SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000462-099

DATE: OCTOBER 4, 2012

BY THE HONOURABLE MR. JUSTICE MARK G. PEACOCK, J.S.C.

NICHOLAS D'URZO,
Petitioner
v.
TNOW ENTERTAINMENT GROUP, INC.,
-And-
LIVE NATION ENTERTAINMENT, INC.,
-And-
TICKETMASTER CANADA HOLDINGS ULC,
-And-
PREMIUM INVENTORY, INC.,
Respondents

RECTIFIED JUDGMENT

Introduction

[1-A] In view of the Rectification of Judgment of October 4, 2012 for reasons of inadvertence, paragraph 13 only of the Reasons of the judgment of August 14, 2012 is

rectified as follows. The remainder of the reasons and conclusions of said judgment remain unchanged.

[1] The Petitioner seeks a judgment:

a) authorizing a class action;

b) approving of the Secondary Claims Settlement Agreement (the "Settlement Agreement") attached to this Judgement as Exhibit A (English original version) and Exhibit B (French translation); and

c) approving a notice to the class members attached as Exhibit C (English version) and Exhibit D (French version).

[2] This judgment will proceed under the following headings:

A- Factual and Procedural Context

B- Should the Court Authorize the Bringing of the Class Action and Ascribe the Status of Representative?

C- Should the Court Approve the Settlement?

D- Should the Court Approve the Legal Fees Requested?

A- Factual and Procedural Context

[3] The original Motion to Authorize a Class Action in Quebec was dated February 19, 2009. It was one of four separate but similar proceedings brought in four different Canadian jurisdictions: Quebec, Ontario, Alberta and Manitoba. The substituted petitioner, Mr. D'Urzo alleged that on September 30, 2008 he went to the TicketMaster.com website to purchase three tickets for the February 7, 2009 Montreal Canadians home game, only to find that there were no more tickets available in the primary market but was re-directed to the TicketsNow ("TNow") website where tickets were available. This latter website is part of what is known as the re-sale or "secondary market".

[4] On the TNow website, he purchased three tickets each with a face value of $35.00 but for which he had to pay $112.00 each. The total charge was $416.35 which also included $29.95 of delivery fees and a service charge of $50.40. The price for the tickets themselves went to the third party seller who advertised on the TNow website while the delivery fees and service charge were paid to TNow.

[5] Mr. D'Urzo alleges that when he went to this hockey game, ***"... it appeared from the large number of empty seats that the game was not sold out"***.

[6] Live Nation Entertainment Inc. is the parent company for the other three Respondents, including TNow and TicketMaster. TicketMaster sells primary market tickets for music, sporting, cultural and other events in Canada, inter alia, through its website, while TNow operates a website whereby tickets for many of -the same events may be resold in the secondary market to interested consumers who go to the TNow website. The actual vendors are either: (a) arms-length third parties who have tickets to resell or (b) TicketMaster. An undisclosed percentage of the tickets on the TNow website were allegedly being sold by TicketMaster.

[7] Furthermore, Mr. D'Urzo alleges that the non-arms-length Respondents conspired to artificially inflate the price to re-sell tickets on the secondary market by buying up tickets on the primary market.

[8] The Court now turns to the procedural context. The only counsel of record appearing in the Quebec proceedings were those Montreal-based attorneys whose names appear at the end of this judgment.[1] As a result of positions taken by both sides at case management conferences, the Quebec proceedings were originally suspended to permit discovery to take place in the Ontario proceedings which could then be used – at a considerable cost saving – in Quebec. Ultimately, further suspensions were granted when both sides advised the Court that serious settlement discussions were being undertaken in Ontario, settlement discussions that might also result in a settlement of the Quebec proceedings.

[9] In the Ontario proceedings, a cross-examination on affidavit took place of TicketMaster's Chief Operating Officer. Thereafter, settlement negotiations were undertaken in Ontario with the help of a mediator, which ended in the Settlement Agreement being signed on February 1, 2012, in which the Quebec proceedings were also settled.

[10] In essence and as relates to Quebec, the Settlement Agreement provided amongst others that:

a) every Quebec settlement class member would receive a refund of $36.00 per ticket less deductions for legal fees, disbursements and statutory contribution to the Fonds d'aide aux recours collectifs ("Fonds");

b) the eligible members of the class are those who purchased one or more tickets on TNow's website for an event taking place in the Province of Quebec any time from February 19, 2006 to the "Effective Date of Settlement" which was defined in the Settlement Agreement to be ***"the next business day after the day on which all appellant rights with respect to***

[1] Referred to as Applicant's counsel.

the last made approval order in the proposed class actions (i.e. in all four provinces) ***have expired or have been exhausted"***;

c) there are no monetary caps;

d) the settlement administrator is to make all payments within four months of the "Effective Date of Settlement";

e) the Respondents are to pay a lump sum of $850,000.00 on account of legal fees for all of the four jurisdictions; and

f) art. 1036 *C.C.P.* was to apply where a balance remained that resulted from cheques not being cashed by Quebec settlement class members.

[11] In particular, paragraph 9 of the Settlement Agreement required that it be fully and finally approved in all four jurisdictions; otherwise, it was null and void.

[12] The Applicant's counsel provided the Court with a "Summary of Projected Deductions and Recovery" which showed a "Projected per Ticket Recovery in Quebec" of $30.36 per ticket, after projected deductions for legal fees etc. from the original $36.00 payout.

[13] Since the Effective Date of Settlement was not yet known at the hearing of the within application (the settlement hearing in Manitoba is to take place on August 15, 2012), the total number of members in the four proceedings was projected to be 46,750 members for which the projected total sale value could be $28.2 million with profits to TNow of $2.1million. The projected membership in the Province of Quebec is 8,400 members (about 18% of the total). It was estimated that approximately (...) 25,200 tickets could be involved in Quebec (an average of 3 tickets per purchaser).

[14] TNow as the website operator did not have any records of the original face value of the tickets being sold on its website. TNow charged a flat delivery fee as well as an additional service charge which was a fixed percentage of the final sale price in the secondary market.

[15] The Respondents did a spot check on 45 different Ontario events which were sold on the primary market through TicketMaster and then resold in the secondary market through TNow. By doing this, an average price mark-up between primary and secondary markets was determined to be a factor of 1.73.

[16] Based on this estimate, it is believed that approximately $9.8 million was paid on price overages[2] but this amount went to the third party sellers. The Respondents

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[2] A price overage is the difference in price between the face value price of the ticket and the secondary market price for which the same ticket was resold on the TNow website.

estimated they realized $2.1 million in profit if delivery and service charges are included and only $1.7 million if they are excluded.

