

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-001365-259

DATE: JANUARY 19, 2026

BY THE HONOURABLE CATHERINE MARTEL, J.S.C.

CORPORATION TRANSPORT VITESSE
and
SERVICES CAMIONNAGE VITESSE INC.
Plaintiffs

v.
MICROSOFT CORPORATION
et
MICROSOFT CANADA INC.
Defendants

JUGEMENT
(APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE)

JM3321

OVERVIEW

[1] The Applicants allege that an outage of Microsoft services occurred in the month of March 2025, which caused them and other customers to incur inconvenience and financial losses. They have filed an application for authorization to bring a class action against the Defendants on behalf of all persons in Canada who were impacted by the outage. The Defendants seek leave to adduce evidence that they allege is necessary for the court to assess whether the class action should be authorized.

[2] For the following reasons, the Court allows the Defendant's application in part and authorizes them to file limited portions of the proposed sworn statement from their representative, two "post-incident reports" providing details regarding the duration, causes and effects of the outage (as ascertained by Microsoft employees), the relevant agreements with the members of the proposed Class and the copy of a webpage informing customers on how they can prepare for and manage service interruptions.

[3] The Court further allows the Applicants to examine the author of the sworn statement for a duration of 45 minutes, only on those portions of the statement that are allowed in evidence.

ANALYSIS

1. CONTEXT: THE APPLICATION FOR AUTHORIZATION

[4] The Applicants operate a logistic, warehouse and trucking business. They allege that they pay monthly fees to the Defendants (collectively "**Microsoft**") for the use of their software and services, on which they rely to conduct their business.

[5] The Applicants allege that several Microsoft services were unavailable to them and other customers in Canada due to one or more service disruptions that occurred between Saturday, March 1, 2025, and Monday, March 3, 2025 ("**Service Disruptions**").

[6] The Applicants assert that the Defendants breached their contractual and legal obligation to provide the services and caused them to suffer injury (including loss of revenue, troubles and inconvenience). They seek the authorization to bring a class action for a reduction of obligations as well as compensatory and punitive damages on behalf of all Canadian consumers or businesses who were affected by the Service Disruption ("**Class**").¹

2. MICROSOFT'S APPLICATION FOR LEAVE TO ADDUCE EVIDENCE

[7] Microsoft seeks leave to adduce evidence which it believes relevant in order for the Court to assess whether the authorization criteria set out in article 575 of the *Code of Civil Procedure*² are met. Specifically, Microsoft seeks leave to adduce a sworn statement by Michael Ziock, Vice President of Service Engineering at Microsoft Corporation, and the following supporting documents:

- 7.1. A *Post-Incident Report for Microsoft 365* dated March 7, 2025, prepared by the Microsoft Incident Communications and Coordination team (exhibit MZ-

¹ The proposed Class is defined as follows in the *Application to Authorize the Bringing of a Class Action* (« **Application for Authorization** »): "All consumers and Businesses in Canada who could not use one or more of the Microsoft services from March 1, 2025, and until the Microsoft services were fully restored, or who were impacted by the Microsoft outage".

² *Code of Civil Procedure*, RLRQ c. C-25.01 ("**CCP**").

1);

- 7.2. A *Post-Incident Report for Microsoft 365* dated March 10, 2025, prepared by the Microsoft Incident Communications and Coordination team (exhibit MZ-2);
- 7.3. A standard form Microsoft Customer Agreement (exhibit MZ-3);
- 7.4. A Service Level Agreement for Microsoft Online Services dated July 1, 2025 (exhibit MZ-4);
- 7.5. A Microsoft Webpage titled *Microsoft Azure Incident Readiness* dated June 30, 2025 (exhibit MZ-5).

[8] The Applicants assert that they do not oppose the Defendants' application. However, they reserve their right to argue that the Defendants' evidence is irrelevant or has low probative value at the authorization hearing. They also argue that they are entitled to examine Mr. Ziock on his sworn declaration either as of right or with the Court's permission, and request 60 minutes to do so.

3. ANALYSIS

3.1 Legal Principles

[9] Article 574 (3) CCP provides that an application for authorization to bring a class action "may only be contested orally", but that "the court may allow relevant evidence to be submitted".

