

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-001132-212

DATE: March 30, 2023

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**PRESIDED BY: THE HONOURABLE SILVANA CONTE, J.S.C.**

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**GABRIEL BOURGEOIS**

**Applicant**

**v.**

**ELECTRONICS ARTS INC.,  
and  
ELECTRONICS ARTS (CANADA),  
and  
ACTIVISION BLIZZARD INC.,  
and  
ACTIVISION PUBLISHING INC.,  
and  
BLIZZARD ENTERTAINMENT INC.,  
and  
TAKE TWO INTERACTIVE SOFTWARE INC.,  
and  
TAKE TWO INTERACTIVE CANADA HOLDINGS INC.,  
and  
2K GAMES INC.,  
and  
ROCKSTAR GAMES INC.,  
and  
WARNER BROS ENTERTAINMENT INC.,  
and  
WARNER BROS ENTERTAINMENT CANADA INC.,**

and  
WARNER BROS. HOME ENTERTAINMENT INC.,  
and  
UBISOFT ENTERTAINMENT SA.,  
and  
UBISOFT INC.,  
and  
UBISOFT ENTERTAINMENT INC. / UBISOFT DIVERTISSEMENTS INC.,  
and  
MICROSOFT CORPORATION,  
and  
MICROSOFT CANADA INC.,  
and  
SCOPELY INC.,  
and  
NIANTIC INC.,  
and  
KING DIGITAL ENTERTAINMENT GROUP INC.,  
and  
KING.COM LTD.,  
and  
ZYNKA INC.,  
and  
ZYNKA GAME CANADA LTD

**Respondents**

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JUDGMENT

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[1] Respondents Electronic Arts Inc. (EA), Electronic Arts (Canada) Inc. (EA Canada), Activision Blizzard Inc., Activision Publishing Inc. and Blizzard Entertainment Inc. (collectively Respondents) seek a partial dismissal of the Amended Application for Authorization to Institute a Class Action & Obtain the Status of Representative Plaintiff ("Application") on the basis of lack of jurisdiction over the non-resident class members.

[2] At issue, is article 3148 1 (2) of the *Civil Code of Quebec* (CCQ). Respondents argue that they do not have an establishment in Quebec and, moreover, the dispute does not relate to its activities in Québec.

## **CONTEXT**

[3] On or about March 2, 2021, Applicant filed the Application on behalf of the following proposed class:

All Canadian customers of the Loot Box Foreign Respondents [...] who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Application for Authorization between 2008 and the date this action is authorized as a class proceeding.

[4] Applicant argues that, amongst other things, the design, development, offering and operation of the video games with loot boxes constitute unlicensed illegal gaming systems under Canadian law which contravene provisions in the *Civil Code of Québec*, the *Competition Act*<sup>1</sup>, the *Québec Consumer Protection Act*<sup>2</sup>, as well as other related legislation in other Canadian provinces.

[5] On October 25, 2021, due to the partial overlap of class members in parallel class action proceedings instituted in British Columbia, Applicant sought leave to file an Amended Application for Authorization to Institute a Class Action & Obtain the Status of Representative.

[6] On December 7, 2021, the Court granted the application in part and modified the description of the proposed class as follows<sup>3</sup>:

All Canadian customers of the Lootbox Respondents (defined further below<sup>4</sup>) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Application for Authorization between 2008 and the date this action is authorized as a class proceeding, except such Canadian customers otherwise already included in class description in either one of the following cases *Cunningham et al v. Activision Blizzard Inc. et al* SCBC S-2013414, *Lussier et al v. Scopely Inc.*, SCBC S-2013510, *Pechnik et al v. Take Two Interactive Software Inc. et al*, SCBC S-211073, *Sutherland v. Electronic Arts Inc. et al*, SCBC S-209803, *Petty et al v. Niantic Inc. et al*, SCBC S 213723.

[7] On June 8, 2022, the Court authorized a further amendment to the description of the proposed class to limit same to residents of the province of Quebec with the exception of the proposed class sought against Ubisoft, Activision, EA and Warner Bros. Entities, which remained a national class.

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<sup>1</sup> RSC 1985, c. C-34.

<sup>2</sup> CQLR, c. P-40.1.

<sup>3</sup> *Bourgeois v. Electronic Arts Inc.*, 2021 QCCS 5055 (CanLII).

<sup>4</sup> "Loot boxes" are described in the Application as a "game of chance inside a video game, by which a player pays for a digital roll of the dice and the possibility of obtaining desirable virtual rewards." It is alleged that loot boxes are purchased either with real money or must be "unlocked" using a virtual key purchased with real money.

[8] The proposed class is now divided into two sub-classes and reads as follows:

All Canadian customers of the National-class Loot Box Respondents (defined further below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Amended (2) Application for Authorization between 2008 and the date this action is authorized as a class proceeding, except such Canadian customers otherwise already included in class description in either one of the following cases *Cunningham et al v. Activision Blizzard Inc. et al* SCBC S-2013414, *Lussier et al v. Scopely Inc.*, 3 SCBC S-2013510, *Pechnik et al v. Take-Two Interactive Software Inc. et al*, SCBC S-211073, *Sutherland v. Electronic Arts Inc. et al*, SCBC S-209803, *Petty et al v. Ninantic Inc. et al*, SCBC S-213723. (the “National Class”, “National-class Members” and “Class Period”)

and

All Quebec customers of the Quebec-class Loot Box Respondents (defined further below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Amended (2) Application for Authorization between 2008 and the date this action is authorized as a class proceeding. (the “Quebec Class,” “Quebec Class Members” and “Class Period”)

[9] On February 15, 2023, the Honourable Justice Majawa of British Columbia, approved a Canada-wide settlement resolving the matters at issue in this action against Epic Games, including Québec residents, in the parallel class action on the same issue in British Columbia *Glenn Johnston v. Epic Games et al.* (Court File No. S-220088).

[10] On March 24, 2023, this Court authorized the discontinuance of Application against Epic Games Inc. and Epic Games Canada ULC.

### **ANALYSIS**

[11] A class action proceeding is a procedural vehicle that does not confer substantive rights. As such, the Application does not have the effect of conferring jurisdiction on the Superior Court over a proposed class of members that would otherwise fall within the subject-matter jurisdiction of another court or tribunal<sup>5</sup>.

[12] On a declinatory exception for lack of jurisdiction under article 167 of the *Code of Civil Procedure (CCP)*, Applicant has the burden of demonstrating, on a *prima facie* basis, that the individual claims of each class member meet one of the connecting factors under article 3148 CCQ. The opposing party may present evidence to challenge these facts. However, at this stage of the proceeding the facts alleged in the proceedings are taken

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<sup>5</sup> *Bou Malhab v. Diffusion Métromédia CMR Inc.*, 2011 SCC 9 (CanLII), at para 52.

as averred and while the Court reviews the evidence in order to determine if that *prima facie* burden has been met, it does not engage in an evaluation of the merits of the claim<sup>6</sup>.

[13] Article 3148 CCQ is a broad-based legislation which is designed to ensure that there is a “real and substantial connection” between the action and the province of Quebec<sup>7</sup>. Article 3148 1 (2) CCQ, which is in issue, reads as follows:

3148. In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases: [...]

(2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;

[..]

[14] Applicant therefore has the burden of establishing, on a *prima facie* basis, that Respondents: 1) have an establishment in Quebec, and 2) the dispute relates to their activities in Quebec.

[15] The determination of whether a defendant has an establishment in the province of Quebec is a question of fact. In *Interinvest*<sup>8</sup>, the Court of Appeal reviewed the doctrine and caselaw and concluded as follows<sup>9</sup>:

[20] Dans son livre, « If I am from Grand-Mère, why am I being sued in Texas? » Responding to Inappropriate Foreign Jurisdiction in Quebec-United States Crossborder Litigation, Montréal, Éditions Thémis, 2001, Me Jeffrey Talpis écrit aux p. 23 et 24 :

*ii. Establishment of Foreign Defendant in Quebec*

*Since international commercial activities are typically conducted through branches, establishments, subsidiaries, related companies or agents, it is important to clarify the circumstances in which a foreign parent company, domiciled outside Quebec, will be subject to jurisdiction of the Quebec Courts by virtue of the activities it carries on, directly or through its branches, establishment or subsidiaries in Quebec.*

*By virtue of art. 3148 para. 1(2) C.C.Q., jurisdiction can exist over a foreign company which is not domiciled in Quebec, but which has an establishment in Quebec, so long as the dispute relates to its activities in Quebec. The meaning of “establishment” and “activities” in Quebec as well as the condition that the dispute arose from the activities of the Quebec establishment require further explanation.*

<sup>6</sup> *Transax Technologies Inc. v. Red Baron Corp. Ltd.*, 2017 QCCA 626 (CanLII), at para 16.

<sup>7</sup> *Spar Aerospace Ltd. v. American Mobile Satellite Corp.*, 2002 SCC 78 (CanLII), at para 55.

<sup>8</sup> *Interinvest (Bermuda) Ltd. v. Herzog*, 2009 QCCA 1428 (CanLII),

<sup>9</sup> *Ibid* at paras 20, 21 and 28.

*Although the concept of establishment is not defined, an essential aspect of it is that it must either be an integral part of the parent organization or be under its immediate control and engaged in its business.*

*A subsidiary, even one that is wholly owned by a parent company, will not, by that fact alone, be regarded as falling within the definition of establishment as long as it is maintained as a separate and distinct entity.*

[21] Maurice et Paul Martel, *La compagnie au Québec, les aspects juridiques*, Montréal, Wilson & Lafleur, 2006, p. 10-4 font les commentaires suivants en ce qui a trait à la déclaration annuelle :

6) *L'adresse des établissements possédés au Québec. On doit aussi préciser le nom qui les désigne et les deux principaux secteurs d'activités qui y sont exercés. Il semble bien que l'information requise concerne non pas les immeubles détenus par la compagnie, mais les lieux physiques où elle exploite d'une manière stable son ou ses entreprises, comme propriétaire ou locataire.*

[...]

[28] Je retiens de cette analyse qu'une société peut avoir, en plus de son siège, divers établissements ou places d'affaires, qu'un établissement est l'endroit où une entreprise est exploitée, soit un lieu physique offrant une certaine stabilité, et que la détermination de l'existence au Québec d'un établissement est une question essentiellement factuelle. Le défaut de s'immatriculer au Québec ou de produire une déclaration annuelle n'est pas déterminant.

[16] In *Rees v. Convergja*<sup>10</sup>, the Court of Appeal stated that the establishment referred to in article 3148(2) must exist when the action is brought.

[17] As for the second part of the test, the Court of Appeal has confirmed, in several decisions, that the dispute must relate to the activities of the Defendant in Quebec and not to the activities of the establishment, even where the decision-making powers reside outside the province<sup>11</sup>.

[18] The Court will now examine whether the Applicant has demonstrated a *prima facie* case for jurisdiction against the Respondents as regards the non-resident class members.

<sup>10</sup> *Rees v. Convergja*, 2005 QCCA 353 (CanLII), at paras 48-49.

<sup>11</sup> *Interinvest*, *supra* note 8 at para 29; *Anvil Mining Limited v. Association canadienne contre l'impunité*, 2012 QCCA 117 at para 89; *Syndicat canadien de la fonction publique v. Syndicat canadien des communications, de l'énergie et du papier, section locale 2013 (SCEP)*, 2015 QCCA 1392 (CanLII) at paras 39-40; *Transax*, *supra* note 6 at para 32.

**Electronic Arts Inc. (EA) and Electronic Arts (Canada) Inc. (EA Canada)**

[19] EA is a company incorporated under the laws of Delaware, with an address for service at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, USA.

[20] EA develops and publishes several video game series based on professional sports, including the NHL series, based on professional hockey, and the Madden NFL series, based on professional American football.

[21] EA Canada is a company incorporated pursuant to the laws of British Columbia, with an address for service at 1800-510 West Georgia St, Vancouver, British Columbia.

[22] EA Canada is a wholly owned subsidiary of EA involved in the development of some of EA video games pursuant to a development services agreement.

**1. Establishment**

[23] EA Canada admits that it has an establishment in Quebec located at 2200 Stanley St., 6th floor, Montréal, QC H3A 1R6, the head office of its wholly owned subsidiary, EA Montreal<sup>12</sup>.

[24] EA Canada currently operates the Motive games studio in Montreal. Motive was not involved in development of any of the sixty (60) titles involved listed in Appendix A as "Affected Titles" of the Application.

[25] EA Canada operated the BioWare (Montreal) studio in Quebec until August 2017. EA Canada admits that this studio was the location of primary development for one title in Appendix A, Mass Effect: Andromeda<sup>13</sup>.

[26] As for EA, Applicant alleges at paragraph 8 of the Application that "EA and EA Canada Defendants function as a joint enterprise. Each of these Defendants is an agent of the other for the purposes of developing, marketing, distributing and selling the video games referred to herein". However, as this allegation is a legal conclusion or a qualification of the facts and not a statement of fact that is to be averred<sup>14</sup>, the Court must determine if the facts support a *prima facie* argument that EA Canada and EA operate as a joint enterprise.

