

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Action)

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N°: 500-06-000595-120

**ANTOINE PONTBRIAND**

Petitioner

vs.

**APPLE CORPORATION**

and

**HACHETTE BOOK GROUP INC.**

and

**HACHETTE BOOK GROUP CANADA  
LTD.**

and

**HARPERCOLLINS PUBLISHERS LLC,**

and

**HARPERCOLLINS CANADA LTD.**

And

**MACMILLAN PUBLISHERS INC.**

and

**PENGUIN GROUP (USA) LLC  
(formerly Penguin Group (USA), Inc.),**

and

**PENGUIN CANADA BOOKS INC.**

and

**SIMON & SCHUSTER CANADA a  
Division of CBS CANADA HOLDINGS  
CO.**

Respondents

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**MOTION FOR AUTHORIZATION  
TO INSTITUTE A CLASS ACTION AGAINST THE SETTLING DEFENDANTS,  
TO OBTAIN THE STATUS OF REPRESENTATIVE  
AND FOR APPROVAL OF A NOTICE TO MEMBERS  
OF A SETTLEMENT APPROVAL HEARING**

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**IN SUPPORT OF THIS MOTION, PETITIONER ANTOINE PONTBRIAND  
RESPECTFULLY SUBMITS THE FOLLOWING:**

1. In the amended motion to institute a class action in the present court file, Petitioner sought to institute a class action on behalf of the persons forming the group hereinafter described:

*All those natural persons, residing and domiciled in Quebec, who purchased, since April 1, 2010, an electronic book published by one of the Respondents Publishers.*

2. The identical, similar, or related questions of fact and law in said amended motion were:
  - a) Did Respondents act in violation of section 45(1)(a) of the *Competition Act* (R.C.S. 1985, c. C-34) by agreeing to switch to the Agency model of eBook pricing and by agreeing to fix the prices of eBooks?
  - b) Did Respondents act in violation of sections 1457 or 1458 of the *Civil Code of Québec* (S.Q., 1991, c. 64), by conspiring and succeeding to artificially raise prevailing prices of eBooks?

- c) In the affirmative to one or both of the above questions, were Petitioner and members of the Group aggrieved by Respondents' conduct?
  - d) In the affirmative, what is the quantum of any compensatory damages due to the Petitioner and the members of the Group?
  - e) Are the Respondents jointly liable for the overcharges paid by the Group members?
  - f) Should punitive damages be awarded against the Respondents; and
  - g) In the affirmative, what are the amounts of punitive damages to award to the Petitioner and members of the Group?
3. On May 12, 2014, Petitioner reached a settlement agreement with the following Respondents :
- Hachette Book Group Canada Ltd.
  - Hachette Book Group Inc.
  - HarperCollins Canada Limited
  - HarperCollins Publishers L.L.C.
  - Macmillan Publishers Inc.
  - Penguin Group (USA) L.L.C. (formerly Penguin Group (USA), Inc.)
  - Penguin Canada Books Inc.
  - Simon & Schuster Canada, a division of CBS Canada Holdings Co.

(Hereinafter the "Settling Defendants")

Said agreement is subject to the approval of the Court and is communicated herewith as **Exhibit S-1**;

- 4. For the purpose of the present motion, except where indicated otherwise, all capitalised terms have the meaning defined in the proposed S-1 Settlement Agreement;
- 5. The proposed S-1 Settlement Agreement is also subject to approval of the Ontario Court and to the discontinuance of the BC Proceeding as against the Settling Defendants;

6. The proposed S-1 Settlement Agreement provides for the payment by the Settling Defendants of a lumps sum of CDN 3.175 M \$, and for a level of cooperation in the continuing national class actions against the Non-Settling Defendant;
7. By S-1 Settlement Agreement, Petitioner and the Settling Defendants wish to settle and finally resolve the Quebec Proceeding as against the Settling Defendants;
8. By the present motion, Petitioner seeks to obtain :
  - the authorisation of a class action, against the Settling Defendants only and by consent from them, in the context of the S-1 Settlement Agreement;
  - the approval of a notice to class members of said authorisation and of the coming Court hearing on approval of the S-1 Settlement Agreement;
  - the approval of a plan of distribution of the notice; and
  - the establishment of an opt-out period and of a date of hearing of a motion for approval of the S-1 Settlement Agreement;

#### **Authorisation of the class action as against the Settling Defendants**

9. The group as defined in the S-1 Settlement Agreement and for whom Petitioner hereby seeks the status of Representative (the Quebec Settlement Class) is :

All individuals resident in Quebec and all legal Persons in Quebec established for a private interest, partnership or association in the Province of Quebec which at all times since April 1, 2010 have had no more than fifty persons bound to it by contact of employment or under its direction or control, who purchased E-Books during the Settlement Class Period except Excluded Persons, Persons who are in the National Settlement Class and Persons who validly Opt-Out of the Settlement Classes in accordance with the Authorization Judgment;

10. The common question of facts and law for which Petitioner hereby seeks to obtain the authorisation of a class action against the Settling Defendants only is:

Did the Settling Defendants, or any of them, conspire with each other or others to fix, maintain, increase or control the price of E-Books in Canada during the Settlement Class Period?