[17] As for Quebec class settlement members, if there were 8,400 members and if each purchased three tickets and if the projected per ticket recovery shown in Exhibit E (attached hereto) is used, then the actual payout for the potential Quebec settlement class members could be in the order of $765,072.00.

B- Should the Court Authorize the Bringing of the Class Action and Ascribe the Status of Representative?

[18] Art. 1025 of the *Code of Civil Procedure*[3] (*"C.C.P"*) requires that unless the parties transact for the entire claim, the Court must determine whether the Settlement Agreement should be approved. However, before this determination can occur, the Court must first decide whether to authorize the class action.

[19] There is some jurisprudential controversy over the level of scrutiny that is to be applied by the court to such applications in the context of settlement.

[20] In the present case, the Applicant submitted that a lesser standard of scrutiny is permitted for the authorization since the litigation is on a settlement and not a contested track.

[21] In 2009, the controversy was raised clearly and squarely by Mr. Justice Pierre-C. Gagnon:[4]

> ***"[43] The parties submitted jointly that when a group action is already settled authorization is a mere formality, something for the Court to do automatically.***
>
> ***[44] The parties cited a precedent in Association coopérative d'économie familiale du nord de Montréal v. Hoechst Aktiengesellschaft,[6] where Chaput J. wrote:***
>
> > ***12. Et, lorsque la transaction intervient avant que le recours ne soit autorisé, il est maintenant de jurisprudence que le tribunal peut autoriser le recours à la seule fin de permette que la transaction soit soumise à l'approbation du tribunal.***
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> ***[45] Justice Chaput then relied on six judgments of the Superior Court,[7] but none from the Court of Appeal. These six judgments do not discuss the level of***

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3 R.S.Q., chapter C-25.

4 *M.G.* v. *Association Selwyn House*, 2009 QCCS 989 at para. 43 and following.

> ***scrutiny required before the class action is authorized in such a context.***
>
> ***[46] There may indeed be cases where the legal situation is obvious, as all conditions set by Article 1003 CCP are met. But that is not to say that a class action can and should be authorized by mere consent of the parties, if only because a class action involves the rights and obligations of putative group members who are not fully represented in Court at the authorization stage.***
>
> ***[47] Some of the requirements of Article 1003 CCP are of a procedural nature, reflecting the wish by the legislator that a class action be reasonably manageable within the court system. These requirements become much less important if a settlement avoids a trial.***
>
> ***[48] Also, when the respondent settles with the petitioner, they implicitly agree that, under paragraph (b), "the facts alleged seem to justify the conclusions sought ".***
>
> ***[49] However, the Court must ascertain that paragraph (d) is met, and cannot blindly rely on the representation by the parties that "the member to whom the court intends to ascribe the status of representative is in a position to represent the members adequately".***[5]

[6] [2002] J.Q. no. 10257 (S.C.).

[7] *ACEF-Centre and Power* v. *Bristol-Myers Squibb,* [1995] J.Q. no. 1970 (S.C.); *Pelletier* v. *Baxter Healthcare Corporation,* J.E. 98-1200 (S.C.); *Podmore* v. *Sun Life du Canada, compagnie d'assurance vie,* [1998] A.Q. no. 80 (S.C.); *Option Consommateurs* v. *Archers Daniels Midland Company,* CSM 500-06-000094-991, December 14, 2001; *Teixeira Paulo* v. *Tetra Vision Inc. and Bombardier Capital ltée,* CSM 500-06-000073-087, February 26, 2001.

[22] In 2009, Mr. Justice André Prévost – later supported by Madam Justice Dominique Bélanger in 2011 – decided that the Legislator did not provide for two different levels of analysis:

a) a less rigorous level, where the authorization was put before the Court in the context of a settlement; and

b) a higher level when the authorization was being contested in the normal course.[6]

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[5] *Ibid.* at para. 43–49.

[6] *Demers* v. *Johnson & Johnson Inc. et al*, 2009 QCCS 4885 at para. 20 and following and *Bisson* v. *Johnson & Johnson et al*, 2011 QCCS 3083 at para. 59 and following.

[23] In a very recent decision[7], Mr. Justice Daniel W. Payette has decided that the authorization of the class and the approval of the settlement may proceed successively but in two distinct steps.[8]

[24] According to Mr. Justice Payette, the court's application of the criteria of art. 1003 *C.C.P.* should be done ***"de façon souple"*** particularly regarding art. 1003 (b) *C.C.P.* which requires that ***"the facts alleged seem to justify the conclusions sought"***. It is worthwhile noting Mr. Justice Payette's reasoning[9]:

> ***"[16] Certes, l'autorisation du recours collectif doit précéder l'approbation de la transaction puisque le recours n'existe pas avant d'avoir été approuvé.***
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> ***[17] Par contre, rien ne s'oppose à ce que le Tribunal procède simultanément, bien que successivement, à l'autorisation du recours et à l'approbation de la transaction et qu'il tienne compte de celle-ci dans l'évaluation des critères de l'article 1003 C.p.c.[12]. Ainsi, les deux étapes procèdent distinctement tout en étant étroitement liées.***
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> ***[18] En somme, il s'agit d'appliquer de façon souple les critères de l'article 1003 C.p.c. au recours proposé, plus particulièrement celui énoncé à l'alinéa b), en fonction de la transaction soumise.***
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> ***[19] Cela permet de répondre à ceux qui reprochent aux tenants de l'autorisation pro forma de ne pas discuter du niveau d'analyse nécessaire pour procéder à une telle autorisation[13] et d'éviter de prononcer des jugements destinés à ne produire aucun effet si la transaction n'est pas approuvée, comme le suggèrent les auteurs Dunbury et Martel[14]."***
>
> ***[20] Cela permet aussi d'éviter d'appliquer certains des critères de l'article 1003 C.p.c. sans appliquer les autres.***
>
> ***[21] Cela permet enfin de tenir compte de la finalité recherchée par les parties au stade même de l'autorisation, d'éviter l'injustice qui résulterait d'autoriser un recours collectif sans donner l'opportunité à l'intimé de s'y opposer parce qu'il s'attend à ce que la transaction proposée soit***

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7 *Option Consommateurs* v. *Virgin Atlantic Airways Ltd.*, 2012 QCCS 3213.
8 *Ibid.* at para. 16 and 17.
9 *Ibid.* at para. 16-21.