[27] Applicant relies mainly on the following *prima facie* evidence in support of the argument that EA entities operate as a joint enterprise:

27.1. extracts from the EA official website (not EA Montreal website) wherein EA

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<sup>12</sup> Paragraph 14 of Ms. Hopkins' Affidavit, Exhibit EA-1.

<sup>13</sup> Paragraphs 15-16 of Ms. Hopkins' Affidavit, Exhibit EA-1.

<sup>14</sup> *Bohémier v. Barreau du Québec*, 2012 QCCA 308 (CanLII) at para 17.

describes life at the Montreal Motive studio<sup>15</sup>;

- 27.2. EA's website, advertises job postings for a Generalist Software Engineer – C++ - EA Sports with EA Sports in EA Montréal and in Vancouver, as well as a Lead Data Engineer" job with the FIFA Analytics Team in, among others, the Montréal Electronic Art's premises<sup>16</sup>;
- 27.3. EA Canada represents that it does business under the names EA, EA.com and Electronic Arts in the Quebec Business Registry<sup>17</sup>;and
- 27.4. EA alleges that EA Canada is a subsidiary involved in the development of some of EA's video games<sup>18</sup>.

[28] EA does not deny these facts. Rather it simply denies that it has an establishment in Quebec (which is argument) and alleges that one of the job postings was filled at another subsidiary in Toronto<sup>19</sup>.

[29] As described in *Interinvest*<sup>20</sup>, a subsidiary operating in Quebec can be considered an establishment where it is either an integral part of the parent organization or under its immediate direction and control. In *Chandler v. Volkswagen Aktiengesellschaft*,<sup>21</sup> the Court found that the subsidiary operated as a distinct and separate entity, such that it was neither under the parent's control nor an agent for its activities in Quebec.

[30] On the facts of this case, the Court finds that Applicant's evidence demonstrates on a *prima facie* basis that EA Canada's operations in Montreal are an integral part of the EA organization.

[31] EA's official website generally promotes the team at the EA Canada Montreal Motive studio and describes the very active participation of EA Canada's former Bioware studio in the development of the EA video games.

[32] In particular, the EA website lists job posting for EA employees and offers them the opportunity to work at many EA entity locations including the Montreal office operated by EA Canada. This evidence demonstrates the integration of the EA and EA Canada entities through a sharing of resources, be it office space or employees in a joint enterprise for the development and offering for sale of EA video games.

[33] Finally, it is arguable that the use by EA Canada of the EA trademarks in its Quebec business activities is further evidence of the operation of a joint enterprise.

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<sup>15</sup> Exhibits P-43

<sup>16</sup> Exhibits P-48 and P-49

<sup>17</sup> Exhibit P-42

<sup>18</sup> Paragraph 6 of Ms. Hopkins' Affidavit, Exhibit EA-1.

<sup>19</sup> Paragraph 19 of Ms. Hopkins' Affidavit, Exhibit EA-1.

<sup>20</sup> *Interinvest*, *supra* note 8, at para 20.

<sup>21</sup> *Chandler v. Volkswagen Aktiengesellschaft*, 2020 QCCS 1202 (CanLII) at paras 71-75.



[34] Therefore, EA Canada's Montreal premises constitutes an EA establishment within the broad meaning of article 3148 1 (2) CCQ.

## 2. Dispute relates to activities in Quebec

[35] Applicant contends generally that the design, development, distribution, marketing, sale and operation of the video games with loot boxes constitute unlicensed illegal gaming systems under Canadian law which contravene provisions in the *Civil Code of Québec*, the *Competition Act*<sup>22</sup>, the *Québec Consumer Protection Act*<sup>23</sup>, as well as other related legislation in other Canadian provinces

[36] The dispute, as amended, also includes faulty conduct as regards the development, building, editing, designing, implementing, and debugging of video games containing loot boxes for the titles listed in Appendix A to the Application<sup>24</sup>.

[37] The class period dates from 2008 to the authorization of the proposed class action.

[38] EA admits that the former Quebec studio, Bioware, led the primary development for one title in Appendix A to the Application, *Mass Effect: Andromeda*<sup>25</sup>. However, as the Bioware studio was not in operation at the time of the filing of the Application, Respondent argues that the dispute does not relate to EA's activities in Quebec.