[10] The principles that apply when considering an application to file relevant evidence pursuant to article 574 CCP are well known and can be succinctly summarized as follows:³

- 10.1. At the authorization stage, the allegations in the motion are presumed true⁴ and the Court's role is to analyze the proposed legal syllogism, not to act as the ultimate arbiter of the facts.⁵
- 10.2. The decision to allow a party to adduce evidence is discretionary, and the Court is not bound by the parties' agreement or consent.⁶
- 10.3. The proposed evidence must be limited and proportionate to what is

³ For a more detailed list of the applicable principles, see: *Ward v. Procureur général du Canada*, 2021 QCCS 109, par. 17-21 and *Krief v. Apple Canada Inc.*, 2025 QCCS 4246, par. 12-13.

⁴ *Infineon Technologies AG v. Option, consommateurs* [2013] 3 S.C.R. 600, par. 67.

⁵ *Desjardins Financial Services Firm Inc. v. Asselin*, [2020] 3 S.C.R. 298, par. 9 and 74.

⁶ *Allstate du Canada, compagnie d'assurances v. Agostino*, 2012 QCCA 678, par. 25.

“essential and indispensable” to assess the criteria for authorization set out in article 575 CCP.⁷

- 10.4. The Court must resist transforming the authorization stage as a review of the actual merits of the case.⁸ It must strike the right balance between rigidity and permissiveness,⁹ and remain mindful of the principles of proportionality and reasonable conduct of proceedings in articles 18 and 19 CCP.
- 10.5. Evidence that *undisputably* establishes that certain allegations of the application for authorization are improbable or obviously false can be allowed,¹⁰ as well as evidence that provides salient facts that were omitted from the application for authorization¹¹ or that complete vague or imprecise allegations.¹²
- 10.6. However, the evidence adduced for those purposes must not be open to challenge as to its truthfulness, scope or probative value.¹³ The Court cannot allow a party to bring evidence that would force an adversarial debate on a substantive issue, as this would lead to a trial before the trial.¹⁴
- 10.7. Sworn statements are akin to written testimony and should only attest to neutral and objective facts.¹⁵ They can be allowed if they respect the rules of evidence that apply to oral testimony: they must be relevant, emanate from someone who has personal knowledge of the stated facts and cannot contain hearsay or opinion.¹⁶
- 10.8. The Court must avoid prejudging the quality of the arguments that the defendant can present based on the evidence and must only decide whether the evidence can be considered at the authorization hearing.¹⁷

[11] Applying those principles to the facts of the present case, the Court finds that except for certain paragraphs of Mr. Ziock’s sworn statement, the evidence that Microsoft

⁷ *Allstate du Canada, compagnie d’assurances v. Agostino*, 2012 QCCA 678, par. 35.

⁸ *Infineon Technologies AG v. Option consommateurs*, [2013] 3 S.C.R. 600, par. 68.

⁹ *Infineon Technologies AG v. Option consommateurs*, [2013] 3 S.C.R. 600, par. 68.

¹⁰ *Durand v. Subway Franchise Systems of Canada*, 2020 QCCA 1647, par. 51; *Krief v. Apple Canada inc.*, 2025 QCCS 4246, par. 8.4; *Badji v. Zenleads inc.*, 2025 QCCS 4514, par. 11.

¹¹ *Ward v. Procureur général du Canada*, 2021 QCCS 109, par. 20; *Diop v. Rocketreach*, 2025 QCCS 4589, par. 22.

¹² *Vivier v. Air Canada*, 2025 QCCS 854, par. 13.3.

¹³ *Association pour la protection automobile (APA) v. Banque de Montréal*, 2021 QCCA 676, par. 62; *Durand v. Subway Franchise Systems of Canada*, 2020 QCCA 1647, par. 67; *Krief v. Apple Canada inc.*, 2025 QCCS 4246, par. 7.6.

¹⁴ *Durand v. Subway Franchise Systems of Canada*, 2020 QCCA 1647, par. 51.

¹⁵ *Krief v. Apple Canada inc.*, 2025 QCCS 4246, par. 7.6.

¹⁶ *Karras v. Maple Leaf Foods Inc.*, 2024 QCCS 1664, par. 28.

¹⁷ *Krief v. Apple Canada inc.*, 2025 QCCS 4246, par.

wishes to adduce is appropriate, relevant and should form part of the Court's record at the authorization stage.