> ***approuvée et de s'abstenir de déduire de ce silence des admissions qui ne sont consenties qu'en contrepartie du règlement intervenu entre les parties.***
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> [12] *Demers c. Johnson & Johnson Corporation, préc., note 9, par. 25.*
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> [13] *M.G. c. Association Selwyn House, 2009 QCCS 989 (CanLII), 2009 QCCS 989, par. 45.*
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> [14] *Éric DUNBURY et Catherine MARTEL, « Les transactions et les mesures alternatives de règlement dans le cadre d'un recours collectif », dans Développements récents en recours collectif, Service de la formation continue du Barreau du Québec, 2010, La Référence, EYB 2010DEV1716.*[10]

[25] Furthermore, by way of comparative law, the Ontario Superior Court[11] confirmed, that: ***"Where certification is sought for the purposes of settlement, all the criteria for certification must still be met. ... However, compliance with the certification criteria is not as strictly required because of the different circumstances associated with settlements ..."***[this Court's emphasis]

[26] Our Court of Appeal has consistently confirmed that the authorization process is ***"un mécanisme de filtrage et de vérification"***[12] and one where ***"le fardeau en est un de démonstration et non de preuve"***.[13]

[27] Accordingly, this Court agrees with Mr. Justice Payette that even in the context of settlement proceedings, the Court must do the serious analysis required by art. 1003 *C.C.P.* – albeit with some flexibility depending on the circumstances of each case – since the courts' judgment does operate as *res judicata* for the authorization[14], in the absence of any application under art. 1022, *C.C.P.* As the authorization judgment affects the rights of the class members Mr. D'Urzo is seeking to represent and who are not before the Court, the Court must apply vigilance and perspicacity to the authorization process.

[28] Mr. Justice Payette noted the importance of avoiding an injustice where respondents are not given the opportunity to oppose the authorization on the assumption that the proposed settlement would be approved.

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10 In the companion case to the present one in Quebec, *Krajewski* v. *TNow Entertainment Group Inc.*, 2012 ONSC 398, the criteria for certification in Ontario are very similar to those in Quebec, see art. 5 (1) of the *Class Proceedings Act*, 1992, S.O. 1992, c.6 cited in National Trust Co. v. Smallhorn, [2007] O.J. no. 3825 where the Court said: *"These requirements may be applied less stringently where certification is sought on consent in the context of intended settlement approval."*

11 *Ibid.*

12 *Pharmascience inc.* v. *Option Consommateurs*, 2005 QCCA 437 at para.24.

13 *Ibid.* at para. 25.

14 *Ibid.* at para. 25 where the Court of Appeal clearly makes the distinction between the authorization stage and then the subsequent action on the merits: *"Il ne faut donc pas confondre l'action intentée une fois autorisée et la procédure visant cette autorisation. L'objet est la finalité de l'une et l'autre sont antinomiques."* Respondents may have a clear interest in having the Court authorize the bringing of the class action where a settlement agreement has been entered into since *"if the settlement is subsequently approved"* all the members of the class are bound by this settlement unless they opt out.

[29] Applying Mr. Justice Payette's reasoning, this Court provided the opportunity to counsel for the Respondents to assert any arguments they wished in opposition to the request for authorization. The Respondents declined. The Court must assume that this decision was taken on the basis that the Respondents felt it was in their best overall interests to have the class action authorized so as to have the opportunity to have the settlement approved.[15] The Court's assumption in this regard is consistent with the Preamble of the Settlement Agreement which states:

> ***"WHEREAS, the Parties desire to compromise and settle all issues pertaining to the Secondary Market Claims, and to ensure that there are no further proceedings, actions or disputes with regard to the Secondary Market Claims and the Proposed Class Actions, and intend that this Agreement be so construed;***
>
> ***..."***

[30] Turning to the authorization application itself, the Court must base its determination on the Applicant's pleadings, affidavits and written evidence filed in support.

[31] The Court will now consider whether this proceeding meets the four tests of art. 1003 (a)-(d) *C.C.P.* The following headings are taken directly from the wording of these subsections:

i- "The recourses of the members raise identical, similar or related questions of law or fact"

[32] The Court is satisfied that this test is met since similar or related questions of fact include:

a) Whether the Respondents, individually or as conspirators, acted to reduce the number of tickets available in the Primary Market to create artificially higher prices in the Secondary Market?

b) Were tickets sold on the TNow Website necessarily priced higher than those in the Primary Market? and

c) What were the amounts of fixed and variable service charges levied by TNow and paid by Quebec settlement class members?

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[15] Approval of the class authorization must be given before approval of the settlement can be considered (see *Bisson*, *supra*, note 5 at para. 65).

[33] As for the similar or related questions of law, the Court is satisfied that there were at least three such questions:

a) Did the Respondents use misleading or false representations that induced the Quebec settlement class members to purchase tickets priced over their face value on the TNow website contrary to art. 219, *Consumer Protection Act*?

b) Did the Respondents conspire to unduly overcharge the Class Members? and

c) Were the alleged Overcharges claimable as damages?

ii- "The Facts Alleged Seem To Justify the Conclusions Sought"

[34] At this stage, the Court is simply required to determine – assuming the Applicant can prove the allegations made – whether the causes of action justify the conclusions? These conclusions seek declarations of fraud and conspiracy as well as a claim for aggregate damages ***"assessed in an amount equal to the amount of the Overcharges, with interest payable at the legal rate as prescribed by law."***[16] The Court is satisfied this test is met.

iii- "The Composition of the Group Makes the Application of Art. 59 or 67 C.C.P. Difficult or Impracticable"

[35] Attorney James H. MacMaster, senior partner of the Vancouver law firm of Branch MacMaster, LLP and also attorneys in the Ontario proceedings confirms at paragraph 51 of his June 20, 2012 Affidavit in support of this application that there are approximately 8,400 Quebec Class Members. Moreover, the names of these individuals are only known to the Respondents and not the Applicants. Accordingly, the Court is satisfied that this criteria is clearly met.

iv- "The Member to Whom the Court Intends to Ascribe the Status of Representative Is in a Position to Represent the Members Adequately"

[36] The proposed representative, Mr. Nicholas D'Urzo of Toronto was substituted for the original Applicant on or about April 24, 2012 when counsel ascertained that the original Applicant had purchased her tickets for an event in Ontario and hence, did not properly come within the definition of Quebec settlement class member.

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[16] Alleged overcharges consisted of two components: (a) the Secondary Market price charged for the ticket over and above the primary or face value of the ticket, as well as (b) the fixed shipping charge and the variable service charge that was a percentage of the marked-up secondary market price.

