

SUPERIOR COURT

(Class Action Chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-001352-257

DATE: November 26, 2025

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

ILANA KRIEF

Plaintiff

v.

APPLE CANADA INC.

and

APPLE, INC.

Defendants

JUDGMENT ON MOTION TO ADDUCE RELEVANT EVIDENCE

OVERVIEW

[1] Plaintiff, Ilana Krief, wishes to file a national class action on behalf of “all persons in Canada who purchased, owned, used or possessed an Apple Siri Device, and members of their households, whose conversations were obtained by Apple and/or were shared with third parties without their consent from at least as early as October 12, 2011, to the present” (collectively the “**Class**” and individually the “**Class Members**”).

[2] Plaintiff alleges that individuals who have purchased or used Siri Devices and interacted with Siri have not consented to Apple recording or disclosing conversations where ‘Hey, Siri’ has not been uttered and no button on the device has been pressed.

[3] Defendants Apple Canada Inc. and Apple, Inc. (collectively “**Apple**”) seek leave to adduce relevant evidence in support of their submission that the Amended Application for Authorization fails to meet the criteria set out in Article 575 of the *Code of Civil Procedure* (“**C.C.P.**”).

ANALYSIS

1. Is the Evidence that Apple Wishes to File Useful and Essential to Assess whether the Authorization Criteria Are Met?

A. Applicable Law

[4] A class action is a proceeding in which one person, the representative, can sue on behalf of all members of a class who have a similar claim. Since the class representative is not specifically mandated to act on behalf of the members, prior authorization of the court is required before a class action can be commenced.¹

[5] The role of the court at the authorization stage has been described as “screening”. It must weed out frivolous cases that clearly do not meet the requirements for authorization of a class action (article 575 C.C.P.). The merits of the case must be considered only after the action has been authorized.²

[6] Article 574 C.C.P. provides that an application for authorization to institute a class action must set out: (i) the facts on which it is based; (ii) the nature of the action; and (iii) the group on whose behalf the person intends to act. It adds that the application for authorization is contested orally and that “the court may allow relevant evidence to be submitted”.

[7] The principles that must guide the court when considering an application to file relevant evidence at the authorization stage of a class action are well known. These principles may be summarized as follows:

- 7.1. The filing of appropriate evidence requires prior leave of the court. An agreement between the parties on this issue does not bind the court.³
- 7.2. In determining whether to allow the filing, the court must strike the right balance between rigidity and permissiveness. The summary nature of the authorization process requires such caution.⁴
- 7.3. The proposed evidence must be limited and proportionate to what is essential and indispensable to assess the criteria for authorization set out in article 575 C.C.P.⁵ The Court must be mindful of the principles of

¹ *L’Oratoire Saint-Joseph du Mont-Royal c. J.J.*, 2019 SCC 35, para. 6.

² *Desjardins Cabinet de services financiers inc. c. Asselin*, 2020 SCC 30, para. 55; *L’Oratoire Saint-Joseph du Mont-Royal c. J.J.*, *supra*, note 1, para. 7; *Infineon Technologies AG c. Option consommateurs*, 2013 SCC 59, paras. 59, 61, 65 and 68.

³ *Allstate du Canada, compagnie d’assurances c. Agostino*, 2012 QCCA 678, paras. 25 and 27; *Ward c. Procureur général du Canada*, 2021 QCCS 109, para. 17.

⁴ *Allstate du Canada, compagnie d’assurances c. Agostino*, *supra*, note 3, para. 35.

⁵ *Lambert (Gestion Peggy) c. Écolait ltée*, 2016 QCCA 659, para. 38; *Allstate du Canada, compagnie d’assurances c. Agostino*, *supra*, note 3, para. 35, quoting with approval justice Clément Gascon (then at the Superior Court) in *Option Consommateurs c. Banque Amex du Canada*, 2006 QCCS 6290, para. 20.

proportionality and reasonable conduct of proceedings set out in articles 18 and 19 C.C.P.⁶

- 7.4. The court must be careful not to transform the authorization phase into a pre-trial hearing. At the authorization stage, the allegations in the motion should be presumed true without the need to testing their veracity. The court should limit itself to analyzing the proposed legal syllogism and avoid assuming the role of ultimate trier of facts.⁷
- 7.5. On the other hand, when faced with a request for the filing of relevant evidence, the Court should avoid passing judgment on the quality of the arguments that the defendants may wish to make. Its role is simply to decide whether they are entitled to have the information required to present these arguments.⁸
- 7.6. Where evidence consists of sworn statements, these should attest to neutral and objective facts, as opposed to controversial or contentious issues that are best left for evidentiary assessment on the merits of the case. Evidence that may be challenged with regard to its truthfulness, scope or probative value should not be filed or considered at the authorization stage.⁹
- 7.7. The burden of demonstrating the utility and necessity of the evidence rests with the party seeking leave to file this evidence.¹⁰

