

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

M. BLACKETTE

NO: 500-06-000583-118

Petitioner

-vs.-

RESEARCH IN MOTION LIMITED, legal person duly constituted, having its head office at 295 Phillip Street, City of Waterloo, Province of Ontario, N2L 3W8

Respondent

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER
STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:
 - all residents in Canada who have a BlackBerry smartphone and who pay for a monthly data plan but were unable to access their email, BlackBerry Messenger service (“BBM”), and/or internet for the period of October 11 to 14, 2011, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have a BlackBerry smartphone and who pay for a monthly data plan but were unable to access their email,

BlackBerry Messenger service (“BBM”), and/or internet for the period of October 11 to 14, 2011, or any other group to be determined by the Court;

2. Petitioner contends that, despite the fact that the Respondent is responsible for BlackBerry users’ loss of email, BBM, and/or internet service for approximately one (1) and a half (1/2) days, it has not compensated consumers on a prorated basis for such loss of use, while knowing full well that BlackBerry users pay a monthly fee to their wireless service providers for data services and that they were deprived thereof;
3. By reason of these actions and omissions, Petitioner and the members of the class suffered economic damages, which they are entitled to claim;

B) The Respondent

4. Respondent Research in Motion Limited (“RIM”) is a national telecommunications company that designs, manufactures and markets the BlackBerry smartphone;
5. BlackBerry is known for its ability to send and receive e-mail and instant messages while maintaining a high level of security through on-device message encryption;
6. BlackBerry has a 11.7% share of the worldwide smartphone sales, making it the fourth most popular device. As of October 2011, there were seventy (70) million subscribers worldwide to BlackBerry;

C) The Situation

7. BlackBerry messages are routed through RIM’s Network Operations Center, and while this produces an extra point of failure, it also adds extra layers of encryption;
8. On Monday, October 10th 2011, BlackBerrys began having problems overseas with their email, BBM, and internet services;
9. On Tuesday, October 11th 2011, RIM announced that the problems were caused by a core switch failure within the company's infrastructure. RIM explained that a transition to a backup switch did not function as tested, causing a large backlog of data;
10. On Wednesday, October 12th 2011, it was suggested that a technical failure in Europe was suspected of causing a huge backlog of messages worldwide

for BlackBerry users, who had experienced three (3) days of outages and that this started affecting BlackBerry users globally;

11. A copy of the Respondent's "BlackBerry Service Update" is attached hereto and produced herein as **Exhibit R-1**;
12. In Canada, the BlackBerry users were unable to send and receive emails, BBM messages, and/or browse the internet from as early as October 11th 2011 until the problem was fully resolved on October 14th 2011;
13. On October 17th 2011, the Respondent published a press release that stated that they would be offering BlackBerry users one (1) month of free technical support to enterprise customers and free downloads of the following apps until December 31st 2011:
 - SIMS 3 - Electronic Arts
 - Bejeweled - Electronic Arts
 - N.O.V.A. - Gameloft
 - Texas Hold'em Poker 2 - Gameloft
 - Bubble Bash 2 - Gameloft
 - Photo Editor Ultimate - Ice Cold Apps
 - DriveSafe.ly Pro - iSpeech.org
 - iSpeech Translator Pro - iSpeech.org
 - Drive Safe.ly Enterprise - iSpeech.org
 - Nobex Radio™ Premium - Nobex
 - Shazam Encore - Shazam
 - Vlingo Plus: Virtual Assistant - Vlingo

the whole as appears more fully from a copy of said Press Release, produced herein as **Exhibit R-2**;

14. It was also reported in the news that RIM was discussing the possibility of refunding wireless service providers certain sums that they received from these wireless service providers who pay a monthly fee for each active BlackBerry user;
15. The Respondent, however, made no mention anywhere of either directly refunding or arranging with BlackBerry users' wireless service providers compensation for the amount of time that their customers were deprived of the use of their data, despite having admitted in their Press Release (Exhibit R-2) that "service interruptions" occurred for "1.5 days in Canada";
16. The right to download specific free apps (which RIM values at more than \$100) does not properly compensate BlackBerry users who have paid for services that they were unable to use;