[37] The Court is satisfied that Mr. D'Urzo meets the necessary requirements to properly act as class representative. It is clear that he is a member of the Proposed Class having purchased tickets to a Montreal Canadians hockey game in Montreal over the Internet from TNow within the relevant time period. His interest in taking part in this matter is difficult to criticize given that he has allowed himself to be put forward, late in the day. His counsel has made representations regarding not only his ability to devote time going forward but also time that he has spent bringing himself "up to speed" by reviewing the legal proceedings and approving the retainer agreement.

[38] He is not in conflict of interest with any other member of the proposed class.

[39] If the settlement is approved, it is clear that he will have much less work and involvement than if the matter had proceeded forward to trial. Mr. D'Urzo is a suitable representative.

[40] For these reasons, the Court authorizes the following Class Action:

> ***"An action in civil responsibility against the Respondents as a result of the Respondents misleading and false representations and conspiracy to commit same in the context of the sale of event tickets to the following persons:***
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> ***All physical persons in Canada who, between February 19th 2006 and the Effective Date of the Settlement, purchased a ticket through the TicketsNow Website for an event in the Province of Quebec."***[17]

[41] Furthermore, the Court designates Mr. Nicholas D'Urzo as the representative.

C- Should the Court Approve the Settlement?

[42] In the Norbourg case[18], Mr. Justice André Prevost notes that the Court must be vigilant in approving settlements because:

a) it does not have a full record or understanding of all the issues (and this Court would add, particularly where the settlement arises even before the authorization); and

b) in recognition of the Court's general interest in promoting reasonable settlements. This Court would add a third consideration: if the settlement should ultimately fail – for example, because it was not approved in

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17 Motion by Petitioner for Authorization of a Class Action and for Approval of a Transaction, dated July 13, 2012.

18 *Pellemans et al.* v. *Norbourg et al*, 2011 QCCS 1345 at para. 21.

another jurisdiction – the Court must not "paint itself into a corner" in the judgment approving settlement such that it could preclude itself from hearing the merits later on, should that be required.

[43] The Court is satisfied that the necessary notice was given to potential class members for the application of the approval of the settlement.[19]

[44] The relevant tests to be applied under art. 1025 *C.C.P.* for settlement approval have been summarized by Madam Justice Michèle Monast:

> ***"[64] Lorsque le tribunal est d'avis que l'entente proposée est juste et raisonnable et qu'elle sert, à la fois, les intérêts des représentants et ceux des membres du groupe visé, il doit l'approuver. Il ne lui appartient pas de la modifier. Il ne doit pas substituer son jugement à l'accord des parties. Il peut refuser de l'approuver s'il juge qu'elle n'est pas dans le meilleur intérêt des membres du groupe ou s'il est d'avis qu'elle contrevient à la loi ou à l'ordre public.***
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> ***[65] Dans l'exercice de ce pouvoir discrétionnaire, le Tribunal doit considérer la nature et l'étendue des communications qui ont eu lieu entre le représentant, ou ses procureurs, et les membres du groupe pendant le litige, de même que les positions respectives qui ont été adoptées par les parties durant la négociation.[12] Il doit analyser l'entente à la lumière de divers critères développés par la jurisprudence incluant:[13]***
>
> ***(1) les probabilités de succès du recours et les chances de recouvrement;***
> ***(2) l'importance et la nature de la preuve administrée;***
> ***(3) les termes et les conditions de la transaction;***
> ***(4) la recommandation des procureurs et leur expérience;***
> ***(5) les coûts futurs anticipés et la durée probable du litige;***
> ***(6) la recommandation d'une tierce personne neutre, le cas échéant;***
> ***(7) le nombre et la nature des objections à la transaction, et;***
> ***(8) la bonne foi des parties et l'absence de collusion.***

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[19] As required by art. 1025 *C.C.P.*

> ***[66] Il peut arriver que l'un ou l'autre de ces critères soit inapplicable. Aucun n'est déterminant en soi mais certains peuvent, en raison des circonstances propres à chaque cas, avoir un poids plus significatif que d'autres.***"[20]
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> [12] *Kelman* v. *Goodyear Tire and Rubber Co.* [2005] O.J. No. 175
>
> [13] *Option Consommateurs et al* c. *Assurances générales des Caisses Desjardins Inc.et al* [2005] J.Q.no. 13243; *Bouchard et Pearson* c. *Abitibi Consolidated et al* [2004] J.Q. no 7122; *Union des consommateurs* c. *Bell Canada* [2004] J.E 2004-1206; *Page* c *Canada (Procureur Général)* [1999] J.Q. No 4415; *Dabbs* v. *Sun Life Assurance Co. of Canada* [1998] O.J. No. 1598; *Comité d'environnement de La Baie Inc.* c. *Société d'électrolyse et de chimie Alcan ltée* 1990 CanLII 3338 (QC CA), [1990] R.J.Q. 655 (C.A.)

[45] By applying the relevant criteria and for the following reasons, the Court grants its approval to this settlement:

a) proof of fraud and conspiracy is always difficult. This action on the merits would be a case of some complexity and substantial difficulty not to mention the costs involved. The Quebec proceeding has benefited from being "piggy-backed" onto the settlement in the other provinces where in Manitoba, Alberta and Ontario there are a specific laws prohibiting event tickets from being sold at a higher price in the secondary market. No such specific prohibitions exist in Quebec. Moreover, this Court recognizes that the bulk of the profit made from the price overage is made by third parties and not by the Respondents at all. These third parties will not even be part of any future class proceeding. Hence, the Applicant's most likely recourse is solely for the additional charges imposed and collected by TNow. Finally, given the alleged profit that would have been made by the Respondents in any event, the amount of recovery for the potential settlement class members is reasonable;

b) a substantial advantage in this settlement is that the Quebec settlement class members will not be required to present claims. The settlement administrator will take their address information from the files provided by TNow and mail out the settlement cheques directly. As counsel for the Applicant properly pointed out, the result should be a very high "take-up rate";

c) in his arguments recommending the settlement, the Applicant's counsel noted he had been doing class action work since 2004 and had been called to the Bar since 1996. Eight years of experience in this specialized area does add a level of credibility to the recommendation that the settlement be approved. Finally, this Court is mindful that the Settlement Agreement has already been approved both in Ontario and in Alberta;

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[20] *Association de protection des épargnants et investisseurs du Québec (APEIQ)* v. *Corporation Nortel Networks*, 2007 QCCS 266 at para. 63-66.

d) there is no question that the parties and their counsel are acting in good faith and there is no evidence of any collusion; and

e) no potential member of the Quebec settlement class objected to the approval.

