SUPERIOR COURT
(Class Actions Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°: 500-06-000583-118

DATE : March 19, 2013

PRESIDING : THE HONOURABLE MARK SCHRAGER, J.S.C.

Michael Blackette
Petitioner
vs

Research in Motion Limited
Respondent

JUDGMENT

JS 1319

INTRODUCTION

[1] Petitioner Blackette seeks authorization to institute a class action against Respondent, Research in Motion Limited ("RIM").

FACTS

[2] RIM is the manufacturer of the BlackBerry smartphone device which combines a cellular phone with the capability to send and receive electronic data in the form of e-mails and messages on the BlackBerry Messenger service ("BBM") and to access the internet.

[3] The BlackBerry smartphone is not sold by RIM directly to the consuming public but rather through internet/telephone carriers such as, in the case of Petitioner, Rogers.

[4] Petitioner Blackette is the owner of a BlackBerry smartphone and a customer of Rogers who maintains an account to provide him with the aforementioned electronic data as well a cellular telephone service. Blackette alleges that the data portion of the monthly fee he pays to Rogers is $25.00, though this amount does not appear clearly from the Rogers' invoices produced in the Court record.

[5] Data messages are routed through RIM's Network Operations Center. According to press releases issued by RIM, interruptions in the delivery of data commenced on October 10, 2011.

[6] On Tuesday, October 11, 2011, RIM issued the following press release:

> "Tuesday 11th October – 21:30 (GMT+1)
> The messaging and browsing delays that some of you are still experiencing were caused by a core switch failure within RIM's infrastructure. Although the system is designed to failover to a back-up switch, the failover did not function as previously tested. As a result, a large backlog of data was generated and we are now working to clear that backlog and restore normal service as quickly as possible. We sincerely apologize for the inconvenience caused to many of you and we will continue to keep your informed."

[7] On October 12, 2011, RIM confirmed that some customers were still experiencing "service problems" and that RIM was working "night and day to restore all BlackBerry services to normal levels".

[8] Through October 12, 2011, delays in the delivery of data messages continued to be experienced.

[9] In his petition, Blackette claims loss of service for 1.5 days during October 12 and 13, 2011. Through the evidence filed, it seems that some data was received by him during that period, but the transmission thereof was delayed. There remains some debate between Petitioner and RIM as to whether the ability

to send a BBM message after several attempts constitutes a total interruption or a delay of service. However, it is clear on the face of the record that the service provided to Canadian (including Québec) users of the BlackBerry system during October 12th and 13th was nothing akin to the level of service that customers usually receive on their BlackBerry devices as part of the data plan with their carriers or service providers.

[10] RIM offered free "apps" to its customers as a goodwill gesture following the foregoing situation. The offer was of no interest to Blackette. In any event, it is common ground between the parties that the offer was not an admission of liability by RIM and that an acceptance of any such apps was not a release by a potential member of the class of any liability that RIM may have.

[11] Petitioner originally sought to certify the class action such that the members would be all residents of Canada (or alternately Québec) who have a BlackBerry smartphone. Now, after amending and re-amending, Petitioner seeks authorization to issue a class action on behalf of the following:

> "all physical persons residing in Québec who had a BlackBerry Smartphone, paid for a monthly data plan, and had their e-mail, BlackBerry Messenger ("BBM"), and/or internet services interrupted during the period of October 11 to 14, 2011, or any other group to be determined by the Court."

[12] The change to "physical persons" is calculated to exclude persons who are not consumers within the definition of such term in the *Québec Consumer Protection Act* ("Q.C.P.A.") [1] for reasons that will become apparent herein below.

[13] The use of "physical persons" as opposed to "consumers" may be over inclusive and will be addressed by the undersigned later on in this judgment.

[14] At the first appearance, the parties were advised that, as a BlackBerry owner, the undersigned was a potential member of the class. The attorneys advised the Court that they renounced to any ground of recusation arising from these facts, and such renunciation was noted in the minutes of proceedings.