17. In addition, refunding wireless service providers who pay a monthly fee for active BlackBerry users, does not obligate them to pass these monies along to BlackBerry users. Further, even if they did pass those along, it would not be sufficient to pay for the actual costs that wireless service providers charge to BlackBerry users in the form of monthly data plans;
18. The Respondent has failed to take action to either directly compensate BlackBerry users or to indirectly compensate BlackBerry users by arranging for wireless service providers to refunds their customers and to take full responsibility for these damages;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

19. Petitioner owns a BlackBerry Curve 9300 and pays a monthly data fee of 25\$ to Rogers Wireless for 1 GB;
20. He specifically uses his BBM and email for friends he has in Trinidad, England, Barbados, and the United States. Text messaging them would cost him significant money for each text message;
21. On October 12th 2011 until October 13th 2011, the Petitioner was unable to use his email and BBM services;
22. After the problem was resolved, the Petitioner expected to be compensated for the loss of services to which he was paying a monthly fee for. Instead, he was disappointed to learn that RIM was only offering some free App downloads that he does not want or need;
23. On October 24th 2011, the Petitioner called Rogers Wireless to inquire if they would compensate him for the loss of service and they said that the problem was not their fault, directing him to call RIM if he has a complaint to make;
24. In the Petitioner's case his prorated share of the damages that he suffered is \$1.25, namely \$25 for his monthly data plan / 30 days x 1.5 days;
25. Petitioner's damages are a direct and proximate result of the Respondent's conduct and its failure to provide BlackBerry data services;
26. In consequence of the foregoing, Petitioner is justified in claiming damages;



III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

27. Every member of the class has a BlackBerry smartphone and has paid a monthly fee for their data plan, but was unable to access their email, BlackBerry Messenger service (“BBM”), and/or internet for the period of October 11 to 14, 2011;
28. Each member of the class is justified in claiming damages in the amount of their prorated share of their monthly data fees which they were unable to use (i.e. \$ of monthly data fee / 30 days x 1.5 days);
29. All of these damages to the class members are a direct and proximate result of the Respondent’s conduct and its failure to provide BlackBerry data services;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
30. Petitioner is unaware of the specific number of persons who have Blackberry smartphones and who pay for monthly data plans, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
31. Class members are numerous and are scattered across the entire province and country;
32. In addition, given the costs and risks inherent in an action before the courts, and the small amount being claimed by each person, many people will hesitate to institute an individual action against the Respondent. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondent would increase delay and expense to all parties and to the court system;
33. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
34. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;

35. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondent and that which the Petitioner wishes to have adjudicated upon by this class action
36. Individual questions, if any, pale by comparison to the common questions that predominate;
37. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondent's conduct;
38. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondent fail to provide BlackBerry users with email, BlackBerry Messenger service ("BBM"), and/or internet services during the period of October 11 to 14, 2011?
 - b) 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 services?
39. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

40. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages;
41. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

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

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

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;

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;

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;

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

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

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that he be attributed the status of representative of the Class

42. Petitioner is a member of the class;

43. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;

44. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

45. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

46. Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

47. Petitioner is in good faith and has instituted this action for the sole goal

of having his rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;

48. Petitioner understands the nature of the action;

49. Petitioner's interests are not antagonistic to those of other members of the class;

B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

50. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

51. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

52. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada who have a BlackBerry smartphone and who pay for a monthly data plan but were unable to access their email, BlackBerry Messenger service ("BBM"), and/or internet for the period of October 11 to 14, 2011, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have a BlackBerry smartphone and who pay for a monthly data plan but were unable to access their email, BlackBerry Messenger service ("BBM"), and/or internet for the period of October 11 to 14, 2011, or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondent fail to provide BlackBerry users with email, BlackBerry Messenger service (“BBM”), and/or internet services during the period of October 11 to 14, 2011?
- b) 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 services?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

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

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

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;

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;

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;

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

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

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have

not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER 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 judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the Respondent's website with a link stating "Notice to BlackBerry users";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs, including all publications fees.

Montreal, October 25, 2011

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner