

CANADA

Class Actions Division  
**SUPERIOR COURT**

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PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL  
No.: 500-06-001113-204

**P [REDACTED] L [REDACTED];**

*Applicant*

-and-

**TURQUOISE HILL RESOURCES LTD.;**

-and-

**ULF QUELLMANN;**

-and-

**LUKE COLTON;**

-and-

**BRENDAN LANE;**

-and-

**RIO TINTO PLC;**

-and-

**RIO TINTO LIMITED;**

-and-

**RIO TINTO INTERNATIONAL HOLDINGS  
LIMITED;**

-and-

**JEAN-SÉBASTIEN JACQUES;**

-and-

**ARNAUD SOIRAT;**

*Respondents*

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**APPLICATION FOR PERMISSION TO AMEND THE RE-RE-AMENDED APPLICATION FOR  
AUTHORIZATION TO INSTITUTE A CLASS ACTION AND FOR AUTHORIZATION TO  
BRING AN ACTION PURSUANT TO SECTION 225.4 OF THE QUÉBEC SECURITIES ACT**  
(Art. 206, 585 and 589 C.C.P)

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**TO THE HONOURABLE JUSTICE MARTIN F. SHEEHAN OF THE SUPERIOR COURT OF  
QUÉBEC, DESIGNATED TO PRESIDE OVER THE PRESENT MATTER, SITTING IN AND FOR  
THE DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY STATES THE  
FOLLOWING:**

**I. INTRODUCTION**

1. On August 30, 2023, Applicant filed an “*Application for Permission to Amend the Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act*” along with the corresponding *Re-Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.5 of the Québec Securities Act*” (the “**Original Application**”).
2. On November 6, 2023, the Honourable Justice Sheehan granted permission to file the Original Application.
3. For the reasons outlined herein, and with the Respondents having indicated they do not contest the proposed amendment, the Court’s permission is being sought in order to amend the Original Application, the whole in accordance with a copy of the draft proposed “*Re-Re-Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.5 of the Québec Securities Act*”, communicated herewith as **Exhibit R-1** (the “**Amended Application**”).
4. Indeed, we hereby wish to amend the Original Application in order to substitute the current Applicant, P [REDACTED] L [REDACTED], with a new Applicant and proposed representative plaintiff, H [REDACTED] D [REDACTED], as well as to change the Class definition slightly to avoid any overlap with a related American class action which has been tentatively settled subject to court approval.

**II. GROUNDS FOR PERMISSION TO AMEND**

5. The current Applicant, the late P [REDACTED] L [REDACTED], was the Applicant when this action was originally commenced in December 2020, and was actively engaged and involved in the proceeding since that time.

6. Unfortunately, on March 3, 2025, Mr. [REDACTED] L [REDACTED] passed away, and those handling his estate have told the undersigned attorneys that if necessary his estate would remain involved, but if alternatives to his estate acting as applicant existed, that would be preferable to them, hence the filing of the present application.
7. In addition, the corresponding class action commenced in the United States also on behalf of people and entities who purchased Turquoise Hill Resources Ltd.'s ("**Turquoise Hill**") securities during substantially the same time period as this action and against certain of the same Respondents, has tentatively settled, subject to the approval of the U.S. court. The settlement class in that action has some overlap with the Class as defined in the Original Application.
8. Thus, we wish to amend the Class definition in the Original Application to exclude only those people and entities who are included in the U.S. settlement class and thereby avoid overlap with those who are subject to receive compensation under the U.S. settlement. The Class Period itself however will not be changed. The only change is the exclusion of the U.S. settlement class members.
9. Mr. H [REDACTED] D [REDACTED] is a Class Member herein and has confirmed that he would like to be substituted in place of Mr. [REDACTED] L [REDACTED] as Applicant and proposed representative plaintiff for the proposed Class, and has already signed a professional mandate agreement retaining the undersigned attorneys as his counsel herein.
10. The settlement class in the U.S. class action is:

All persons and entities who purchased or otherwise acquired Turquoise Hill common stock, call options on Turquoise Hill common stock (or sold put options on Turquoise Hill common stock), or entered into swaps replicating a purchase of Turquoise Hill common stock, in domestic transactions or on U.S. exchanges, during the period from July 17, 2018 through July 31, 2019, inclusive (the "Class Period"), and were damaged thereby.
11. As stated in the Amended Application, we would like to amend the Class definition in this proposed securities class action so that this action is brought on behalf of:

All persons and entities (apart from certain "Excluded Persons"), wherever they may reside or may be domiciled who during the period from July 31, 2018 to July 31, 2019 inclusive, purchased or otherwise acquired Turquoise Hill's securities in non-U.S. transactions or on an exchange outside of the United States, and held all or some of those securities until after one or both of July 15, 2019 and July 31, 2019.
12. Mr. D [REDACTED] meets the criteria outlined above and is a putative Class Member.
13. The new Class definition is a mirror image of the settlement class in the U.S. class action, such that everyone who is included under the U.S. settlement will be excluded from this class action.
14. [Article 585 of the Code of Civil Procedure](#) ("**C.C.P.**") permits the representative plaintiff to amend a pleading with authorization of the Court.

Substitution of the Applicant:

15. [Article 589 C.C.P.](#) clearly provides that if a representative plaintiff is no longer in a position to properly represent the class members, another class member may ask the Court to be substituted as representative plaintiff.
16. This Court has held that *inter alia* because of [Article 25 of the C.C.P.](#), Article 589 of the C.C.P. also applies at the pre-authorization stage: “prémunir les membres putatifs contre les gestes préjudiciables qu’un représentant incapable de les représenter adéquatement serait susceptible de leur causer s’il continuait à assumer le statut de membre requérant” ([Croteau c. Société de transport de Montréal \(STM\), 2017 QCCS 4634, par. 8](#); see also [Major c. Wainberg, 2016 QCCS 902 \(C.S.\), par. 63](#)).
17. It is trite law that an applicant can be replaced and that this amendment is retroactive to the date of the initial filing ([Lepage Forbes c. Procureur général du Québec, 2017 QCCS 1572, par. 44](#) and decisions cited therein).
18. The Court of Appeal has ruled on many occasions that “[l]e défaut de représentation pouvait donc être corrigé en tout état de cause, même en appel” ([Ruehmling c. Schleichkorn, 1994 CanLII 5805, par. 26](#); see also *Rimouski Ready Mix Inc. c. Beaulieu*, (1981) R.P. 330 (C.A.); *Commission de transport de la Communauté urbaine de Montréal c. Mougias*, (1976) C.A. 117; *St-Cyr c. Firemen's Insurance Co. of Newark*, (1969) B.R. 609; *Arrighi c. Cité de Pointe-aux-Trembles*, (1969) B.R. 885.), and this Court has held this principle applies to the addition of a Plaintiff in a class action pursuant to Article 589 C.C.P. (see recent decision in *Gartner et al. c. Ford Motor Company of Canada, Limited et al.*, 500-06-000956-181, 13 août 2025, Honourable Juge Sylvain Lussier, par. 57-58).
19. This Court has repeatedly held that a substitution of a proposed representative plaintiff may take place provided that it is not unnecessary or contrary to the interests of justice and does not result in an entirely new claim unrelated to the original claim ([Croteau c. Société de transport de Montréal \(STM\), 2017 QCCS 4634, par. 8 & 10](#); [Tanguay c. Québec \(Procureur général\), 2003 CanLII 75265 \(QC CS\), par. 13](#); [Dulude c. Ville de Varennes, 2022 QCCS 152, par. 23](#)).
20. This Court has found that a substitution of the proposed representative plaintiff is necessary and should be done “immédiatement” in a situation where the proposed representative passes away, including prior to the hearing of the authorization motion ([Major c. Wainberg, 2016 QCCS 902, par 9 & 65](#)).
21. When assessing the adequacy of a representative to represent a class for the purpose of determining whether a proposed class action should be authorized, the Court examines three factors: (1) the Applicant’s interest in pursuing the action; (2) the Applicant’s competence; and (3) the absence of a conflict between the Applicant and the other members of the class ([Labranche c. Énergie éolienne des Moulins, 2018 QCCS 3366, par. 24-25](#)).
22. This Court in an **authorized class action** permitted substitution of the representative plaintiff in circumstances where:
  - a. The original Applicant was no longer able to act as representative in the action;