[15] In addition to the allegations of the Petitioner, and the exhibits filed therewith, the Court has relied upon the following evidence adduced in the record pursuant to permission granted by the undersigned pursuant to Article 1002 of the Code of Civil Procedure ("C.C.P."),:

1. Transcript of the examination of Petitioner;

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[1] R.S.Q., c. P-40.1

2. Affidavit of Andrew Bocking, a representative of RIM;

3. Transcript of the examination of Andrew Bocking by the Petitioner's attorney;

4. The following documents produced in conjunction with the afore-mentioned testimony :

   4.1 A copy of Petitioner's service agreement with Rogers;

   4.2 Rogers' invoices to Petitioner for October, November and December 2011;

   4.3 Copy of a list of potential class members (produced under seal) with dates that they communicated their interest in joining the class;

   4.4 BlackBerry Solution Licence Agreement;

   4.5 BlackBerry Prosumer Service Agreement.

RELEVANT STATUTORY PROVISIONS

[16] Articles 1002 and 1003 C.C.P. provides as follows:

"**1002.** A member cannot institute a class action except with the prior authorization of the court, obtained on a motion.

The motion states the facts giving rise thereto, indicates the nature of the recourses for which authorization is applied for, and describes the group on behalf of which the member intends to act. It is accompanied with a notice of at least 10 days of the date of presentation and is served on the person against whom the applicant intends to exercise the class action; the motion may only be contested orally and the judge may allow relevant evidence to be submitted.

1003. The court authorizes the bringing of the class action and ascribes the status of representative to the member it designates if of opinion that:

(a) the recourses of the members raise identical, similar or related questions of law or fact;

(b) the facts alleged seem to justify the conclusions sought;

(c) the composition of the group makes the application of article 59 or 67 difficult or impracticable; and

(d) the member to whom the court intends to ascribe the status of representative is in a position to represent the members adequately.

SUMMARY OF THE PARTIES' POSITIONS

[17] There is no contestation by RIM stemming from Article 1003(c) C.C.P.

[18] Part of the contestation by RIM with respect to the adequacy of Petitioner to represent the class (Article 1003(d) C.C.P.) regarding those members of the class who are not consumers became moot when, shortly before the hearing, Petitioner amended his Petition as indicated above to include "consumers" (or at least physical persons) only.

[19] RIM contests the authorization of the class action on the basis of Article 1003 C.C.P.:

(a) the commonality of the question of law;

(b) that the facts give rise to the conclusions sought; and

(d) the adequacy of Blackette as the class representative.

[20] As well, RIM argues that the Petition does not respect Article 1002 C.C.P. because :

20.1 It does not adequatly indicate the nature of the recourses sought;

20.2 No fault of RIM is alleged;

20.3 The allegations of the total interruption of service are contradicted by the evidence; and

20.4 The Petition is silent on the damages, if any, incurred by other potential members of the class who deal with carriers other than Rogers.

[21] The various elements of the authorization test and RIM's objections will be dealt with in detail herein below.

DISCUSSION

Requirements of Article 1002 C.C.P.

[22] RIM argues that Petitioner has not properly stated the facts giving rise to the proposed class action nor stated clearly the legal grounds of his action. RIM also questions the description of the class.

[23] Since the beginning, Petitioner's thesis has been simple. He paid $25.00 (to Rogers) for one month of data service on his BlackBerry smartphone, was deprived of 1.5 days of use, and he is thus owed a reimbursement of the mathematical equivalent of this 1.5 days of service or $1.25.

[24] At the inception, Petitioner considered his recourse against RIM to be founded in extra-contractual liability since Petitioner's contract for data service is with his service provider, or carrier, Rogers. This was noted in the judgment of the undersigned herein granting leave for the deposition of the Petitioner, on June 19, 2012.

[25] Through the Bocking affidavit and cross-examination, we now know that every purchaser of a BlackBerry smartphone accedes to a software licence agreement, the BlackBerry Solution Licence Agreement ("B.B.S.L.A."). There is an on-screen acceptance of an addendum and a reference to a Web address to the full text of the B.B.S.L.A. Mr. Blackette acknowledged during his examination that he pressed the "accept" button to indicate his consent to the terms and conditions of the B.B.S.L.A. It thus appears that the recourse of the Petitioner and the proposed group is based on contract. Despite the contract directly with RIM, the consumer pays his carrier (i.e. Rogers) who in turn, Mr. Bocking testified, pays a fee to RIM. The Petition, as drafted, proposes the institution of "an action in damages" against RIM (see paragraph 40) for the damages suffered as a "direct and proximate result of the Respondent's conduct and its failure to provide BlackBerry data services" (see paragraph 25).

[26] In the opinion of the undersigned, the foregoing is sufficient to " indicate the nature of the recourses for which authorization is applied" within the meanning of Article 1002 C.C.P. The law does not require a statement of the legal argument upon which Petititoner relies. As a general rule, a party is not required to allege the law in a motion to institute proceedings (Article 76 C.C.P.). Petitioner is not required *per se* to state that his recourse is founded in contract or in extra-contractual liability.

[27] This is in no way offensive to Article 1458 of the *Civil Code of Québec* ("C.C.Q.") which prohibits Petitioner relying on extra-contractual liability when he is bound by the B.B.S.L.A. Petitioner may have forgotten about the B.B.S.L.A. when the Petition was instituted, but now the B.B.S.L.A. is in the record. The drafting of the Petition, however, is broad enough to encompass the contractual recourse.

Article 1003(b) C.C.P. The facts alleged seem to justify the conclusions sought

[28] In a word, the Petitioner's allegations amount to a claim that he did not receive all of the services for which he had paid in advance in October 2011, and so he seeks reimbursement of the monetary equivalent of those services which were not delivered.

[29] Once the contract between the parties (the "B.B.S.L.A.") is considered, RIM argues that the requirement of Article 1003(b) C.C.P. is not met for the following reasons.

[30] Clause 19(b)(ii) of the B.B.S.L.A. provides as follows :

> "RIM does not warrant or provide an (sic) other similar assurance whatsoever that uninterrupted use or operation of any service, continued availability of any service, or that any messages, content or information sent by or to you will be accurate, transmitted in uncorrupted form or within a reasonable period of time."

[31] A similar provision is included in the addendum to the B.B.S.L.A. which appears on-screen, and is accepted by the consumer upon the purchase of the BlackBerry smartphone. Section 8 of the addendum reads as follows:

> "RIM cannot and does not guarantee that the BlackBerry Prosumer Services will be continuous, uninterrupted, timely, secure or error-free."

[32] Based on these clauses, RIM argues that its obligation is not one of result but one of means. In other words, RIM is not obligated to provide continuing, uninterrupted data services during any given month, but rather to take reasonable means in order to provide uninterrupted, continuing data services.

[33] RIM submits that it has done this and that its diligence appears on the face of the record. RIM adds that the Petitioner has not alleged the contrary. There is no positive act or omission alleged by way of fault in the petition. The RIM press releases, filed as exhibits by Petitioner, indicate that RIM had provided a backup system (which failed) and that its people were working "day and night" to correct

the problem. Therefore, RIM concludes that, on the face of the petition, no action lies against it.

[34] Petitioner rebuts by stating that clause 19(b)(ii) B.B.S.L.A. is one of several clauses under the heading "Disclaimer" or, in French, "Avis d'exclusion de responsabilité" or, "notice of limitation of liability".

[35] The actual syntax of the language used in Article 19(b)(ii) B.B.S.L.A. may not be disculpatory *per se* (or as RIM's counsel states, the language is only descriptive of the intensity of RIM's obligations). However, the positioning of the clause in the contract and the intention or effect of the language is to limit or exclude liability.

