SUPERIOR COURT

(Class Action Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001374-251

DATE: November 17, 2025

BEFORE THE HONOURABLE ELENI YIANNAKIS, J.C.S.

MICHAEL MIRE
Plaintiff
v.
APPLE CANADA INC.
And
APPLE INC.
Defendants

JUDGMENT ON REQUEST FOR AUTHORIZATION TO ADDUCE EVIDENCE AND TO EXAMINE AFFIANTS

Context

[1] On April 7, 2025, the Applicant filed an Application for Authorization to Institute a Class Action (the "Application") against the Defendants (collectively "Apple"), in relation to their Trade In Program, as defined in the Application.[1]

JY0083 [2] The proposed Class Action provides for the following proposed class:

[1] Application for Authorization to Institute a Class Action dated April 7, 2025.

> All persons in Canada who participated in the Apple Trade In Program by providing their Eligible Used Device in the context of the purchase of a New Device from Apple, and who were charged Sales Taxes calculated on the full price of the New Device, or any other Group(s) or Sub-Group(s) to be determined by the Court.[2]

[3] Apple's Trade In Program allows customers to benefit from a credit on the price of a new device when trading-in a used eligible device.

[4] The proposed Class Action seeks damages from Apple, alleging that it charged the tax rate on the wrong amount in the context of its Trade In Program and failed to apply trade-in provisions stemming from applicable tax legislation.

[5] More specifically, the Applicant claims that in the context of Apple's Trade In Program, it charged and collected Goods and Services Tax (GST) and other sales taxes on the full amount of a new device, rather than on the net value. In doing so, the Applicant alleges that the putative class members have been paying undue taxes unlawfully, and that Apple made misleading representations and committed prohibited acts, by making the putative class members believe that the sales taxes charged and collected were owed.

[6] Apple seeks to adduce the following evidence:

a) The Terms and Conditions pertaining to Apple's Trade In Program, along with the step-by-step processes for submitting a device for trade-in on Apple's website and in store.[3]

b) Apple's webpage detailing its Trade In Program.[4]

c) The affidavit by Boun Prasith, Store Leader at the Apple store located on St-Catherine attesting to the accuracy of the Terms and Conditions and the webpage.[5]

d) The short affidavit by Terry Ryan, Senior Tax Director at Apple stating that the taxes collected on the purchase of a device in the context of the Trade In Program in Canada are remitted to the Canadian tax authorities.[6]

[7] The Applicant does not contest the filing of this evidence, but is asking the Court to cross-examine the two affiants pursuant to Article 105 *C.C.P.* His request to examine is also not contested by Apple.

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2 Application, par. 1.
3 Exhibit D-1.
4 Exhibit D-3.
5 Attorneys for Defendants filed this additional affidavit at the request of Applicant's attorney, while still maintaining that it was not necessary to adduce Exhibits D-1 and D-3 but did so to avoid a debate on this issue.
6 Exhibit D-4.

Apple's Request to Adduce Evidence

[8] Lets begin with Apple's request to adduce evidence.

[9] Even if such a request in uncontested, the Court must nevertheless analyse it in order to determine whether the evidence should be adduced.[7]

[10] In a recent decision, *Toledano* v. *Bank of Nova Scotia*, the Court outlines the criteria that need to be considered in order to determine whether the requested evidence should be adduced in accordance with article 574 *C.C.P.*:

> [11] Pour nos fins les conditions à remplir sont les suivantes :
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> • Une preuve n'est appropriée que si elle est pertinente et utile à la vérification des critères de l'article 575 *C.p.c.* Le consentement de la partie demanderesse à une preuve suggérée par la défense ne suffit pas à en autoriser le dépôt;
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> • La preuve documentaire proposée doit respecter les principes de la conduite raisonnable et de la proportionnalité posés aux articles 18 et 19 *C.p.c.;*
>
> • La vérification de la véracité des allégations de la demande relève du fond. Une partie défenderesse ne peut mettre en preuve des éléments qui relèvent de la nature d'un moyen de défense au mérite. Si le juge de l'autorisation est devant des faits contradictoires, il doit faire prévaloir le principe général qui est de tenir pour avérés ceux de la demande d'autorisation, sauf s'ils apparaissent invraisemblables ou manifestement inexacts;
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> • À ce stade, la finalité de la demande se limite au seuil fixé par la Cour suprême du Canada, soit la démonstration d'une cause défendable. Le tribunal doit se garder d'autoriser une preuve qui inclut davantage que ce qui est strictement nécessaire pour atteindre ce seuil;
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> • Il doit être démontré que la preuve demandée est appropriée et pertinente dans les circonstances spécifiques et les faits propres du dossier, notamment en regard des allégations et du contenu de la demande d'autorisation;
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> • La preuve permet de comprendre la nature des opérations de la partie défenderesse;
>
> • La preuve permet de compléter, corriger ou contredire les allégations de la demande d'autorisation lorsqu'elle permet au tribunal d'avoir une meilleure compréhension du contexte factuel de la demande; ou

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7 *Ward* v. *Procureur général du Canada*, 2021 QCCS 109, par. 17.

- La preuve établit quelles sont les relations contractuelles entre les parties.[8]

[11] In this case, the Court finds that the evidence meets the required criteria for the following reasons:

11.1. The Terms and Conditions allow the Court to understand the relevant rules governing the relationship between the customers and Apple in the course of a Trade In and addresses the issue of transfer of ownership of the device, a central component of the proposed Class Action.

11.2. Apple's website detailing the Trade In Program completes the factual portrait presented by the Applicant and may assist the Court in assessing the allegations regarding misrepresentations.