[12] The Court specifies that the present judgment in no way determines the probative value or usefulness of the evidence whose production is authorized. If, at the hearing on the Application for Authorization, the evidence is used for the purposes of a debate that goes beyond the strict scope of authorization, that debate will be deferred to the merits.

3.2 Proposed Evidence

3.2.1 Draft Statement from Michael Ziock (Exhibit MSFT-1)

[13] Microsoft submitted a sworn statement from Mr. Ziock in draft form ("**Draft Statement**"). The sworn statement is akin to oral testimony, and it is therefore offered as proof of the veracity of its content.

[14] Paragraphs 3 and 8 of the Draft Statement establish that the witness is the manager of the team at Microsoft that was involved in the investigation of the Service Disruptions and that drafted the post incident reports, which are provided as exhibits MZ-1 and MZ-2. Those paragraphs are useful to adduce the reports, which are internal documents that are not publicly available and are themselves relevant, as discussed below. They will be allowed as appropriate evidence for that purpose. However, the defined terms "First Service Incident" and "Second Service Incident" should be removed from these paragraphs because the number of service incidents is a contentious issue in the present case.

[15] Paragraphs 4 to 7 and 9 to 13 of the Draft Statement address the number of service incidents, the causes identified by Microsoft for the outages and their impact on the availability of services or software. These paragraphs relate to contentious issues that are clearly open to challenge. Indeed, at the hearing of the Defendants' application, the Applicants confirmed that they intend to contest Mr. Ziock's assertions regarding the number and duration of Service Disruptions. This type of evidence should be assessed at the merits, and not at the authorization stage.¹⁸ Those paragraphs will therefore not be allowed.

[16] Paragraphs 14 to 22 of the Draft Statement provide information regarding the contractual relation between the members of the proposed Class and the Defendants. At paragraphs 17 and 18, Mr. Ziock states that the Defendant Microsoft Canada Inc. does not enter into contractual agreements with customers, including the Applicants. At paragraphs 15 and 16, Mr. Ziock states that the contractual relationship between the Applicants and Microsoft Corporation is governed by Microsoft's Customer Agreement,

¹⁸ *Association pour la protection automobile (APA) v. Banque de Montréal*, 2021 QCCA 676, par. 67; *Karras v. Maple Leaf Foods Inc.*, 2024 QCCS 1664, par. 12.

which incorporates Microsoft's Service Level Agreement (submitted as exhibits MZ-3 and MZ-4).

[17] This evidence is essential to complete the allegations of the Application for Authorization. Indeed, the Applicants assert that both Defendants (Microsoft Corporation and Microsoft Canada inc.) breached their contractual obligations to the members of the proposed Class. However, the Applicants do not provide any contractual document in support of their claim, and provide no evidence of the contractual relation between either Defendants and the putative members. Paragraphs 15 to 18 of the Draft Statement are therefore directly relevant to the Court's assessment of the colour of right criterion in article 575, par. 2 CCP, and will be allowed as appropriate evidence for the debate on authorization.¹⁹

[18] However, paragraphs 14 and 19 to 22 of the Draft Statement contain arguments regarding the scope of Microsoft's obligations to its customers and a description of the content of various contractual clauses. They relate to the interpretation and potential application of the agreements. As such, they constitute legal arguments that are best left to counsel.²⁰ They fall outside of the scope of what is "essential and indispensable" to assess the criteria for authorization and will therefore not be allowed.

[19] Finally, paragraph 23 of the Draft Statement describes the content of a Microsoft webpage titled *Microsoft Azure Incident Readiness* (exhibit MZ-5). This document is public and can be filed without a sworn statement.²¹ This paragraph does not add anything to exhibit MZ-5. It falls outside of the scope of what is "essential and indispensable" to assess the criteria for authorization.

[20] For these reasons, the Court will allow Microsoft to adduce a sworn statement by Mr. Ziock containing only paragraphs 1, 2, 3 (without the defined term "First Service Incident"), 8 (without the defined term "Second Service Incident"), 15, 16, 17 and 18 of the Draft Statement.