[36] Section 10 of the Q.C.P.A. [2] prohibits such exoneration clauses. Should there be any doubt in the interpretation of clause 19(b)(ii) in such regard, then we are bound to resolve such doubt in favor of the consumer (Section 17 Q.C.P.A.).

[37] However emphatically RIM pleads that this debate should be resolved at the authorization stage, the Court of Appeal has clearly stated that grounds of defence should not be decided until the hearing on the merits. [3]

[38] This argument based on the nature and the intensity of RIM's obligation to provide uninterrupted service is a defence. Petitioner need not rebut it and the Court should not rule upon it at this stage of the proceedings. The same could be said regarding any plea relating to the mitigation of the damage because other means of communication were available to Petitioner.

[39] Petitioner has alleged, or at least produced as part of the RIM press releases, the admission by RIM that "the problems were caused by a core switch failure within the company infrastructure". RIM further explained in its press releases that a transmission to a backup switch did not function properly and caused the backup of data and the interruption of service.

[40] In the opinion of the undersigned, the foregoing are sufficient allegations of fault. Petitioner need not provide specific allegations of engineering deficiencies, if any, at this stage. In order to succeed on the merits, Petitioner may be obliged to adduce more detailed evidence of what RIM did or did not do.

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[2] R.S.Q., c. P-40.1

[3] *Comtois vs. Telus*, 2010 QCCA 596, para. 42; *Carrier vs. Procureur général du Québec*, 2011 QCCA 1231, para.37; *Brown vs. B2B Trust*, 2012 QCCA 900, para. 40; see also *Union des consommateurs vs. Bell Canada*, 2012 QCCA 1287 and *Lafontaine vs. Vidéotron Ltée*, 2009 QCCS 3189.

At the present stage, the allegations of fault are sufficient to make out a *prima facie* case of liability.[4]

[41] RIM also argues that the allegations or calculation of damages by the Petitioner is deficient because the monthly fee of $25.00 is allegedly paid by the Petitioner to Rogers, but not to RIM. However, Mr. Bocking confirmed that RIM is paid a sum by Rogers per subscriber. Again, this may ultimately be a good ground of defence, on the merits, but it is premature to consider it at this, the authorization stage of the class action.

[42] Lastly, with regard to Article 1003(b) C.C.P., RIM pleads that the prejudice alleged is not quantifiable. More specifically, the evidence adduced demonstrates that the allegations in the Petition (paragraphs 12 and 21) to the effect that BlackBerry users, including Petitioner, "were unable to use e-mail and BBM" are inaccurate. The documents filed with the Bocking affidavit indicate that Petitioner did send and receive data on the dates in question though service was interrupted or slowed down. Incidentally, the RIM press releases do indeed refer to "service interruption".

[43] Accordingly, RIM argues that the Petitioner's quantification of his claim which is premised on a total loss of service during 1.5 days, cannot be sustained as it is incompatible with the actual facts appearing from the record. Moreover, RIM pleads that the service interruption or slowdown as opposed to complete shutdown was not sufficienlty serious so as to give rise to a prejudice that can be compensated in a Court of law. It is rather an inconvenience or disturbance, which is not susceptible of indemnification.[5] Not every delay gives rise to a damage claim.[6]

[44] Petitioner answers that the distinction between a delay in sending an e-mail and the total impossibility of sending it becomes blurred since after, for example three (3) unsuccessful attempts, a reasonable person simply gives up because he assumes that the e-mail function is not working properly. This appears compatible with the record in Petitioner's case. This also will be susceptible of proper evaluation after proof and hearing on the merits.

[45] Petitioner's attorney adds that the caselaw supporting RIM's argument (i.e. *Mazzonna vs. Daimler Chrysler Financial Services Canada Inc*.) and which refused authorization dealt with a situation where the damages claimed were for stress and anxiety.

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[4] *Fournier vs. Banque de Nouvelle-Écosse*, 2011 QCCA 1459, para. 30; *Brown vs. B2B Trust*, op.cit., para. 40.