11.3. Consequently, Boun Prasith's affidavit which attests to the accuracy of these two documents should also be permitted.[9]

11.4. Finally, Terry Ryan's affidavit stating that the collected taxes are remitted to the tax authorities is appropriate and relevant given that Apple intends to contest this Court's jurisdiction over the proposed Class Action on this basis. More specifically, Apple will argue that the Superior Court does not have jurisdiction to hear the proposed class action for the reimbursement of taxes paid to tax authorities since this matter falls exclusively within the jurisdiction of the Tax Court of Canada or the Court of Québec.[10]

[12] The Court specifies that this judgment in no way determines the relative weight or usefulness of the information contained in the authorized documents or affidavits in the analysis of the authorization criteria.

Applicant's Request to Examine Affiants

[13] Turning now to the Applicant's request to cross-examine the two affiants.

[14] In *Toledano* c. *Bank of Nova Scotia*, the Court notes that several cases have found that the Applicant does not have a strict right to proceed with such an examination under article 105 (3) *C.P.P.*[11] when an affidavit is filed.[12]

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[8] *Toledano* v. *Bank of Nova Scotia*, 2025 QCCS 3201, par. 11 (leave to appeal denied, 2025 QCCA 1291).

[9] Since Apple chose to ultimately file this affidavit, the Court is not pronouncing itself on whether such an affidavit was indeed required.

[10] Defendants' Plan of Arguments, par. 44-54.

[11] 105 (3) *C.P.P.*: The person who swore the oath may be examined on the facts whose truth the person attested to; similarly, the affiant may be examined on the facts mentioned in the affidavit if the pleading, attestation or affidavit is deemed by law to be sworn. If the person refuses to submit to such an examination without valid cause, the pleading or affidavit is rejected.

[12] *Toledano* v. *Bank of Nova Scotia*, 2025 QCCS 3201, par. 15-18 (leave to appeal denied, 2025 QCCA 1291).

[15] Rather, in accordance with Article 158 (3) *C.P.P.*[13], the Court can set certain limits to said examinations.[14] This is all the truer in the context of class actions at the authorization stage, where when faced with requests seeking to examine a party, the Court must ensure that the adduced evidence is limited to what is strictly necessary to analyze the authorisation criteria outlined at Article 575 *C.P.P.*

[16] In its decision refusing leave to appeal, Justice Stephen W. Hamilton states that if there is conflicting case law on this issue[15], this was not the appropriate case to resolve it, if need be.[16]

[17] In our case, the Court finds that the oral examinations of the two affiants should be allowed but will limit their duration.

[18] Regarding Boun Prasith, since he is attesting to the accuracy of the Terms and Conditions and the website detailing the Trade In Program, the Court will allow a one-hour examination. As for Terry Ryan, given that his affidavit essentially contains one substantive paragraph which simply confirms that the collected taxes are remitted to the tax authorities, the allotted duration will be 30 minutes.

[19] The examinations will have to take place at the latest by December 19, 2025.

[20] Lastly, the parties must file a case protocol at the latest by December 2, 2025, outlining the final steps towards authorization, which will include Apple's Application for Declinatory Exception.

[21] The steps should include the specific dates of the examinations, the timing of the filing of the declinatory exception by Apple and the anticipated dates for the filing of the parties' plans of arguments.

FOR THESE REASONS, THE COURT:

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[13] 158(3) *C.P.P.*: For case management purposes, at any stage of a proceeding, the court may decide, on its own initiative or on request, to:
3° determine terms for the conduct of pre-trial examinations, if such examinations are required, including their number and their length when it appears necessary to exceed the time prescribed by this Code.

[14] *Toledano* v. *Bank of Nova Scotia*, 2025 QCCS 3201, par. 19 (leave to appeal denied, 2025 QCCA 1291).

[15] The attorney for the Applicant submitted the following cases dealing with this issue in a class action context and which state that the right to examine under article 105 (3) *C.P.P.* is a strict right: *Hand* v. *Denso International America Inc.*, 2021 QCCS 1671, par. 49; *Patterson* v. *Ticketmaster Canada Holdings*, 2021 QCCS 4604, par. 49; *Estrade* v. *Wal-Mart Canada Corp.*, 2025 QCCS 3011, par. 19. However, in these cases, just as is the case here, the issue does not appear to have been debated and in all three instances, the Court nevertheless intervened to set boundaries for the authorized examinations.

[16] *Toledano* v. *Bank of Nova Scotia*, 2025 QCCA 1291, par. 12.

[22] **GRANTS** the Application for Authorization to Adduce Evidence dated September 19, 2025;

[23] **AUTHORIZES** the filing of:

23.1. The Terms and Conditions pertaining to Apple's Trade In Program, along with the step-by-step processes for submitting a device for trade-in on Apple's website and in store (Exhibit D-1);

23.2. Apple's webpage detailing its Trade In Program (Exhibit D-3);

23.3. The affidavit by Boun Prasith, dated October 30, 2025;

23.4. The affidavit by Terry Ryan dated August 15, 2025 (Exhibit D-4);

[24] **AUTHORIZES** the examination of Boun Prasith for a maximum duration of one hour, which must be held at the latest by **December 19, 2025**;

[25] **AUTHORIZES** the examination of Terry Ryan for a maximum duration of 30 minutes, which must be held at the latest by **December 19, 2025**;

[26] **ASKS** the parties to file a case protocol outlining all steps for the authorization hearing, which will include Defendants' Application for Declinatory Exception, at the latest by **December 2, 2025**;

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

ELENI YIANNAKIS, J.C.S.

Me David Assor
Lex Group Inc.
Plaintiff's lawyer

Me Emmanuelle Poupart
Me Catherine Julie Martin
Me Shawn Foster
McCarthy Tétrault
Defendants' lawyers

Judgement rendered on the basis of written exchanges with the parties, in accordance with article 115 of the *Directives de la Cour supérieure de la Division de Montréal.*