[39] The Court disagrees.

[40] As stated above, the Court of Appeal has consistently held that the dispute must relate to the activities in the province of Quebec of the defendant and is not limited to the activities performed at its establishment<sup>26</sup>.

[41] The Court of Appeal decisions in *Rees*<sup>27</sup> and *Anvil Mining*<sup>28</sup> did not advance the requirement for a temporal nexus for the second part of the test. Indeed, to do so would result in a narrow and restrictive interpretation of this provision which contrary to the principles set out by the Supreme Court of Canada in *Spar Aerospace*<sup>29</sup>.

[42] Therefore, the dispute relates generally to the design, development, distribution, marketing, sale and operation of the video games with loot boxes in Canada. In particular, the dispute relates to the activities performed at the Bioware studio in Quebec in the

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<sup>22</sup> RSC 1985, c. C-34.

<sup>23</sup> CQLR, c. P-40.1.

<sup>24</sup> Paragraphs 43-44 of the Application

<sup>25</sup> Paragraphs 15-16 of Ms. Hopkins' Affidavit, Exhibit EA-1.

<sup>26</sup> Note 11.

<sup>27</sup> *Rees*, *supra*, note 10.

<sup>28</sup> *Anvil Mining*, *supra*, note 11.

<sup>29</sup> *Spar Aerospace*, *supra*, note 7.

development of at least one video game listed in Appendix A during the class period commencing in 2008.

[43] Therefore, the second part of the test for article 3148 1(2) has been satisfied.

### **Activision Blizzard Inc., Activision Publishing Inc., and Blizzard Entertainment**

[44] Activision Blizzard Inc., incorporated under the laws of Delaware, and is publicly traded on the NASDAQ stock exchange. It is a video game holding company that owns major video game publishing labels Activision Publishing Inc and Blizzard Entertainment Inc, and others carries on business in Quebec, across Canada and worldwide by developing, marketing, distributing, and selling the video games referred to herein, including to residents of Quebec and Canadians, and collecting from the sales of those products<sup>30</sup>.

[45] Blizzard Entertainment Inc. is a company incorporated pursuant to the laws of Delaware with an address for service at 251 Little Falls Drive, Wilmington, New Castle, Delaware, 19808, and a business address at 16251 Alton Parkway, Irvine, California, 92618. Blizzard Entertainment Inc is a wholly owned subsidiary of Activision Blizzard Inc. Blizzard Entertainment Inc carries on business in Quebec and Canada<sup>31</sup>.

[46] Activision Publishing Inc., incorporated pursuant to the laws of Delaware, is a wholly owned subsidiary of Activision Blizzard Inc. Activision Publishing Inc is a wholly-owned subsidiary of Activision Blizzard Inc. Activision Publishing Inc carries on business in Quebec and Canada. Activision Publishing Inc develops and distributes games through subsidiary studios, publishers, and support services in Canada including Beenox Inc. in Québec City<sup>32</sup>.

[47] Beenox is incorporated under the Québec Business Corporations Act, is located at 700-305 boulevard Charest Est, Québec (Québec). It is a wholly owned subsidiary of Activision Publishing inc. since 2005<sup>33</sup>.

#### **1. Establishment**

[48] Applicant alleges at paragraph 11 of the Application that the Respondents operate as a joint enterprise. Each of these Defendants is an agent of the other for the purposes of developing, marketing, distributing, and selling the video games and Loot Boxes referred to herein.

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<sup>30</sup> Paragraph 9 of the Application and Exhibit P-3.

<sup>31</sup> Paragraph 11 of the Application and Exhibit P-3.

<sup>32</sup> Paragraph 10 of the Application and Exhibit P-4.

<sup>33</sup> Paragraph 12.1 and Exhibit P-45.

[49] Respondents argue that there is no evidence to support the legal conclusion that they operate as a joint enterprise. They further posit that Beenox is a distinct and separate entity such that it cannot be said that Respondents have an establishment in Quebec.

[50] Beenox Inc., is not a named Respondent. In Respondents' affidavit evidence, they concede that Beenox provided services to Activision Publishing Inc. regarding these 3 titles<sup>34</sup>. The services are described as follows:

- 50.1. With respect to Call of Duty: Black Ops III, Beenox was simply tasked with adapting the software to allow this game to be played on the Playstation 4 console (known as "porting");
- 50.2. With respect to Call of Duty: Modern Warfare Remastered Beenox was tasked with upgrading the visuals of this game which had been originally published in 2007;
- 50.3. With respect to Call of Duty: Black Ops 4, Beenox was tasked with two things: develop code for portions of this game in accordance with the script provided and adapt the existing software to allow this game to be played on PC (personal computer) using a keyboard and mouse.