[5] See *Mazzonna vs. DaimlerChrysler Financial Services Canada Inc*., 2012 QCCS 958.

[6] Le s*yndicat des cols bleus regroupés de Montréal (SCFP, section locale 301) vs. Coll*, 2009 QCCA 708.

[46] In the present case, however minimal the quantum of damage of Petitioner (and presumably that of other class members), the quantum is objectively quantifiable since it is based on a specific sum paid in advance for services not rendered. Moreover, the Petitioner adds that RIM's argument is an indirect introduction of proportionality as a fifth criteria for authorization under Article 100**3**(b) C.C.P. The Court of Appeal specifically rejected such an argument in *Apple Canada Inc. vs. St-Germain* [7] and reiterated this in *Brown vs. B2B Trust* [8]. Proportionality is a slippery slope to embark upon where the rationale of the class action recourse is to foster access to justice for claims which are small in proportion to the cost associated with litigating them.

[47] Whatever may be the merits of the *de minimus* on the merits, it is not a bar to authorization of the class action.

[48] It should be mentioned, at this time, that the B.B.S.L.A. also contains an arbitration clause which would exclude the jurisdiction of this Court to resolve the dispute between the Petitioner and RIM. However, Section 11.1 Q.C.P.A. prohibits such a clause. This is what instigated Petitioner to amend his petition and limit the class description to "physical persons", so as to include only consumers within the meaning of such term in the *Consumer Protection Act*. The use of the term "physical person" was inspired by the Court of Appeal in the judgment in the matter of *Telus Mobilité vs. Comtois* [9] where the drafting had the same purpose. It is however, in the respectful view of the undersigned, potentially over inclusive as individuals can be merchants and purchasers of BlackBerry smartphones for commercial purposes. The class should be restricted to the consumer which is defined in Section 2 Q.C.P.A. as "a natural person, except a merchant who obtains goods or services for the purposes of his business".

[49] The drafting of the class should be modified accordingly.

Article 1002(a) C.C.P. The recourses of the members raise identical, similar or related questions of law or fact

[50] Petitioner defines as members all physical persons residing in Québec who had a BlackBerry smartphone, paid for a monthly data plan and had their e-mail, BlackBerry and/or Internet services interrupted during the period October 11 to 14, 2011.

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[7] 2010 QCCA 1376, para. 55, 56, 57 and 58.
[8] op.cit., para. 65 and following.
[9] 2012 QCCA 170.

[51] Petitionner suggests that since all members paid for a month of data service on their BlackBerry smartphone and given the RIM network service interruption, the questions are certainly similar or related, if not identical, across the class.

[52] Initially, RIM's objection to the description of the class was focused on the inclusion of non-consumers. Since they are bound by the arbitration clause in the B.B.S.L.A, the class action would not lie against them. The Petitioner's amendment to the class description has obviated that discussion.

[53] However, RIM also formulates an argument based on the evidence that BlackBerry service was interrupted, but never completely shutdown on the dates in question and thus the members of the class, including Mr. Blackette, were not unable to access e-mail, etc. Again, this grey zone between delay and total network shutdown, as well as the linguistic analysis of what constitutes "interruption" and "inability" may be a question for the merits; these arguments however do not negate that the proposed class shares a common question.

[54] The Court of Appeal has stated that what is required for authorization is a common question which is not insignificant to the outcome of the action. [10] Once answered, the question must settle a significant part of the litigious issue or question.[11]

[55] Nuances of experience such as the degree of interruption of service amongst members of the group are not an impediment to authorization.[12] That the precise damages suffered differ amongst members of the class is not a bar to authorization.[13] It is conceivable that members who are serviced by carriers other than Rogers may have been compensated *albeit* that there are Bell customers amongst the list of some 400 persons who have contacted Petitioner. Even if, for example, Bell customers should not form part of the class, the description can be easily modified later if the proof warrants it.