11. Petitioner submits that, in the context of the S-1 Settlement Agreement and against the Settling Defendants only, the facts alleged at paragraphs 4, 5 and 6 of the amended motion for authorization seem to justify the conclusions sought at paragraph 10 of said motion;
12. The number of Quebec Settlement Class members, being all individuals and all eligible legal persons residing in the province of Quebec who purchased any E-Book during a period of more than four years make the application of article 59 or 67 C.C.P. difficult or impracticable;
13. Petitioner is in a position to adequately represent the members, for the following reasons:
  - a) he is a member of the Quebec Class;
  - b) he is well informed of the facts alleged in the amended motion for authorisation;
  - c) he has the required time, determination, and energy to bring this matter to a conclusion;
  - d) he collaborates fully with his attorneys, responds diligently and intelligently to requests his attorneys make and comprehends the nature of the class action proceeding;
  - e) he is not in a conflict of interest with other members of the group.

### **Notice to members**

14. Petitioner wishes to set a date for the hearing of a motion seeking the approval of the S-1 Settlement Agreement;
15. Said hearing would take place at least 60 days after the publication of a notice to members;

16. A copy of the proposed Notice to members is filed as **Exhibit S-2**;
17. The S-2 Notice is to be published in English and French, and the S-1 Settlement Agreement is to be made available to members in both languages as well;
18. French translations of the S-1 Settlement Agreement and of the S-2 Notice will be communicated and produced before the hearing of the present motion;
19. Petitioner proposes that the S-2 Notice be distributed according to a Plan of Distribution to be communicated as **Exhibit S-3**;
20. The S-3 Plan of Distribution has been developed with the class members' E-Book readers' profile in mind, and is intended to be both efficient and cost effective;
21. The proposed S-2 Notice, as distributed according to the Plan of Distribution to be approved, will give sufficient notice to the Quebec Settlement Class of the coming approval hearing, and of the terms of the proposed S-1 Settlement Agreement;
22. Said notice also informs the members of the group of the possibility to opt-out of the class within 60 days, should they wish to do so;

**WHEREUPON PETITIONER PRAYS THE COURT TO ORDER:**

**THAT** the present motion be granted;

**THAT**, except to the extent that they are modified by this Judgment, the definitions set out in the S-1 Settlement Agreement, which is attached to this Judgment, apply to and are incorporated into this Judgment;

**THAT** a class action be is hereby authorized for settlement purposes only, for the following Group, as against the Settling Defendants:

All individuals resident in Quebec and all legal Persons in Quebec established for a private interest, partnership or association in the Province of Quebec which at all times since April 1, 2010 have had no more than fifty persons bound to it by contact of employment or under its direction or control, who purchased E-Books during the Settlement Class Period.

**THAT** the status of representative for the Group be ascribed to Mr. Antoine Pontbriand;

**THAT** any member of the Quebec Settlement Class who wishes to opt-out of the Quebec Proceeding must do so by sending a signed written election to opt-out, together with the information required in the Agreement, to Quebec Class Counsel Sylvestre Fafard Painchaud s.e.n.c.r.l., postmarked or faxed on or before the end of the Opt Out Period;

**THAT** any member of the Quebec Settlement Class who has validly opted-out of the Quebec Proceeding would not be bound by the Agreement should it be approved, and would not either be entitled to receive any share of benefits payable in connection with same, and will cease to be a putative class member in the continuing action against the Non-Settling Defendant;

**THAT** any member of the Quebec Settlement Class who has not validly opted-out of the Quebec Proceeding will be bound by the Agreement should it be approved;

**THAT** the hearing for approval of the S-1 Settlement Agreement shall take place on a date that is at least 60 days following the publication of the S-2 Notice;

**THAT** the S-2 Pre-Approval Notice is hereby approved substantially in the form attached hereto;

**THAT** the S-3 Plan of Distribution is hereby approved in the form attached hereto;

**THAT** the S-2 Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination;

**THAT** this Judgment, including, without limiting the generality of the foregoing, the authorisation of the Quebec Proceeding against the Settling Defendants and the definitions of the Quebec Settlement Class, Settlement Class Period and Common Issue, is without prejudice to any position the Non-Settling Defendant may take in this or any other proceeding on any issue, including the issue of whether the Quebec Proceeding should be certified as a class proceeding as against the Non-Settling Defendant. For greater certainty, this Judgment, the Court's reasons in support of this Judgment and the authorisation of the Quebec Proceeding against the Settling Defendants in the context of the S-1 Settlement Agreement are not binding on and shall have no effect on the Court's ruling in the continuing prosecution of the Quebec Proceeding or any other proceeding as against the Non-Settling Defendant.