[51] The Court does not engage in a pointed analysis of the evidence at this stage. Suffice it to say that this evidence appears to support the allegation that Activision Publishing Inc. develops and distributes games through subsidiary studios, publishers, and support services in Canada including Beenox Inc. in Québec City<sup>35</sup>.

[52] In addition, the extracts filed by Applicant from the Beenox Inc. website<sup>36</sup> lists Beenox as one of the developers for the following titles listed in Appendix A to the Application: Call of Duty: Black Ops III, Call of Duty: Modern Warfare Remastered, and Call of Duty: Black Ops 4. Activision Publishing Inc. is listed as the editor.

[53] This evidence demonstrates, on a *prima facie* basis, that Beenox services form an integral part of Activision Publishing Inc. operations.

[54] The allegation that Activision Blizzard is a holding company and owner of Activision Publishing Inc. and carries on business in Quebec, across Canada and worldwide by developing, marketing, distributing, and selling the video games referred to herein, including to residents of Quebec and Canadians, and collecting from the sales of those products is taken as averred<sup>37</sup>. These titles include the video games developed by Beenox and edited by Activision Publishing Inc.

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<sup>34</sup> Paragraphs 11-19, Affidavit of Mr. Lodato, Exhibit RA-1.

<sup>35</sup> Paragraph 10 of the Application.

<sup>36</sup> Exhibits P-52 to P-54.

<sup>37</sup> Paragraph 9 of the Application.

[55] Similarly, the allegations that Respondent Blizzard Entertainment is a wholly owned subsidiary of Activision Blizzard Inc. and carries on business in Quebec and Canada and that Respondents are video game developers and publishers, are also taken as averred<sup>38</sup>.

[56] Therefore, Beenox performed services integral to the business of its parent companies, directly and indirectly, the developers, editors, and publishers of a video game which is then sold and distributed in Canada to non-resident members. These facts taken together form an arguable case for a joint enterprise with an establishment in Quebec.

## 2. Dispute relates to the activities in Quebec

[57] As mentioned previously, the dispute concerns the development, marketing, distribution, offering for sale and operation of the video games containing loot boxes in Canada. The dispute therefore generally relates to Respondents' activities in Quebec.

[58] In addition, Respondents concede that Beenox performed services in Quebec in relation to the development or editing of the Call of Duty titles such as: the updating of visuals, porting to Playstation 4, coding and adapting the software for PC play<sup>39</sup>.

[59] While Respondents argue that the Beenox activities do not stem from the offering or operation of loot boxes, the dispute as framed in the Application is broader and includes faulty conduct as regards the developing, building, editing, designing, implementing, and debugging digital games containing loot boxes. Moreover, as stated previously, the dispute relates to all of Respondents' activities in Quebec and not only the activities performed at the Quebec establishment.

[60] Respondents also argue that the Beenox did not control or operate the loot boxes nor make any decision regarding the loot boxes nor earn any revenue from the sale of the video games under the Call of Duty titles. However, as stated in *Interinvest*, the fact that key decision-making did not flow from the establishment in Québec had no bearing on whether a dispute relates to a defendant's activity in Québec<sup>40</sup>.

[61] The Court finds that the second part of the test has also been met.

### FOR THESE REASONS, THE COURT:

[62] **DISMISSES** Electronic Arts Inc. and Electronic Arts (Canada) Inc. Amended declinatory exception to limit the proposed class;

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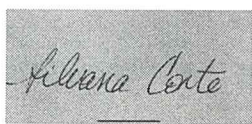
<sup>38</sup> Paragraphs 1 and 11 of the Application.

<sup>39</sup> Paragraphs 11-19, Affidavit of Mr. Lodato, Exhibit RA-1.

<sup>40</sup> *Interinvest*, *supra*, note 8 at para 41.

[63] **DISMISSES** Activision Blizzard Inc., Activision Publishing Inc., and Blizzard Entertainment Inc.'s Amended Application for declinatory exception;

[64] **THE WHOLE** with costs to follow suit.

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SILVANA CONTE, J.S.C.

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Date of hearing: March 23, 2023