[56] Accordingly, in the present case, the fact that members of the class may have experienced more or less service interruption than Mr. Blackette or may have been treated differently by their carrier company does not invalidate the description of the group.

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[10] *Collectif de défense des droits de la Montérégie vs. Centre hospitalier du Suroît du C.S.S.S. du Suroît*, 2011 QCCA 826, para. 22, 23; *Carrier vs. Procureur général du Québec,*op.cit., para. 74.

[11] *Western Canadian Shopping Centers vs. Dutton*, [2001] S.C.R. 534, para. 27, 28 and 29.

[12] *Carrier vs. Procureur général du Québec*, op.cit., para. 73.

[13] *Picard vs. Air Canada*, 2011 QCCS 5186, para. 95; *Vermette vs. General Motors du Canada Ltd.*, 2008 QCCA 1793, para. 58-64.

[57] The description is drafted on the basis of objective criteria (payment for a plan), is rational (seeks reimbursement or damages linked to a payment), and is sufficiently precise (the member must have had a BlackBerry smartphone linked via a plan and have been "unable" to use it on given dates). The description is thus in conformity with the criteria set down in the caselaw.[14]

[58] The use of the dates October 11 to 14 while Mr. Blackette's service interruptions were from October 12 to 13 is desirable to ensure that no potential members are exluded.

[59] Adjustments to the drafting of the group descriptions can be made by the judge at a later stage of proceedings, if warranted.[15]

[60] Two relatively recent and similar authorization judgments merit particular mention. In both *Boyer vs. Agence Métropolitaine de transport (AMT)*[16] and *Ladouceur vs. Société de transport de Montréal*[17], holders of mass transit passes who did not allegedly receive the full service paid for in advance were granted permission to institute a class action. In *Boyer*, our colleague Mr. Justice André Prévost, decided at paragraph 61 that it remains to be determined on the merits what type of delay in transport would engender liability. In *Ladouceur*, our colleague Mr. Justice Louis-Paul Cullen noted that potential members had paid under different tariffs for passes of different durations. In neither case were these potential differences considered a bar to authorization since the common question remained, i.e. users had not received what they paid for from the service provider. This is essentially the thesis of the Petitioner in the case at bar.

Article 1003(c) C.C.P. The composition of the group makes the application of Articles 59 or 67 C.C.P. difficult or impracticable

[61] On the face of the record, and specifically paragraphs 32 to 35 of the Petition, this criteria is satisfied. RIM has not contested on this front.

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[14] *Western Canadian Shopping Centers vs. Dutton*, op.cit.
[15] *Aberback-Ptack vs. Amex Bank of Canada*, 2006 QCCS 1425, para. 24.
[16] 2010 QCCS 4079.
[17] 2010 QCCS 1859

Article 1003(d) C.C.P. The member to whom the Court intends to ascribe the status of representative is in a position to represent the members adequately

[62] It is common ground between the parties that this criteria is not overly difficult to satisfy. The representative must have the interest to pursue the action, the competence to do so, and the absence of any conflict.[18]

[63] RIM objects to Mr. Blackette's ability to act as representative of the members because Mr. Blackette forgot about the B.B.S.L.A. and did not allege it in the Petition. RIM also objects on the grounds raised hereinabove that the allegations of the Petition are lacking in essential elements.

[64] The objection based on the ability to represent non-consumers became obviated by the amendment of the groups' description to include consumers only.

[65] The Court has addressed the drafting of the allegations in the Petition in other parts of this judgment, and has found same to be adequate. Accordingly, this objection to Mr. Blackette as a group representative, cannot stand.

[66] As for not identifying and alledging the B.B.S.L.A. from the outset, in *Martin vs. Société Telus Communications Inc.*[19], the Petitioner only filed her Telus contract at the last minute before the authorization hearing. This was not seen as an impediment to acting as a group representative, by the Court of Appeal. The situation in the present case is somewhat analogous. A consumer could easily, in the undersigned's opinion, forget the contract which he saw briefly in a store on screen when the BlackBerry Smartphone was activated. When the issue was raised during the examination, Mr. Blackette never denied that he did press the accept button, and as such was bound by the B.B.S.L.A.