[8] Applying these principles, courts have generally allowed the filing of evidence consisting of:

- 8.1. Contracts relevant to the members' claim;¹¹

⁶ *Ward c. Procureur général du Canada*, *supra*, note 3, para. 17; *Option Consommateurs c. Samsung Electronics Canada inc.*, 2017 QCCS 1751, para. 11; *Kramar c. Johnson & Johnson*, 2016 QCCS 5296, paras. 22 and 25.

⁷ *Desjardins Cabinet de services financiers inc. c. Asselin*, *supra*, note 2, paras. 9 and 74; *Infineon Technologies AG c. Option consommateurs*, *supra*, note 2, paras. 67 and 68; *Godin c. Aréna des Canadiens inc.*, 2020 QCCA 1291 (Motion for approval of settlement agreement granted, 2022 QCCS 2110); *Ward c. Procureur général du Canada*, *supra*, note 3, para. 17.

⁸ *Marcho c. Ticketmaster Canada*, 2024 QCCS 2486, para. 18; *Option Consommateurs c. Banque Laurentienne du Canada*, 2015 QCCS 2794, para. 23; *Piro c. Novopharm Ltd.*, J.E. 2004-1251 (C.S.), paras. 35 and 51 (Motion for leave to appeal continued *sine die* (C.A., 2004-06-16) 500-09-014618-045).

⁹ *Association pour la protection automobile (APA) c. Banque de Montréal*, 2021 QCCA 676, paras. 62 and 67; *Durand c. Subway Franchise Systems of Canada*, 2020 QCCA 1647, paras. 51 to 54 (Application for Permission to Withdraw an Application for Authorization to Institute a Class Action granted, 2023 QCCS 1795); *Lambert (Gestion Peggy) c. Écolait ltée*, *supra*, note 5, para. 37.

¹⁰ *Allstate du Canada, compagnie d'assurances c. Agostino*, *supra*, note 3, para. 35, quoting with approval justice Clément Gascon (then at the Superior Court) in *Option Consommateurs c. Banque Amex du Canada*, *supra*, note 5, para. 20.

¹¹ *Benabou c. StockX*, 2020 QCCS 418, para. 10; *Morier c. Ouellet Canada inc.*, 2019 QCCS 5159, para. 23; *Société AGIL OBNL c. Bell Canada*, 2019 QCCS 4432, para. 9; *Charbonneau c. Location Claireview*, 2019 QCCS 4196, para. 58 (Leave to appeal denied, 2019 QCCA 2056); *Gagné c. Rail World*, 2014 QCCS 32, paras. 77, 136 and 137.

- 8.2. The nature of a defendant's business and the regulatory environment in which it operates;¹²
- 8.3. Evidence that supplements an incomplete or incorrectly identified document;¹³
- 8.4. Evidence that demonstrates, on its face, the obvious falsity of certain allegations;¹⁴
- 8.5. Evidence that demonstrates the lack of jurisdiction of the Superior Court when such lack of jurisdiction is raised.¹⁵

B. Discussion

[9] Each of the exhibits that Apple wishes to file must be assessed independently.

- i) A public statement by Apple entitled "Improving Siri's privacy protections" issued on August 28, 2019 (Exhibit R-1)

[10] The English version of the statement is filed by Plaintiff as Exhibit P-16.

[11] Apple wishes to file a version that includes the French version.

[12] Therefore, the document completes an exhibit already in the record.

[13] It is also relevant to Plaintiff's allegations regarding Apple's "representations", "assurances" and/or "promises".

- ii) "Ask Siri, Dictation & Privacy" and "Siri, Dictation & Privacy" (Exhibits R-2 to R-6.1)

[14] Exhibit's R-2 to R-6.1 consist of various versions of two distinct policies, in force during the proposed class period, that reflect Apple's collection, storage, and potential review of users' interactions with Siri:

- 14.1. the policy outlining Siri's default behaviour, applicable to Siri users who do not opt in to Improve Siri and Dictation (the "**Siri, Dictation & Privacy Policy**"); and

¹² *Morier c. Ouellet Canada inc.*, *supra*, note 11, para. 22; *Labranche c. Énergie éolienne des Moulins, s.e.c.*, 2015 QCCS 918, paras. 48 and 52.

