Toronto would likely be a highly

inconvenient forum for a lawsuit against a hospital that needed to bring an intensive care patient as a witness from Montreal. Similarly, the forum for a large documents case with a warehouse full of paper needed at trial must be analyzed through a different lens than the forum for a digital documents case where thousands of pages can be instantly uploaded to the court from anywhere in the world: *Kore Meals LLC v. Freshii Development LLC*, 2021 ONSC 2896, at para. 31.

[52] Since it is the Defendant that is arguing about the convenience and inconvenience of one jurisdiction over another, the section 5(7)(b) factors should, first and foremost, be analyzed from the Defendant's perspective, keeping in mind the need for them to be assessed realistically and in context. So, for example, Defendants' counsel makes a point of noting that the Plaintiff in the Ontario Action is a resident of Alberta rather than of Ontario, arguing that it is a less convenient arrangement than the BC Action where the Plaintiff is a resident of British Columbia. That comparative inconvenience, however, must be viewed in the context of other factors. Specifically, I note that counsel for the Defendants in the BC Action are the same Toronto-based lawyers as counsel for the Defendants in the Ontario Action.

[53] It comes as a surprise to me that it is more convenient for Toronto counsel to have to travel to Vancouver for all appearances than for an Alberta client to fly to Toronto for court hearings. The client, who can instruct counsel and take advice by telephone, Zoom, email, text message, and other modern telecommunications mediums, can today attend any motion or hearing virtually. But it is considerably more common, and more important, for counsel to be physically present for motions and other hearings. All of this is a way of saying that the *conveniens* or *non conveniens* factors in section 5(7)(b) have to be real; it is not a mechanical exercise in tallying up points such that the Defendants get 1 and the Plaintiff gets 0 on account of residence of the representative plaintiff.

[54] In examining the reality of the parties' respective positions, I therefore cannot lose perspective on who the parties are and what might or might not truly be inconvenient for them. The Defendants' record in this motion contains a press release by Telus Corporation dated October 31, 2025 – i.e. subsequent to the class period – announcing its acquisition of all outstanding shares of Telus Digital. The press release provides some realistic insight into the corporate Defendant:

TELUS (TSX; NYSE: TU) is a world-leading communications technology company operating in more than 45 countries and generating over \$200 billion in annual revenue with more than 20 million customer connections through our advanced suite of broadband services for consumers, businesses and the public sector. We are committed to leveraging our technology to enable remarkable outcomes.

[55] Telus' short description of itself can almost stand alone as an answer to the various *forum non conveniens* factors that its counsel cite in argument. It is difficult to think of a litigant for whom digital communication, virtual appearances, digitized documents and internet uploading, and coordinating between matters in two Canadian cities would be less inconvenient and more second nature. The geographic realities of Telus' day-to-day business, and the resources that it brings to bear, are monumental in comparison with the logistical factors at issue here.

[56] A telecommunications giant on the cutting edge of technology, that operates in 45 countries with annual revenues topping \$200 billion, is a formidably resourced and capable litigant in any jurisdiction. Under the circumstances, the objectives listed under s. 5(7)(a) – in particular, (i) ensuring that the interests of all parties in each of the applicable jurisdictions are given due consideration, and (ii) ensuring that the ends of justice are served – dictate that the Plaintiff and putative class likewise be able to marshal their most effective resources and litigation strategies. A comparison of the two cases shows that it is the Ontario Action where the claim is the most advance and where the claimant’s best foot has been put forward.

[57] Without meaning to parrot its own publication, I am certain that the corporate Defendant will be committed to leveraging its technology to enable remarkable levels of participation in the Ontario Action regardless of where the BC Action stands. The Ontario Action will proceed on course.

IV. Scheduling going forward

[58] As an alternative form of relief, the Defendants have asked for more time to prepare their responding record and to re-schedule the motion dates booked for the leave and certification motions. In the process, they submit that section 4.1 of the CPA, which requires the stay motion argued here to be brought prior to certification, also gives the Defendants the right to have the two motions severed and to have the leave motion precede the certification.