[67] Moreover, Mr. Blackette took the initiative to complain to Rogers and then to RIM, and to identify and engage counsel experienced in the practice area. He is clearly a member of the group. He has been examined under oath and he has given effect to undertakings. He was present at the hearing on the present Petition, and it appears from his answers in the transcript that he understands the process. As well, Mr. Blackette with the assistance of counsel, has identified approximately 400 potential members of the group.

[68] The foregoing is sufficient to demonstrate the interest and the competence to act as a representative of the members. As well, there is no conflict apparent on the face of the record.

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[18] *Bouchard c. Agropur*, 2006 QCCA 1342, para. 74 et following.
[19] 2010 QCCA 2376, para. 41.

[69] Consequently, Mr. Blackette is in a position to adequately represent the members of the proposed group.

SUMMARY

[70] Given the satisfaction of the prerequisites and that none of the objections raised by RIM are fatal to the authorization, the judgment will issue authorizing the class action herein.

[71] As explained above, because only consumers should form members of the class, the description suggested will be modified so as to read :

> "all persons who are consumers (as defined in the *Québec Consumer Protection Act*) […] "
>
> instead of :
>
> "all physical persons […]"

CONCLUSIONS

FOR ALL OF THE ABOVE REASONS, THE COURT:

[72] **GRANTS** the Petitioner's Re-Amended Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative (Article 1002 C.C.P. and following);

[73] **AUTHORIZES** the bringing of a class action in the form of a motion to institute proceedings in damages;

[74] **ASCRIBES** the Petitioner the status of representative of the persons included in the class herein described as:

> All persons who are consumers (as defined in the *Québec Consumer Protection Act*) residing in Québec who had a BlackBerry smartphone, paid for a monthly data plan, and had their e-mail, BlackBerry Messenger ("BBM"), and/or internet services interrupted during the period of October 11 to 14, 2011;"

[75] **IDENTIFIES** the principle questions of fact and law to be treated collectively as the following :

75.1 Did the Respondent fail to provide BlackBerry users with adequate e-mail, BlackBerry Messenger Service ("BBM"), and/or internet services during the period of October 11 to 14, 2011?

75.2 Is the Respondent liable to the class members for reimbursement of the prorated amount of their monthly data plans for the time period that they were deprived of proper services?

[76] **IDENTIFIES** the conclusions sought by the class action to be instituted as being the following:

76.1 **GRANT** the class action of the Petitioner and each of the members of the class;

76.2 **DECLARE** the Defendant liable for the damages suffered by the Petitioner and each of the members of the class;

76.3 **CONDEMN** the Defendant to pay to each member of the class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

76.4 **CONDEMN** the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

76.5 **ORDER** the Defendant to deposit in the office of this Court, the totality of the sums which forms part of the collective recovery, with interest and costs;

76.6 **ORDER** that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

76.7 **CONDEMN** the Defendant to bear the costs of the present action including expert and notice fees;

76.8 **RENDER** any other order that this honourable Court shall determine that is in the interest of the members of the class;

[77] **DECLARES** that all members of the class that have not requested their exclusion, be bound by any judgment ot be rendered on the class action to be instituted in the manner provided for by law;

[78] **FIXES** the delay of exclusion of thirty (30) days from the date of the publication of the notice to the members, upon which date the members of the class who have not requested their exclusion will be bound by any judgment to be rendered herein;

[79] **ORDERS** the publication of a notice to the members of the group in accordance with Article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE and the NATIONAL POST;

[80] **ORDERS** that said notice be available on the Respondent's Website with a link stating "Notice to BlackBerry users";

[81] **THE WHOLE** with costs, including all publication fees.

_____

MARK SCHRAGER, J.S.C.

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Dates of hearing: January 30 and 31, 2013