- b. There was another member of the Class, who agreed to replace the original Applicant;
  - c. There was no reason to question the new Applicant's competence, readiness and availability to represent the interests of the Class Members;
  - d. There was no potential conflict raised between the new Applicant and the Class Members;
  - e. The substitution of the Class Representative was in the interests of the Class Members; and
  - f. The Defendants consented to the proposed substitution ([Swann c. Amazon.com.ca, 2024 QCCS 4176, par. 1-6](#)).
23. All of these conditions are met in the within application:
- a. Mr. [REDACTED] L [REDACTED] is unfortunately no longer able to act as representative in the action;
  - b. Mr. D [REDACTED] is a member of the Class and has agreed to replace Mr. [REDACTED] L [REDACTED];
  - c. There is no reason to question Mr. D [REDACTED]'s competence, readiness, and availability to represent the interests of the Class Members;
  - d. There is no potential conflict raised between Mr. D [REDACTED] and putative Class Members;
  - e. The substitution of the original Applicant for Mr. D [REDACTED] is in the interests of the Class Members; and
  - f. The Respondents consent to the proposed substitution.
24. Furthermore, unlike the *Swann c. Amazon.com.ca* case, this action has not yet been authorized and the need for caution in substituting the Applicant is not as great, as Mr. D [REDACTED]'s suitability to act as representative for the Class will be more fully assessed at the authorization application.
25. The proposed amendment is limited in scope and does not constitute new claims. The Original Application remains substantively the same in every respect other than substituting Mr. D [REDACTED] in place of the late Mr. [REDACTED] L [REDACTED], and a slight modification to the Class definition to avoid overlap with a tentatively-settled similar action.
26. The proposed amendments are neither unnecessary nor contrary to the ends of justice, and do not result in an entirely new action, as the facts, the causes of action, and all of the parties apart from the original Applicant remain the same.
27. The putative Class Members' interests are better protected by having an actively engaged Class Member represent their interest and rights.

Revising the Class Definition:

28. As articulated by the Court of Appeal, “[t]here is no doubt that judges have the power to revise the class definition if the circumstances so require” (*Option Consommateurs c. Banque Amex du Canada*, 2018 QCCA 305, par. 79; see also *Société des loteries du Québec (Loto-Québec) c. Brochu*, 2007 QCCA 1392, par. 6-7).
29. The judge managing a class action has considerable discretionary power to modify the composition of a class (*Province canadienne de la Congrégation de Sainte-Croix c. J.B.*, 2023 QCCA 1307, par. 16). Nothing prevents the judge managing the class action from excluding some putative class members that had been included in the group or restricting the group. (*Lepage c. Société de l'assurance automobile du Québec*, 2019 QCCA 1981, par. 9-10).
30. In approving a change to the definition of a Class, the C.C.P entrusts the judge to protect the interests of absent class members (*Société des loteries du Québec (Loto-Québec) c. Brochu*, 2007 QCCA 1392, par. 6).
31. Here, no absent Class Member would have their interests prejudiced by the amendment to the Class definition, as anyone who is excluded from this class action is able to make a claim and receive compensation under the U.S. settlement. The change in the Class definition merely avoids allowing for shareholders to potentially double-dip or be included in and possibly make claims for proceeds from two related actions.
32. The only putative Class Members that are being excluded from the Class definition are those who purchased their shares on a U.S. exchange or in a U.S. transaction and hence should expect that they would have to seek compensation under the U.S. settlement.
33. In a recent **authorized class action which had been tentatively settled** (pending approval by the Court), this Court permitted a modification of the Québec class specifically to harmonize the class with a corresponding action on behalf of non-Québec class members. The Court did so, even though notices had already been published and it would require the imposition of a further opt-out deadline to allow the additional class members being added an opportunity to opt-out, because the modification of the class was not contrary to the interests of justice or to the interests of the Québec class members (*Govan c. Loblaw Companies Limited*, 2025 QCCS 1481, par. 17-24).
34. Here, there is even stronger justification to permit the modification of the Class, as this action has not yet been authorized and no notices have been published.
35. The amendments would also not prejudice the rights of any of the parties to this litigation. In fact, the Respondents were informed of the intention to substitute the Applicant and change the Class definition, and do not contest said amendments.
36. Given that the proposed class action has not yet been authorized, permitting these amendments would not run contrary to the interests of justice.
37. For all of the above reasons, the proposed amendments do not in any manner change the stated intent of the proceedings and the substitution of the original Applicant with the new