[59] With respect, section 4.1 confers no such right, and creates no scheduling or sequencing obligation relative to a motion for leave to proceed under the OSA. As Justice Belobaba stated in *Dufault v. Toronto Dominion Bank*, 2021 ONSC 6223, at para. 7, the scheduling and sequencing of the leave and certification remains in the discretion of the case management judge:

Section 4.1 preserves a sensible measure of judicial discretion and gives the judge the last word. But it also shifts the presumptions about who has to show what. The defendant now has a presumptive right to have certain motions heard and decided before the plaintiff’s motion for certification. The plaintiff can displace this presumption by persuading the court that there is nonetheless an overarching and good reason for the two motions to be heard together.

[60] Section 4.1 of the CPA speaks only to the timing of a motion such as the present one under section 5.6. Its requirement that that motion be decided prior to a certification motion has been satisfied here. I see no further application of section 4.1 to the case at bar.

[61] That said, there is logic to the Defendants’ submission that the question of leave to proceed under the OSA should be decided prior to certification. It stands to reason that without being granted leave to proceed in a securities case alleging statutory misrepresentation, the Plaintiff will have no case at all (leaving aside for the moment the Plaintiff’s common law cause of action).

[62] As the Supreme Court of Canada put it, “Courts are given an important gatekeeping role [under securities legislation], which requires them to conduct a preliminary examination of the impugned action or inaction to assess whether it could be said to have a reasonable possibility of success”: *Theratechnologies Inc. v. 121851 Canada Inc.*, [2015] 2 SCR 106, at para. 36. The Court

has characterized the leave requirement as “a robust deterrent screening mechanism”: *Ibid.*, at para. 38.

[63] At the same time, there is logic to the Plaintiff’s position that the two motions be heard together on the same record. The issues engaged in the leave analysis are the same as those entailed in the cause of action, class definition, and at least some of the common issues aspects of a certification motion under section 5(1) of the *CPA: Green v. Canadian Imperial Bank of Commerce* (2014), 118 OR (3d) 641, at para. 88 (CA). A decision on leave may also impact on the preferability analysis in the certification motion: *Musicians’ Pension Fund of Canada (Trustees of) v. Kinross Gold Corp.*, 2014 ONCA 901, at para. 99. The factual record supporting those aspects of the case will be the same for leave and certification.

[64] It therefore makes sense for the two motions to be argued at the same time on an omnibus factual record, but for the leave decision to be decided first. Only if leave is granted does the Court need to turn its mind to application of that record to the certification issues. In this way, judicial economy – the very goal that the Defendants have been anxious to advance in this motion – can be best achieved.

[65] I do understand counsel for the Defendants’ need for a bit more time to put together their responding record. I also understand counsel’s submission that certification requires evidence relating to damages, including expert evidence, which is not part of a motion for leave under the *OSA*, and that that is an extra undertaking beyond the shared leave and certification issues. All of that takes time.

[66] Plaintiff’s counsel does not necessarily disagree with that proposition, but would simply like to expedite both motions to the extent possible.

[67] I am prepared to extend the timetable for the Defendants to serve their responding record. I do not want a party to have to argue serious matters like leave and certification without adequate time to prepare the record. In my case conference endorsement of April 1, 2026, I set June 30, 2026 as the date for the responding record in both motions. I will extend that now by two months – until August 31, 2026.

[68] With that extension, the case is in need of a follow-up case conference to further discuss the hearing date and timetable going forward.

V. Disposition

[69] The Defendants’ motion is dismissed.

[70] The parties may make written submissions on costs.

[71] I would ask Plaintiffs’ counsel to email my assistant with brief submissions within two weeks of today, and for Defendants’ counsel to email my assistant with equally brief submissions within two weeks thereafter.

[72] I also ask the Plaintiff's lawyers to email my assistant, with a copy to the Defendants' lawyers, to make arrangements for a mutually acceptable case conference date. I trust that can be scheduled as soon as possible.

Date: June 2, 2026

Morgan J.