Notwithstanding the foregoing, the Non-Settling Defendant may not rely, cite or refer to all or any part of this Judgment or any reasons given by the Court in support of this Judgment, and may not assert a deficiency in the notice plan and /or opt-out process set out in this Judgment, as a basis to oppose the Plaintiff's motion to approve the Agreement, including without limitation as a basis to oppose the proposed bar order contained in the S-1 Settlement Agreement.

**THE WHOLE** without costs.

Montréal, May 30, 2014

*Sylvestre Fafard Painchaud*

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**SYLVESTRE, FAFARD, PAINCHAUD s.e.n.c.r.l.**  
Attorneys for the Petitioner

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**NOTICE OF PRESENTATION**

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TO: **Me Pascale Dionne-Bourassa**  
**B.D.B.L. AVOCATS Inc.**  
1, boul. René-Lévesque E.  
2<sup>e</sup> étage E.  
Montréal (Québec) H2X 3Z5  
Tel : 514 317-2970  
Fax : 514 317-2971

Attorneys for Respondent MacMillan Publishers Inc.

TO: **Me Michael A. Eizenga**  
**BENNET JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto (Ontario) M5X 1A4  
Tel : 416-863-1200  
Fax : 416-863-1716

Attorneys for Respondent MacMillan Publishers Inc.

TO: **Me Yves Martineau**  
**STIKEMAN ELLIOTT**  
1155 boul. René-Lévesque Ouest,  
40e étage  
Montréal (Québec) H3B 3V2  
Tel : 514-397-3000  
Fax : 514-397-3222

Attorneys for Respondent HarperCollins Publishers LLC &  
HarperCollins Canada Ltd.

TO: **Me Sylvain Lussier & Me Carine Bouzaglou**  
**OSLER**

1000, rue De La Gauchetière Ouest  
bureau 2100  
Montréal (Québec) H3B 4W5  
Tel : 514-904-8100  
Fax : 514-904-8101

Attorneys for Respondent Simon & Schuster Canada a Division of CBS  
Canada Holdings Co.

TO: **Me Jean Saint-Onge**  
**LAVERY**

Bureau 4000  
1, Place Ville Marie  
Montréal (Québec) H3B 4M4  
Tel : 514-871-1522  
Fax : 514 871-8977

Attorneys for Respondent Hachette Book Group Inc. & Hachette Book  
Group Canada Ltd.

TO: **Me Sidney Elbaz**  
**MC MILLAN**

1000, rue Sherbrooke Ouest  
Bureau 2700  
Montréal, Québec  
Canada H3A 3G4  
Tel : 514-987-5000  
Fax : 514-987-1213

Attorneys for Respondent Penguin Group (USA) LLC  
(Formerly Penguin Group (USA), Inc.) & Penguin Canada Books Inc.

TO: **Me Céline Legendre**  
**MC CARTHY TÉTRAULT**

Bureau 2500  
1000, rue De La Gauchetière Ouest  
Montréal (Québec) H3B 0A2  
Tel : 514-397-4100  
Fax : 514-875-6246

Attorneys for Respondent Apple Corporation

**MADAM, SIR:**

**TAKE NOTICE** that the Petitioner will present the enclosed *Motion for authorization to institute a class action against the settling defendants, to obtain the status of representative and for approval of a notice to members of a settlement approval hearing*, to the Honourable justice David R. Collins of the Superior Court of the district of Montreal, located at 1, Notre-Dame Est street, Montreal Quebec, H2Y 1B6, at a date and time to be determined by the Court.

**DO THEREFORE GOVERN YOURSELVES ACCORDINGLY.**

Montréal, May 30, 2014

*Sylvestre Fafard Painchaud*

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**SYLVESTRE, FAFARD, PAINCHAUD s.e.n.c.r.l.**  
Attorneys for the Petitioner

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**DISTRICT OF MONTRÉAL**

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**ORIGINAL**

ND: 17388/11

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**Me Normand Painchaud**

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