3.2.2 Post-Incident Reports (Exhibits MZ-1 and MZ-2).

[21] The Post-Incident Reports were drafted by the Incident Communications and Coordination team at Microsoft, managed by Mr. Ziock. They provide details relating to the Service Disruptions, including a discussion of their duration, causes, effects (as ascertained by Microsoft employees) and a description of the actions taken to resolve them. They indicate that Microsoft identified two separate service incidents: one having occurred on March 1, 2025, at 8:36 PM (which lasted approximately one hour) and another on March 3, 2025, at 4:22 PM (which lasted approximately two hours).

¹⁹ See *Krief v. Apple Canada Inc.*, 2025 QCCS 4246, par. 8.1 and cases cited therein.

²⁰ *Karras v. Maple Leaf Foods Inc.*, 2024 QCCS 1664, par. 35.

²¹ *Karras v. Maple Leaf Foods Inc.*, 2024 QCCS 1664, par. 35; *Abicidan v. Shakepay Inc.*, 2025 QCCS 1738, par. 42.

[22] The Post-Incident Reports are extrajudicial declarations. As such, they cannot be filed to establish the veracity of their content.²² However, the Court can allow their filing for the limited purpose of providing context as to what Microsoft identified as the causes, duration and effects of the Service Disruptions when the Reports were issued.

[23] This context is useful to allow the Court to assess the authorization criteria in article 575 CCP. Indeed, the allegations of the Application for Authorization regarding the cause, number and duration of service incidents are scant, vague and contradictory.

[24] For instance, at paragraph 6 of the Application for Authorization, the Applicants allege that a single service disruption occurred which started on March 1, 2025, and persisted into Monday, March 3, 2025. However, at paragraph 14, they allege that Microsoft sustained two outages in less three days, one of which lasted a full day. No information is provided regarding the potential causes of the Service Disruptions.

[25] The admission of the Post-Incident Reports is appropriate at this stage because of the contradictions in the Application for Authorization and the paucity of the allegations regarding the facts and circumstances that are central to the Applicant's alleged cause of action.

[26] That said, the Post-Incident Reports relate to contentious issues that are clearly open to challenge. As such, they must be used with caution at the authorization hearing.²³ They can only be used to provide context regarding what Microsoft has determined to be the number of Service Disruptions, their cause and duration. The actual number of Service Disruptions, their cause and duration are contested issue that will eventually be debated on the merits, if the class action is authorized, but should not be debated at the authorization stage.

3.2.3 Contracts with Microsoft Corporation (Exhibits MZ-3 and MZ-4)

[27] As previously noted, Mr. Ziock's Draft Statement indicates that the contractual relationship between the Applicants and Microsoft Corporation is governed by Microsoft's Customer Agreement, which incorporates Microsoft's Service Level Agreement. These agreements are filed in support of the Draft Statement, as exhibits MZ-3 and MZ-4. They are essential to complete the Application for Authorization, in which the Applicants refer to the Defendants' contractual obligations but do not file any contractual documents in support. They are directly relevant to the Court's assessment of the colour of right criterion in article 575, par. 2 CCP.²⁴

²² *Karras v. Maple Leaf Foods Inc.*, 2024 QCCS 1664, par. 37.

²³ *Durand v. Subway Franchise Systems of Canada*, 2020 QCCA 1647, par. 52.

²⁴ See *Krief v. Apple Canada Inc.*, 2025 QCCS 4246, par. 8.1, and cases cited therein.

3.2.4 Microsoft Webpage (Exhibit MZ-5)

[28] Exhibit MZ-5 is a webpage titled *Microsoft Azure Incident Readiness*. It contains advice to Microsoft customers regarding the possibility of service disruptions and the steps that they can take to keep abreast of service issues and minimize their negative impacts. It is relevant to assess whether the Applicants can reasonably argue that Microsoft owes an obligation of result or warranty to its clients, rather than an obligation of diligence. It is relevant to assess whether the criterion for authorization in article 575, par. 2 CCP is met.

3.3 Examination of Mr. Ziock

[29] The Applicants wish to conduct a 60-minute examination of Mr. Ziock on his sworn statement.

[30] Article 105 CCP provides that “whenever the law [...] allows an affidavit as evidence [...] the person who swore the oath may be examined on the facts whose truth the person attested to”. In an individual action, this examination can be conducted as of right.²⁵ However, numerous cases state that in the context of a class action, a party’s right to cross-examine the author of a sworn statement filed in evidence is not automatic.²⁶ These cases recognize that a limited cross-examination may be appropriate to uphold the adversarial principle (in article 17 CCP), while respecting the principles of proportionality and reasonableness (in articles 18 and 19 CCP).