proposed Applicant, Mr. D [REDACTED], as well as the change in the Class definition, is justified both in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**ALLOW** the amendment of the “*Re-Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.5 of the Quebec Securities Act*” dated August 30, 2023, as set forth in the *Re-Re-Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.5 of the Quebec Securities Act*”, (Exhibit R-1);

**THE WHOLE** without costs.

**MONTREAL, September 10, 2025**

-and-

**TORONTO, September 10, 2025**

*(s) Lex Group Inc.*

*(s) KND Complex Litigation*

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**Lex Group Inc.**  
Per: David Assor  
*Attorneys for the Applicants*

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**KND Complex Litigation**  
Per: Eli Karp & Hadi Davarinia  
*Attorneys for the Applicants*

## AFFIDAVIT

I, the undersigned, **HADI DAVARINIA**, attorney, practicing my profession with the firm KND Complex Litigation, located at 2300 Yonge Street, in the City of Toronto, Province of Ontario, M4P 1E4, solemnly declare:

1. I am one of the attorneys representing the Applicant in the present matter;
2. All of the facts alleged in the present *Application for Permission to Amend the Re-Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act*, are true to my personal knowledge.

AND I HAVE SIGNED:



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Hadi Davarinia

SOLEMNLY DECLARED TO BEFORE ME  
AT TORONTO, on September 10, 2025



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COMMISSIONER OF OATHS FOR  
ONTARIO

Eii Karp  
(LSO# 54317P)

## **NOTICE OF PRESENTATION**

TO: Me Nick Rodrigo and Me Faiz Lalani  
**Davies Ward Phillips & Vineberg S.E.N.C.R.L/s.r.l**  
1501 McGill College Avenue  
Montreal, Quebec H3A 3N9  
*Attorneys for Respondents*

**TAKE NOTICE** that the present *Application for Permission to Amend the Re-Re-Amended Application for Authorization to Institute a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act* will be presented for adjudication at a date and time to be determined by the Honourable Justice Martin F. Sheehan, sitting in class actions division of the Superior Court of Quebec, at the Montreal Courthouse located at 1 Notre-Dame Street East, or as soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, September 10, 2025  
LEX GROUP INC.

  
Per: David Assor

And

**KND COMPLEX LITIGATION**

  
Per: Hadi Davarinia

Class Counsel/Attorneys for Applicant

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(Class Action Division)  
SUPERIOR COURT

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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P [REDACTED] L [REDACTED]

*Applicant*

v.

TURQUOISE HILL RESOURCES LTD et al.

*Respondents*

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**APPLICATION FOR PERMISSION TO AMEND  
THE RE-RE-AMENDED APPLICATION FOR  
AUTHORIZATION TO INSTITUTE A CLASS  
ACTION AND FOR AUTHORIZATION TO BRING  
AN ACTION PURSUANT TO SECTION 225.4 OF  
THE QUÉBEC SECURITIES ACT**

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**ORIGINAL**

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*Me David Assor*



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