¹³ *Gagnon c. Intervet Canada Corp.*, 2019 QCCS 4651, para. 36 (Motion for leave to appeal dismissed, 2020 QCCA 248); *Seigneur c. Netflix International*, 2018 QCCS 1275, para. 29.

¹⁴ *Smith c. Ville de Montréal*, 2025 QCCS 3234, para. 16; *De Auburn c. Desjardins assurances générales inc.*, 2021 QCCS 959, paras. 11 and 12; *Benabou c. StockX*, *supra*, note 11, para. 9; *Gagnon c. Intervet Canada Corp.*, *supra*, note 13, para. 35; *Charbonneau c. Location Claireview*, *supra*, note 11, para. 53.

¹⁵ *Marcho c. Ticketmaster Canada*, *supra*, note 8, para. 17; *Elgadi c. WhatsApp*, 2023 QCCS 3181, paras. 10 and 11; *Gagnon c. Intervet Canada Corp.*, *supra*, note 13, para. 37; *Regroupement des cols bleus retraités et pré-retraités de Montréal c. Ville de Montréal*, 2018 QCCS 808, para. 14.

- 14.2. the Siri policy applicable to users who opt in to help develop and improve Siri by allowing Apple to store and have employees review a sample of audio interactions with Siri (the “**Improve Siri and Dictation & Privacy Policy**”).

[15] These publicly available policies set out the type of data collected, stored, and potentially reviewed by Apple, the privacy protections in place for that data, and the choices and control available to users.

[16] Such policies or terms and conditions have been authorized as relevant evidence in other cases.¹⁶

[17] The fact that Plaintiff’s Exhibit P-16 (the Apple Statement dated August 28, 2019) contains a link to the current “Siri, Dictation & Privacy” webpage, confirms the relevance of the policies to assess Plaintiff’s claims.

[18] Plaintiff contests the filing of Exhibits R-4.1 and R-6.1 because they were drafted and posted after the filing of the original authorization motion on January 3, 2025.

[19] As the class period that Plaintiff proposes is open-ended, documents created or made available after the filing of the authorization motion remain relevant.

iii) Apple’s public statement entitled “Our longstanding privacy commitment with Siri” (Exhibit R-7)

[20] These statements are rather recent.

[21] The English version of Exhibit R-7 was issued on January 9, 2025, and the French version was issued on January 8, 2025.

[22] This being said, as stated, Plaintiff has asked for an open-ended class period. As such, the public statement is relevant to the issues to be assessed at the authorization hearing.

iv) Privacy Policies (Exhibits R-8, R-9, R-10 and R-11.1)

[23] Exhibits R-8, R-9, R-10 and R-11.1 consist of representative samples of Apple’s privacy policies (the “**Privacy Policies**”) over the proposed class period.

[24] The Privacy Policies describe how Apple collects, uses, and shares personal data, which are issues at the heart of Plaintiff’s allegations.

[25] Plaintiff filed Apple’s privacy policy as of January 31, 2025, as Exhibit P-14. This supports the fact that the Privacy Policies are relevant.

¹⁶ *Elgadi c. WhatsApp*, *supra*, note 15, paras. 19 to 21; *Option Consommateurs c. Home Depot of Canada Inc.*, 2023 QCCS 3493, para. 19; *Mihoubi c. Priceline.com inc.*, 2021 QCCS 2943, paras 16 to 19; *Bergeron Duchesne c. Ville de Québec*, 2019 QCCS 4913, para. 40 (point 6).

[26] The opposition to the filing of R-11.1 because it postdates the filing of the authorization motion is dismissed for the reasons stated above.

v) Copy of Apple Canada Inc.'s statement of information from Quebec's Enterprise Register (Exhibit R-12)

[27] Apple Canada Inc. seeks to adduce information from the Quebec Enterprise Register to show that it is not domiciled in Quebec. It alleges that the information is relevant to a decision on the scope of the proposed class, including whether it is appropriate to include class members from outside Quebec.

[28] Evidence useful to demonstrate the lack of jurisdiction of the Quebec Superior Court is admissible as relevant evidence¹⁷.

[29] Plaintiff does not contest the filing of Exhibit R-12.

vi) Apple's webpage entitled "Family Privacy Disclosure for Children" (Exhibit R-13)

[30] In its Amended Application for Authorization, Plaintiff alleges that Apple purportedly captured and retained recordings from children, which Plaintiff claims violates "child privacy laws" (paras. 23, 40.2, 40.15, 42 and 61(b)).

[31] One of the common questions Plaintiff proposes is "whether Siri Devices record the conversations of minors who interact with them" (para. 61(b)).

