

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T
(Class Actions)

N^o.: 500-06-001203-229

KARINE PEILLON

Applicant

v.

MASTERCARD INTERNATIONAL INC., ET
AL.

Defendants

APPLICATION BY DEFENDANT MASTERCARD INTERNATIONAL INC. FOR LEAVE
TO ADDUCE EVIDENCE (ART. 574 al.3 C.C.P.)

TO THE HONOURABLE CHRISTIAN IMMER OF THE SUPERIOR COURT, ACTING
AS THE DESIGNATED JUDGE IN THE PRESENT CASE, DEFENDANT
MASTERCARD INTERNATIONAL INC. RESPECTFULLY SUBMITS AS FOLLOWS:

Introduction:

1. Defendant Mastercard International Inc. ("**Mastercard**") seeks leave from this Honourable Court to file relevant evidence to be used in the context of the hearing on the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff (Amended)*, (the "**Application for Authorization**"), the whole pursuant to article 574 al. 3 of the *Code of Civil Procedure* (the "**CCP**").
2. More specifically, Mastercard seeks to adduce a solemnly affirmed declaration from Mr. Darrell MacMullin, Senior Vice President, Product, Digital and New Payments for Canada (the "**Sworn Declaration**"), in order to ensure that the Court has the necessary facts to fairly consider the criteria for authorization set out at article 575 of the CCP. The Sworn Declaration is communicated in support hereto as **Exhibit RMC-1**.

The Application for Authorization:

3. By way of the Application for Authorization dated October 25, 2022, amended on July 3, 2023, Ms. Peillon seeks to initiate a class action proceeding against Mastercard and several other defendants on behalf of the following group:

All consumers pursuant to the Québec Consumer Protection Act who purchased a prepaid card from any of the Defendants and who paid a price higher than the price advertised on the card (excluding sales tax).

4. Ms. Peillon alleges that the Defendants, or some of them, displayed the “price” for certain prepaid cards, including cards bearing the Mastercard logo (the “**Prepaid Cards**”) in a manner prohibited by law, which allegation is expressly denied herein.

The Usefulness of the Proposed Sworn Declaration

5. The Application for Authorization attempts to lump Mastercard in with the other Defendants on a solidarily basis through vague assertions based on unsupported opinions and erroneous hypothesis.
6. The Sworn Declaration seeks to clarify Mastercard’s role with regard to the Prepaid Cards and the allegations contained in the Application for Authorization.
7. In particular, the Sworn Declaration explains that Mastercard is not involved in the issuance, distribution process, pricing, or advertising of the Prepaid Cards, contrary to Ms. Peillon’s hypothesis.
8. Moreover, the Sworn Declaration will explain to this Honourable Court the functions of Mastercard’s prepaid card transaction network.
9. In particular, the Sworn Declaration outlines the exact operations handled through Mastercard’s network, and precisely the limitations of these operations, thereby demonstrating that these operations do not fall within the sphere of activities practices described in the Application for Authorization.
10. In sum, the Sworn Declaration will demonstrate that Mastercard’s activities in relation to the Prepaid Card fall squarely outside any of the practices governed by the statutes invoked in Ms. Peillon’s proposed legal syllogism.
11. Mastercard respectfully submits that the Sworn Declaration is necessary, useful, and reasonable for this Honourable Court’s analysis of relevant facts in order to determine whether Ms. Peillon has an “arguable case”.
12. The Sworn Declaration will allow this Honourable Court to decide whether the criteria for authorization apply by having a more complete understanding of the relevant facts.
13. In light of the above, the present application for leave to file the Sworn Declaration is proportional and in the interests of justice.

14. The present Application is well founded in fact and in law.

WHEREFORE, MAY PLEASE THE COURT TO:

GRANT the present *Application for Leave to Adduce Relevant Evidence*;

AUTHORIZE Defendant Mastercard International Inc. to submit and file into the court record the declaration of Mr. Darrell MacMullin, solemnly affirmed on September 28, 2023.

THE WHOLE without costs except in the event of contestation.

MONTRÉAL, September 29, 2023



MCMILLAN LLP

Me Joséane Chrétien

Me Sidney Elbaz

Me Yassin Gagnon-Djalo

1000, Sherbrooke Street West

Suite 2700

Montréal, Québec, H3A 3G4

Phone: 514-375-5116 / 514-987-5084 /
514-375-5106

Email: joseane.chretien@mcmillan.ca

sidney.elbaz@mcmillan.ca

yassin.gagnon-djalo@mcmillan.ca

*Attorneys for the Defendant **Mastercard International Inc.***

NOTICE OF PRESENTATION

TO : DISTRIBUTION LIST

TAKE NOTICE that the foregoing *Application by Defendant Mastercard International Inc. for Leave to Adduce Evidence (art. 574 al.3 C.C.P.)* will be presented for adjudication before the Honourable Justice Donald Bisson, j.c.s., sitting in the Superior Court at 1, Notre Dame East, Montreal, Quebec, H2Y 1B6 on **December 8, 2023**, in a room to be determined by the coordinator of the Class Action Division.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, September 29, 2023



McMILLAN LLP

Me Joséane Chrétien

Me Sidney Elbaz

Me Yassin Gagnon-Djalo

1000, Sherbrooke Street West

Suite 2700

Montréal, Québec, H3A 3G4

Phone: 514-375-5116 / 514-987-5084 /

514-375-5106

Email: joseane.chretien@mcmillan.ca

sidney.elbaz@mcmillan.ca

yassin.gagnon-djalo@mcmillan.ca

*Attorneys for the Defendant **Mastercard International Inc.***

N° / No.: 500-06-001203-229

SUPERIOR COURT
(Civil Division)
DISTRICT OF MONTREAL

KARINE PEILLON

Applicant

v.

**MASTERCARD INTERNATIONAL INC.,
ET AL.**

Defendants

ORIGINAL

**APPLICATION BY DEFENDANT
MASTERCARD INTERNATIONAL INC.
FOR LEAVE TO ADDUCE EVIDENCE
(ART. 574 al.3 C.C.P.)**

**Me Joséane Chrétien / Me Sidney Elbaz /
Me Yassin Gagnon-Djalo**

joseane.chretien@mcmillan.ca
sidney.elbaz@mcmillan.ca / [yassin.gagnon-
djalo@mcmillan.ca](mailto:yassin.gagnon-djalo@mcmillan.ca)

Réf. / Ref.: 24754-00069

Procureur pour / Attorney for
MASTERCARD INTERNATIONAL INC.

McMillan S.E.N.C.R.L., s.r.l./LLP

1000 Sherbrooke O./W., #2700, Montréal, Québec,
Canada H3A 3G4

t 514.375.5116 / 514.987.5084 / 514.375.5106 |

f 514.987.1213

BM0259