[31] Other cases have held that the applicants can conduct an examination on a sworn statement filed into evidence at the authorization stage as of right.²⁷ Those decisions underscore, however, that the examination is merely a means of controlling the seriousness of the statement, that it must be limited to those facts set out in the statement and that the Court can limit its scope and duration in accordance with article 158, par. 3 CCP.

[32] It is not necessary to resolve this controversy in the present case. In keeping with the adversarial principal, the Applicants should be allowed to cross-examine Mr. Ziock on

²⁵ *Quotto Trading Ltd. b. Prism textile Inc.*, [1990] R.D.J. 89 (C.A.), par. 7-8; *Droit de la famille — 25827*, 2025 QCCS 2264, par. 6-7; *Girard v. Poulin*, 2023 QCCS 4341, par. 28 (requête pour permission d’appeler rejetée : 2024 QCCA 50).

²⁶ *Toledano v. Bank of Nova Scotia*, 2025 QCCS 3201, par. 15-18 (leave to appeal denied: 2025 QCCA 1291); *Mire v. Apple Canada Inc.*, 2025 QCCS 4218, par. 13-17; *Karras v. Maple Leaf Foods Inc.*, 2024 QCCS 1664, par. 22; *Vivier v. Air Canada*, 2025 QCCS 854, par. 16; *Lemay v. VR Champlain inc.*, *Roulottes A.S. Lévesque*, 2024 QCCS 505, par. 21.3; *Barré v. Volkswagen Group Canada Inc.*, 2021 QCCS 2241, par. 17.3; *Holcman v. Restaurant Brands International inc.*, 2021 QCCS 2203, par. 21.3; *Elkoubi v. TD Waterhouse Canada Inc.*, 2021 QCCS 3691, par. 16-21; *Ouellet v. Lasik MD inc.*, 2020 QCCS 1711, par. 53; *Salazar Pasaje v. BMW Canada inc.*, 2018 QCCS 5635, par. 19.

²⁷ *Estrade v. Wal-Mart Canada Corp.*, 2025 QCCS 3011, par. 19; *Hand v. Denso International America Inc.*, 2021 QCCS 1671, par. 51-52; *Patterson v. Ticketmaster Canada Holdings*, 2021 QCCS 4604, par. 49.

the seriousness of the facts set out in his sworn statement. The Court will allow the Applicants to conduct an oral examination of Mr. Ziock on the facts stated in paragraphs 1, 2, 3, 8, 15, 16, 17 and 18 of the Draft Statement, which are the only paragraphs that are allowed in evidence. The examination will be limited to the facts set out in those paragraphs. An oral examination for a duration of 45 minutes appears appropriate. The examination will have to take place at the latest by March 31, 2026.

FOR THESE REASONS, THE COURT:

[33] **GRANTS** in part the Defendants Microsoft Corporation and Microsoft Canada Inc.'s *Application for leave to adduce relevant evidence*;

[34] **AUTHORIZES** the Defendants Microsoft Corporation and Microsoft Canada Inc. to file as exhibit MSFT-1 a sworn statement of Michael Ziock which is to include only those paragraphs 1, 2, 3 (without the defined term "First Service Incident"), 8 (with the defined term "Second Service Incident"), 15, 16, 17 and 18 of his draft sworn statement, along with exhibits MZ-1, MZ-2, MZ-3 and MZ-4 in support thereof;

[35] **AUTHORIZES** the Defendants Microsoft Corporation and Microsoft Canada Inc. to file as exhibits MSFT-2 the Microsoft Webpage titled *Microsoft Azure Incident Readiness* dated June 30, 2025 (previously identified as exhibit MZ-5 in support of Michael Ziock's draft sworn statement);

[36] **AUTHORIZES** the examination of Michael Ziock on the facts alleged in paragraphs 1, 2, 3, 8, 15, 16, 17 and 18 of his draft sworn statement for a maximum duration of 45 minutes, which must be held at the latest by March 31, 2026;

[37] **ORDERS** that, if an examination takes place, the transcript will form part of the Court's record.

[38] **THE WHOLE**, with costs to follow.



CATHERINE MARTEL, J.S.C.

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Hearing date: November 19, 2025