[32] Apple wishes to file Exhibit R-13, which outlines further privacy parameters in place for child accounts, including disclosures on the use and sharing of information (the **"Family Privacy Disclosure Page"**).

[33] Plaintiff's Exhibit P-14 also includes a link to this webpage.

vii) Affidavit of Kirsten Nothstine (Exhibit R-14)

[34] The proposed sworn statement of Kirsten Nothstine, Privacy Program Manager at Apple Inc. is only meant to introduce the above exhibits into evidence.

[35] It simply indicates where some of the documents can be found and, in some cases, the date on which they became available.

[36] It relates to neutral and objective facts.

[37] The sworn statement was included in part because Plaintiff took the position that such a statement was required to file Apple's proposed exhibits.

¹⁷ See authorities listed in note 15 above.

[38] In his written submissions filed on the eve of the hearing, Plaintiff's counsel submitted that he has a strict right to cross-examine on any sworn statement authorized as relevant evidence and that this examination can bear on all facts relevant to the matter.

[39] The Court of Appeal has specifically refused to endorse such an interpretation. Rather, it concluded that the third paragraph of article 158 C.C.P. allows the court, as a case management measure, to determine whether examinations are warranted and, if so, under what conditions.¹⁸

[40] This principle has been followed since, including in the context of a cross-examination on the contents of a sworn statement authorized as relevant evidence under 574 C.C.P.¹⁹

[41] As such, the Court asked Plaintiff's counsel to identify the subjects he intended to cover in the proposed cross-examination.

[42] Counsel stated that the public statements (Exhibit R-1 and Exhibit R-7 (together the "**Statements**"), the policies (Exhibits R-2 to R-6.1, R-8, R-9, R-10 and R-11.1 (together the "**Policies**") and the Family Privacy Disclosure Page (Exhibit R-13), in and of themselves, are incomplete as the sworn statement of Ms. Nothstine does not, in some cases, specify:

- 42.1. the exact period for which each of the Statements, Policies and Family Privacy Disclosure Page were available to potential Class Members;
- 42.2. how the Statement, Policies and Family Privacy Disclosure Page were sent to or made available to Class Members;
- 42.3. whether Class Members consented or not to the Statements, Policies or Family Privacy Disclosure Page in question.

[43] He also noted that the Policies consist of a sample and that, as such, there are periods within the proposed class period for which there is no evidence of the relevant policy in place. Apple agrees that the Policies consist in a sample and that the whole period is not covered. It submits that the Policies are filed to support a prescription arguments and to counter Plaintiff's argument on absence of knowledge.

[44] When asked if there was anything else that he wished to examine on and being advised that the Court was ready to entertain a written examination on certain subjects, Plaintiff's counsel decided to withdraw his request to proceed with an examination.

[45] The Court proposed to authorize a written examination on the subjects that he had identified, leaving it to Plaintiff's counsel to decide if he wished to exercise this right.

¹⁸ *Lussier c. Luft*, 2017 QCCA 1392, para. 8.

¹⁹ *Toledano c. Bank of Nova Scotia*, 2025 QCCS 3201, para. 16 (Leave to Appeal denied, 2025 QCCA 1291); *Normandin c. La Source (Bell) Électronique inc.*, 2024 QCCS 5115, paras. 24 and 25.

[46] Plaintiff's counsel refused.

[47] This being said, the Court agrees with Plaintiff's counsel that the Statements, Policies and Family Privacy Disclosure Page are only relevant if the Court can ascertain when and how they were made available or communicated and whether the Class Members consented to same.

[48] Thus authorization to file these exhibits will be conditional on the sworn statement being amended to add the particulars identified by Plaintiff's counsel.

FOR THESE REASONS, THE COURT:

[49] **AUTHORIZES** the Defendants to file Exhibits R-1 to R-14. However for Exhibits R-1, R-2 to R-6.1, R-7, R-8, R-9, R-10, R-11.1 and R-13, conditional upon the sworn statement of Ms. Kirsten Nothstine (Exhibit R-14) being amended to specify, for each of these Exhibits:

- 49.1. the exact period for which they were available to potential Class Members;
- 49.2. how the Exhibits were sent to or made available to Class Members;
- 49.3. whether Class Members had the opportunity to consent or not to the Exhibits in question;

[50] **PRAYS ACT** of Plaintiff's counsel's withdrawal of his request to cross-examine Ms. Kirsten Nothstine;

[51] **THE WHOLE**, with costs to follow suit.

MARTIN F. SHEEHAN, J.S.C.

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