[46] No financial aid was ever received from the Fonds.

[47] The Court is satisfied that this settlement is in the best interests of the members and should be approved.

D- Should the Court Approve the Legal Fees Requested?

[48] Approval of the legal fees is requested in a second application made by the Applicant. He has already entered into a Retainer Agreement[21] with a 25% contingency and the Respondents have agreed to pay up to $850,000.00 by way of a contribution towards the legal fees in all four jurisdictions.

[49] The judicial discretion to be exercised by the Court in approving legal fees represents a delicate balance. This is because the approval of legal fees is also binding on all of the Quebec settlement class members.

[50] In the *Norbourg* case[22], Mr. Justice André Prevost makes the following observations on legal fees regarding multi-jurisdictional class proceedings such as these:

a) typically, a group of lawyers in one jurisdiction will settle the proceeding after which the other jurisdictions simply "piggy-back" on the settlement: in such circumstances, the percentage of contingency fees for the other jurisdictions may appear too high because of the secondary implication of the other attorneys; and

b) a similar situation may occur when a first action is taken in one jurisdiction and where other jurisdictions simply "pile on" (to use a football analogy) when it appears clear that the matter may be settled in the original jurisdiction.

[51] This second concern is clearly not relevant here since proceedings in all four jurisdictions were undertaken in the month of February, 2009, when no one could have known whether this case would settle.

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21 Sent to the Court on July 26, 2012.
22 *Norbourg*, *supra*, note 18 at para. 60-63.

[52] The law applicable to fee approval has also been carefully summarized by Madam Justice Monast in the 2009 *Corporation Nortel Networks* case and the Court can do no better than to reproduce extensively her analysis from that judgment:

> ***"[134] L'article 32 de la Loi sur les recours collectifs[26] et l'article 69 du Règlement de procédure de la Cour supérieure du Québec[27] sont des dispositions supplétives qui reconnaissent le pouvoir de la Cour supérieure de décider des dépens et de déterminer les honoraires extrajudiciaires des procureurs agissant en demande et, de manière générale, d'approuver une transaction portant notamment sur les dépens ou les honoraires extrajudiciaires des procureurs dans le cadre d'un recours collectif.***
>
> ***[135] Lorsqu'il exerce ce pouvoir d'approbation, le Tribunal doit déterminer si les honoraires extrajudiciaires qui sont demandés par les procureurs sont raisonnables eu égard aux circonstances du dossier.***
>
> ***[136] L'article 126 de la Loi sur le Barreau[28] précise la nature des services qui peuvent donner droit à des honoraires extrajudiciaires:***
>
> > ***«126. (1) Les services justifiant des honoraires extrajudiciaires comprennent, entre autres, les vacations, les voyages, les avis, les consultations écrites et verbales, l'examen, la préparation, la rédaction, l'envoi, la remise de tout document, procédure ou dossier et généralement tout autre service requis d'un avocat.***
> >
> > ***(2) (Paragraphe abrogé)***
> >
> > ***(3) En l'absence de convention expresse entre l'avocat et son client, l'avocat a droit à ses frais extrajudiciaires sur la base de la valeur des services rendus.»***
>
> ***[137] Depuis Nault c. Jarmark et al, [29] il est acquis au débat qu'une convention d'honoraires peut lier tous les membres du groupe même si elle a été signée exclusivement par le représentant.***
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> ***[139] Conformément aux règles sur l'effet relatif des contrats qui sont codifiés à l'article 1440 C.c.Q., une***

convention d'honoraires signée exclusivement par le représentant demeure toutefois sans effet vis-à-vis des tiers, et en particulier la partie défenderesse, à moins que cette dernière ne s'y oblige en acceptant d'en intégrer les termes dans une transaction dont elle demande l'approbation.

[140] Dans ce cas, les parties seront liées par la convention d'honoraires qui a été signée au bénéfice des procureurs qui ont agi en demande. Cette situation se produit assez fréquemment. Il incombe alors au Tribunal d'apprécier le caractère juste et raisonnable de la convention d'honoraires dont on recherche l'application. Il n'est pas lié par les termes de cette convention mais il doit la considérer avec sérieux parce qu'elle fait preuve de la volonté des parties. (This Court's emphasis)

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[142] Au Québec, les dossiers de recours collectifs sont presque invariablement pris sur la base de conventions d'honoraires à pourcentage variant de 15 % à 25 %.

[143] La validité des conventions d'honoraires à pourcentage est assez largement reconnue dans le domaine des recours collectifs, à condition que le pourcentage fixé soit juste et raisonnable.

[144] Bien que les tribunaux aient déjà exprimé, dans le passé, certaines réticences ou préoccupations à l'égard de ce type de convention, en général ils ont considéré qu'il était raisonnable de rémunérer celui qui assume les risques de la poursuite en convenant à l'avance de lui allouer une part des bénéfices qui seront engendrés par ses efforts, s'il a gain de cause. (This Court's emphasis)

[145] On considère également que des ententes de cette nature favorisent en général l'accès à la justice parce qu'elles permettent à un grand nombre de citoyens de faire valoir leurs droits dans des cas où, malgré un préjudice réel, plusieurs d'entre eux n'auraient pas les ressources financières pour intenter des procédures judiciaires.

[146] En 1994, le juge Cory de la Cour suprême a écrit ce qui suit à ce sujet:

> *« The concept of contingency fees is well established in the United States although it is a recent arrival in Canada. Its aim is to make court proceedings available to people who could not otherwise afford to have their legal rights determined. This is indeed a commendable goal that should be encouraged. For many years it has been rightly observed that only the very rich and those who qualify for Legal Aid can afford to go to Court. This point was brought home with shocking clarity by Mr. Justice George Adams in his paper presented the week of July 11th at the Cornell Lectures. There he noted that the total legal bills of all parties in an average General Division lawsuit (including those that settle before trial) may easily amount to between $40,000 and $50,000. Truly litigation can only be undertaken by the very rich or the legally aided. Legal rights are illusory and no more than a source of frustration if they cannot be recognized and enforced. This suggests that a flexible approach should be taken to problems arising from contingency fee arrangements, if only to facilitate access to the courts for more Canadians. Anything less would be to preserve the court's facilities in civil matters for the wealthy and powerful.» [31]*

[147] Le Tribunal n'est pas lié par les termes d'une convention d'honoraires à pourcentage même si elle est intégrée dans une transaction qui a pour but de régler à l'amiable un litige[32]

[148] Il doit cependant faire preuve d'une certaine flexibilité et donner effet à la volonté des parties à moins que la rémunération établie au bénéfice des procureurs soit déraisonnable parce que sans commune mesure avec les services rendus ou les résultats obtenus. (This Court's emphasis)

[149] Dans tous les cas, le Tribunal doit examiner la proportionnalité des honoraires demandés en fonction de l'importance de la cause et de l'utilité des services rendus en tenant compte des facteurs énumérés aux articles 3.08.01, 3.08.02 et 3.08.03 du Code de déontologie des avocats :

> ***«3.08.01 L'avocat doit demander et accepter des honoraires justes et raisonnables.»***
> ***«3.08.02. Les honoraires sont justes et raisonnables s'ils sont justifiés par les circonstances et proportionnés aux services professionnels rendus. L'avocat doit notamment tenir compte des facteurs suivants pour la fixation de ses honoraires :***
> ***L'expérience;***
> ***Le temps consacré à l'affaire;***
> ***La difficulté du problème soumis;***
> ***L'importance de l'affaire;***
> ***La responsabilité assumée;***
> ***La prestation de services professionnels inhabituels ou exigeant une compétence ou une célérité exceptionnelles;***
> ***Le résultat obtenu;***
> ***Les honoraires judiciaires et extrajudiciaires prévus aux tarifs.»***
> ***«3.08.03 L'avocat doit éviter toutes les méthodes et attitudes susceptibles de donner à sa profession un caractère de lucre et de commercialité.»*** [33]

[150] Deux autres critères sont déterminants. Il s'agit de la finalité du recours collectif lui-même et du risque qui est assumé par les procureurs en demande.

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[151] Cette approche globale permet d'évaluer l'importance et la valeur des services fournis par les procureurs. L'utilisation d'un facteur multiplicateur peut aussi s'avérer utile pour vérifier ou corroborer les résultats obtenus à la suite de l'analyse des critères identifiés précédemment. "[23]

[26] L.R.Q., c. R-2.1;
[27] R.R.Q.,1981, c. C-25, r.8;
[28] L.R.Q., c. B-1;
[29] [1985] R.D.J.,180;

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[31] *Coronation Insurance Co. c. Florence, décision non rapportée de Cour suprême en date du 8 août 1994, citée dans Nantais c. Telectronics Proprietary (Canada) Ltd.* [1996] O.J. No. 5386, 19 mars 1996;

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[23] *Association de protection des épargnants et investisseurs du Québec (APEIQ)* v. *Corporation Nortel Networks*, 2009 QCCS 2407 at para. 133-151.

[32] *Québec (Curateur Public) c. Syndicat national des employés de l'hôpital Saint-Ferdinand,* [1996] 3 R.C.S. 211;
[33] R.R.Q., 1981, c. B-1, r.1;
[34] [2007] R.J.Q. 983;

[53] A contingency of 25 percent or less is generally accepted in class actions proceedings.[24] However, as Madam Justice Monast has noted, the Court must apply the tests of the *Code of Ethics of Advocates* to determine whether the potential legal fees are reasonable.

[54] The Fonds raised no objections regarding the retainer agreement or fees.

[55] The Court has two main concerns:

a) the hourly rate for lead counsel in the Province of Quebec was $625.00 per hour; and

b) the Court was concerned about the "piggy-backing" effect given that the settlement was exclusively negotiated by counsel in Ontario (including the Branch MacMaster firm from Vancouver).

[56] In terms of the hourly rate, counsel provided no comparative evidence to the Court. For example, no lawyer surveys were provided that showed average rates in the Montreal area either in relation to call to the bar or specialization. Furthermore, no specific evidence was provided regarding the actual services rendered for the approximate 135 hours docketed by both attorneys of the Applicant's counsel in Quebec (even presented in such a way as to protect attorney-client privilege).

[57] The Court would have preferred to have some evidence on both of these subjects, particularly in this case where proceedings in Quebec were suspended while first, cross-examinations and then, negotiations, occurred in Ontario.

[58] However, as a result of a variety of particular factors relevant to this case, the Court believes that the fees should still be approved:

a) Quebec jurisprudence confirms that the risk taken by counsel in files of this nature must be accounted for.[25] Here that risk was particularly large since when the action was taken, there was no reason to believe it would be necessarily settled, and as noted, the Quebec proceeding presented both evidential and substantive law challenges; and

b) secondly, the Court has to consider that there has been a substantial amount of liaison work between Quebec counsel and their Ontario

[24] *Ibid.* at para. 142.
[25] *Ibid.* at para. 184, 187.

counterparts and this has involved linguistic and legal particularities of this jurisdiction.

[59] Finally, the Court is persuaded by the reasonableness of the two following realities.

[60] Firstly, the settlement provides for a $850,000.00 contribution to legal fees from the Respondents. The attorneys provided a reference document (attached as Exhibit E) which notes that there were disbursements in all four provinces of $119,800.00 (of which approximately $118,000.00 were incurred in the Ontario proceedings). Quebec settlement class members will pay their fair share of these disbursements. This is reasonable since the settlement negotiated by the two law firms in the Ontario proceedings benefited Quebec settlement class members.

[61] The Applicants' counsel based their fees on there being a projected 8,400 members in the potential Quebec settlement class with a total purchase of 25,200 tickets. On a 25 percent fee recovery basis, the total fees would be in the order of $72,575.00 and the Quebec share of the national disbursements would be in the order of $21,700.00: a total of $94,275.00.

[62] The Settlement Agreement also requires that the statutory 2% contribution to be paid to the Fonds is deducted from the $36.00 per ticket. When all this is taken together: from the $36.00 per ticket would have to be deducted approximately $5.65 or about 15.75% to pay legal fees, taxes, disbursements and the contribution to the Fonds, leaving net $30.35 per ticket. Given all of the circumstances of this case, this is a reasonable return per ticket.

[63] On the basis of time spent, the present value of docketed time for Applicant's counsel is $82,593.00. Applicant's counsel notes that the multiplier for fees is approximately 1.1 if all projected Quebec class settlement members cash their cheques. This is reasonable.

[64] In the Settlement Agreement, "Class Counsel" are defined to include: (a) Branch MacMaster LLP, (b) the Ontario law firm of Sutts Strosberg and (c) "local counsel" in Alberta, Manitoba and Quebec. The Quebec "local counsel" are the Applicant's attorneys.

[65] Paragraphs 53 and 54 of the Settlement Agreement says that Class Counsel may also seek approval of their legal fees ***"not to excess 25%"***.

[66] In support of their Motion seeking to approve both, their fees and those of Class Counsel, the Applicant's attorneys rely on art. 3.08.02 of the *Code of Ethics of Advocates*. However, only they – as Quebec attorneys – are governed by this regulation.

[67] Except for Applicant's counsel, none of the other Class Counsel have any form of membership in the Quebec Bar. Accordingly, while the Court would accept – based on the facts disclosed in the Motion – that the Settlement Agreement in relation to Class Counsel fees does comply with art. 3.08.02, it has no jurisdiction to so order. The Court raised this issue at the approval hearing.

[68] Accordingly, the Court approves the Contingency fee agreement signed between Mr. D'Urzo and his counsel. The Court has been asked to approve the 25% contingency ***"on a national" basis"***. Since this Court has no jurisdiction over the counsel in Ontario, Alberta and Manitoba nor any evidence of the laws applicable in those provinces, it cannot provide this ***"national"*** approval.[26]

Conclusions

FOR THESE REASONS, THE COURT:

A- MOTION FOR AUTHORIZATION OF A CLASS ACTION AND FOR APPROVAL OF A TRANSACTION (art. 1002, 1003 and 1025 *C.C.P.*)

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[69] **GRANTS** the Motion;

[70] **DECLARES** that unless indicated otherwise, the defined terms used in this Judgment have the same meaning as that ascribed to them in the Secondary Claims Settlement Agreement (Exhibit A);

[71] **AUTHORISES** the following class action on behalf of the Quebec Settlement Class Members:

> ***"An action in civil responsibility against the Respondents as a result of the Respondents misleading and false representations and conspiracy to commit same in the context of the sale of tickets for events in the Province of Quebec."***

[72] **GRANTS** Petitioner the status of representative for bringing the said class action for the benefit of the following group of persons, namely:

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[26] By analogy, see the *Bisson* case (*supra*, note 5) where Madam Justice Dominique Bélanger confirms the jurisdiction of the Superior Court of Quebec over the execution of the national settlement in relation to Quebec settlement class members (at para. 39.42 and 43). Furthermore, note that art. 69 of the *Rules of Practise of the Superior Court* of Quebec says: *"Costs. Any motion for fixing costs or the fees of the representative's attorney or for approval of a transaction respecting such costs or fees shall be served upon the Fonds, together with a notice of its presentation."* The Class Counsel from other Canadian jurisdictions are not the "representative's attorney" as defined by art. 69. Nonetheless, the Courts of each of the four jurisdictions may approve the fees of the counsel of record in the proceedings in their province and if this is done in all four jurisdictions, then, in effect, there will be a "national approval".

"All physical persons in Canada who, between February 19th 2006 and the Effective Date of the Settlement, purchased a ticket through the TicketsNow Website for an event in the Province of Quebec."

[73] **ORDERS** that the law firm of Sylvestre Fafard Painchaud are hereby appointed as class counsel for the Quebec Settlement Class;

[74] **ORDERS** that persons who would otherwise be Quebec Settlement Class Members but who do not wish to be bound by the terms of the Secondary Claims Settlement Agreement may opt out of the Quebec Settlement Class by submitting a completed Opt Out Form to the law firm of Sylvestre Fafard Painchaud within the Opt Out Period;

[75] **ORDERS** that persons who opt out of the Quebec Settlement Class for the purposes of implementation of the Secondary Claims Settlement Agreement, shall be excluded from the Quebec Settlement Class and shall not be entitled to any of the monetary or other benefits afforded to the Quebec Settlement Class Members pursuant to the Secondary Claims Settlement Agreement;

[76] **ORDERS** and **DECLARES** that the Secondary Claims Settlement Agreement in relation to the Quebec Settlement Class is fair, reasonable and in the best interests of the Quebec Settlement Class;

[77] **ORDERS** and **DECLARES** that the Secondary Claims Settlement Agreement in relation to the Quebec Settlement Class, including its preamble and schedules but excluding any elements relating to authorization, certification and settlement approval in Ontario, Alberta or Manitoba, is hereby approved, and shall be implemented and enforced in accordance with the terms of this Judgment;

[78] **ORDERS** and **DECLARES** that this Judgment is binding upon each and every Quebec Settlement Class Member;

[79] **ORDERS** that in the event of a conflict between this Judgment and the Secondary Claims Settlement Agreement, this Judgment shall prevail;

[80] **ORDERS** and **DECLARES** that, upon the Effective Date of Settlement, the release of claims provided for in paragraph 65 of the Secondary Claims Settlement Agreement shall have full force and effect and shall be binding upon each and every Quebec Settlement Class Member;

[81] **ORDERS** that Class Notice be provided to the Quebec Settlement Class Members in accordance with paragraphs 16 and 17 of the Secondary Claims Settlement Agreement, in a form substantially similar to that which is annexed as Exhibit

C (English version) and Exhibit D (French version) to this Judgment, which is hereby approved, within 40 days from the Effective Date of the Settlement, by the following means:

a) the Settlement Administrator will deliver a copy of the French and English versions of the Class Notice to each Quebec Settlement Class Member by email, using the email address that each Quebec Settlement Class Member used in purchasing his or her most recently purchased Ticket(s) through the TicketsNow Website;

b) if the Settlement Administrator receives an error message, or other message that otherwise indicates that the Class Notice sent pursuant to paragraph 84 (a) of this Judgment did not reach its intended destination address, then the Settlement Administrator will mail the French and English versions of the Class Notice to the Quebec Settlement Class Member in respect of whom that message was received to the mailing address that the Quebec Settlement Class Member provided at the time he or she purchased his or her most recently purchased Ticket(s) through the TicketsNow Website;

c) the Respondents will publish the Class Notice once in English on a Saturday in the Review section of the national edition of *The Globe and Mail*, in a size not smaller than 1/6 of a page;

d) the Respondents will publish the Class Notice once in French on a Saturday in the Arts section of *La Presse,* in a size not smaller than 1/6 of a page;

e) the Respondents will publish the Class Notice once in English on a Saturday in the Arts section of *The Montreal Gazette*, in a size not smaller than 1/6 of a page;

f) Class Counsel will issue a press release in French and English in a form substantially similar to the form attached as Exhibit F (English version) and Exhibit G (French version);

g) Class Counsel will send a copy of the French and English versions of the Class Notice by email or regular mail to all persons purporting to be Quebec Settlement Class Members who contact them in respect of any of the Proposed Class Actions and provided contact information;

h) Class Counsel will post a copy of the Class Notice in English and French on the Class Action Website and on their respective firms' websites, and provide the Court with a copy;

i) Class Counsel will post a link to an electronic version of the Class Notice on Facebook and on Twitter in English and French, and provide the Court with a copy;

j) Class Counsel will ask that a copy of the Class Notice be posted in English and French with the case information on the CBA's National Class Action Database, and provide the Court with a copy;

k) Class Counsel will provide a copy of the Class Notice in English or French to any person who requests it; and

l) the Settlement Administrator will post a copy of the Class Notice in English and French on the Settlement Website, and Class Counsel will provide the Court with a copy;

