

**SUPERIOR COURT
(CLASS ACTION)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-001018-197

TRACEY ARIAL ET AL.

Applicants

vs.

APPLE CANADA INC.

-and-

APPLE INC.

-and-

SAMSUNG ELECTRONICS CANADA

-and-

SAMSUNG ELECTRONICS CO. LTD.

Defendants

**NEW APPLICATION BY DEFENDANTS
APPLE CANADA INC. and APPLE INC.
FOR LEAVE TO ADDUCE EVIDENCE
(Article 574(3) CCP)**

**TO THE HONOURABLE JUSTICE PIERRE-C. GAGNON OF THE SUPERIOR COURT
OF QUEBEC, THE DEFENDANTS, APPLE CANADA INC. AND APPLE INC.,
RESPECTFULLY SUBMIT THE FOLLOWING:**

I. Introduction

1. The Defendants, Apple Canada Inc. and Apple Inc. (together, "**Apple**"), seek leave to file relevant and limited documentary evidence into the Court record.

II. Procedural History

2. On 4 September 2019, Applicants filed the *Motion for Authorization to Institute a Collective Action and to Obtain the Status of Representative*.

3. On 15 December 2019, Applicants filed the *Amended Motion for Authorization to Institute a Collective Action and to Obtain the Status of Representative*.
4. On 18 June 2020, this Court authorized the Defendant Apple Canada Inc. (as well as the Defendant, Samsung Electronics Canada Inc) to file certain limited evidence. Among other evidence, this Court authorized the filing of certain proceedings from a U.S. class action (*Cohen v. Apple Inc.*, Northern District of California, Court File No. 3:19-cv-5322-WHA), by which the present case is inspired, namely:
 - (a) APL-9: *Statement of Interest dated April 13, 2020 by the FCC*;
 - (b) APL-10: *First Amended and Consolidated Class Action Complaint*; and
 - (c) APL-11: *District Court's Request for FCC to Appear as an Amicus Curiae*.
5. This Court held, at paragraphs 55-58 of its judgment of 18 June 2020, that the filing of these proceedings relating to a similar action in another jurisdiction is appropriate considering article 55 of the Regulation of the Superior Court of Québec in civil matters (CQLR c C-25.01, r 0.2.1).
6. The Applicants then further modified and again remodified their Motion for Authorization, adding new Defendants (Apple Inc. and Samsung Electronics Co. Ltd.) as well as modifying and adding certain allegations.
7. By judgment dated 22 April 2021, this Court authorized the latest amendments to the Motion for Authorization and set a deadline of 31 May 2021 for the Defendants to file any further applications to adduce evidence.

III. Application for Leave to File Relevant Evidence

8. In the time since this Court issued its judgment of 18 June 2020 authorizing the filing of certain evidence, judgment was rendered in the U.S. *Cohen v. Apple Inc.* matter mentioned above.
9. By Order dated 29 October 2020, Justice William Alsup of the United States District Court (Northern District of California) granted Apple's motion for summary judgment, putting an end to those proceedings. This Order is attached as Apple's proposed new **Exhibit APL-12**.
10. The dismissal of the *Cohen v. Apple Inc.* proceedings has been appealed but Apple has not yet filed its opposition and no decision on the appeal has been rendered.
11. Where this Court has allowed the filing of certain proceedings leading up to an eventual decision by the U.S. District Court in the *Cohen v. Apple Inc.* matter, Apple

seeks to provide the Court with the decision that has since been rendered, out of transparency and for the sake of completeness.

12. The filing of this one additional Exhibit in order to complete the record already before this Court meets the criterion of proportionality.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the Defendants Apple Inc. and Apple Canada Inc. to file Exhibit APL-12 as described above;

ALL OF WHICH IS SOUGHT without costs, unless the present Application is contested.

MONTREAL, MAY 31, 2021



McCARTHY TÉTRAULT LLP

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File reference : 198276-525591

AFFIDAVIT

I, the undersigned, J.R. Kristian Brabander, lawyer, exercising my profession at McCarthy Tétrault LLP, located at Suite 2500, 1000 De La Gauchetière Street West, in the city and district of Montreal, province of Quebec, solemnly declare and affirm the following :

1. I am one of the lawyers of Defendants Apple Canada Inc. and Apple Inc.; and
2. All of the facts alleged in the present application filed by the Defendants are true.

AND I HAVE SIGNED



J.R. KRISTIAN BRABANDER

Solemnly affirmed before me at Montreal,
Province of Quebec, this 31st day of May,
2021

 122,144

Commissioner of Oaths for all Judicial
District of Quebec

NOTICE OF PRESENTATION

TO: Me Charles O'Brien
Lorax Litigation
Lawyers for the Plaintiffs

TO: Me Karine Chênevert
Me Stéphane Pitre
Me Jean Saint-Onge, Ad. E.
Borden Ladner Gervais
Lawyers for the Defendants
Samsung Electronics Canada
Samsung Electronics Co. Ltd.

TAKE NOTICE that the New Application by Defendants Apple Canada Inc. and Apple Inc. for Leave to Adduce Evidence will be presented for adjudication before the Honourable Pierre-C. Gagnon of the Superior Court of Quebec, on a date and time to be determined by the Honourable Pierre-C. Gagnon at the Montreal Courthouse located at 1, Notre-Dame Street East.

MONTREAL, MAY 31, 2021



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LIST OF EXHIBITS

EXHIBIT APL-12: Order dated 29 October 2020 rendered by Justice William Alsup of the United States District Court (Northern District of California) in *Cohen v. Apple Inc.*, Court File No. 3:19-cv-5322-WHA)

MONTREAL, MAY 31, 2021



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