[82] **ORDERS** that that the Respondents shall pay for the costs of disseminating the Class Notice pursuant to paragraphs 84 (a)-(e) of this Judgment;

[83] **ORDERS** that within 60 days from the Effective Date of Settlement, the Respondents and the Settlement Administrator will provide written confirmation to Class Counsel that Class Notice was disseminated in accordance with paragraphs 84 (a)-(e) of this Judgment;

[84] **ORDERS** that Respondents shall pay to each Quebec Settlement Class Member a Refund in accordance with paragraphs 25 to 29 of the Secondary Claims Settlement Agreement;

[85] **ORDERS** that payment of the Refunds shall be carried out by the Settlement Administrator in accordance with paragraphs 36 to 43 of the Secondary Claims Settlement Agreement;

[86] **ORDERS** that upon the Effective Date of Settlement, the Respondents shall implement the user experience and website changes particularized in paragraphs 44 to 47 of the Secondary Claims Settlement Agreement;

[87] **ORDERS** that the Settlement Administrator shall discharge all duties and responsibilities ascribed to it pursuant to the Secondary Claims Settlement Agreement and, in addition, the Settlement Administrator shall provide, at the same time that it provides its final report on the settlement administration pursuant to paragraph 49 of the Secondary Claims Settlement Agreement, counsel for the Petitioner and counsel for the Respondents with a list identifying each Quebec Settlement Class Member by number only and containing the following information for each Quebec Settlement Class Member:

a) the number of Quebec Tickets purchased by that person;

b) the amount of the Refund calculated by the Settlement Administrator in respect of that person's Quebec Tickets; and

c) whether that person cashed the cheque(s) sent to them with respect to that Refund amount. The list shall not contain any nominative or personal information of any Quebec Settlement Class Member (for example, it shall not contain the name, email or mailing address, telephone number or credit card information of any Quebec Settlement Class Member), and shall not be disclosed to any third party or used for any purpose other than for counsel to satisfy themselves that the Settlement has been properly administered;

[88] **ORDERS** that the Settlement Administrator shall provide to counsel for the Petitioner (with copy to counsel for the Respondent) the name and email address of up to ten (10) Quebec Settlement Class Members chosen by counsel for the Petitioner from the above-mentioned list, or such larger number as the Court may order upon request, which counsel for the Petitioner shall be permitted to use to satisfy themselves that the Settlement has been properly administered (including by entering into contact with those Quebec Settlement Class Members);

[89] **ORDERS** that, subject to paragraph 11 of the Secondary Claims Settlement Agreement, the Respondents shall provide the Settlement Administrator with the information which the Settlement Administrator will need to calculate the amounts to be paid to Settlement Class Members pursuant to the Secondary Claims Settlement Agreement;

[90] **ORDERS** that the Respondents shall pay the costs of the administration of the Secondary Claims Settlement Agreement by the Settlement Administrator;

[91] **ORDERS** that the Fonds Levy shall be paid to the Fonds d'aide aux recours collectifs pursuant to the law and, in addition, paragraphs 29, 60 and 61 of the Secondary Claims Settlement Agreement;

[92] **ORDERS** that if any Net Refund cheques remain uncashed and/or undelivered after the Ultimate Cashing Deadline, the Respondents will make the Cy-Pres Payment to the Charitable Organization, to be designated in the event that the Cy-Pres Payment is required, in accordance with paragraphs 62 to 64 of the Secondary Claims Settlement Agreement, except that the Court shall determine in conformity with art. 1036 of the *Code of Civil Procedure*[27], after hearing submissions from the parties, what entity(ies) shall receive any part of the Cy-Pres Payment attributable to uncashed cheques sent to Quebec Settlement Class Members;

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[27] *Supra*, note 3.

[93] **ORDERS** and **DECLARES** that the terms of this judgment shall not be effective unless and until the Secondary Claims Settlement Agreement is approved by the Alberta Court of Queen's Bench, the Manitoba Court of Queen's Bench and the Ontario Superior Court, and any and all appeal rights associated with those approval orders are exhausted;

[94] **ORDERS** that if the Secondary Claims Settlement Agreement is terminated for any reason, or is not finally approved in the Alberta Action, Manitoba Action and Ontario Action:

a) this judgment shall become moot and be of no force or effect; and

b) the Secondary Claims Settlement Agreement and all proceedings in connection therewith shall be null and void;

[95] **ORDERS** that for the purposes of administration and enforcement of this Order and the Secondary Claims Settlement Agreement, the Court will retain an ongoing supervisory role and any party or the Settlement Administrator may apply to this Court for directions in respect of the implementation of the Secondary Claims Settlement Agreement or any other matter related thereto, including how the Cy-Pres Payment, if any, shall be made, on providing ten (10) days' notice to the other parties and to the Settlement Administrator, and the Respondents and the Settlement Administrator acknowledge and attorn to the jurisdiction of the Court for this purpose;

[96] **ALL WITHOUT COSTS.**

B- MOTION FOR CLASS COUNSEL FEE APPROVAL (s. 32, *Act respecting the class action*)

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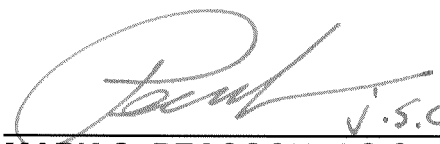
[97] **APPROVE** the Contingency Fee Agreement signed between Mr. Nicholas D'Urzo and the Applicant's attorneys;

[98] **APPROVE** the Applicant's attorneys' fees of 25% plus disbursements and applicable taxes of the amounts directly payable by Quebec settlement class members;

[99] **ALL WITHOUT COSTS.**



MARK G. PEACOCK, J.S.C.

Me. Normand Painchaud
Me. Marie-Eve Porlier
SYLVESTRE FAFARD PAINCHAUD
Attorneys for Petitioner

Me. Christopher L. Richter
WOODS LLP
Attorneys for Respondents

Me. Frikia Belogbi
FONDS D'AIDE AUX RECOURS COLLECTIFS

Dates of hearing: July 20 and 31, 2012