

CANADA  
Province of Québec  
District: Montréal  
Locality: Montréal  
File No.: 500-06-000907-184

SUPERIOR COURT  
Class Action Division

**Karine Levy**

Plaintiff

v.

**Nissan Canada Inc.**

Defendant

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**PLAINTIFF'S PROPOSED SECOND CASE PROTOCOL (in civil matters)  
PRESENTATION PAGE  
Superior Court of Québec, Montréal Division**

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1. **You are required to complete this page when filing a first case protocol or a proposed case protocol in the record of the Court.** Place this page before the case protocol or the proposed case protocol (before page 1) and staple them together.
  2. **Do not complete or attach** this presentation page if you are filing an amended case protocol.
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For each question, you must check an answer, either YES or NO.  
No answer will be deemed to be YES.

<b>The parties are requesting a stay of the proceeding:</b> (line 4 of the protocol)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>The parties are requesting an extension of the time limit:</b> (line 6 of the protocol)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>The parties plan to file more than six expert opinions:</b> (lines 40 to 43 of the protocol)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>A party (defendant, third person, person called) intends to file an application for authorization to file a written defence:</b> (line 33 of the protocol)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>The parties plan to conduct more than six pre-trial examinations:</b> (lines 47 and 48 of the protocol)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>The parties plan to conduct examinations the duration of which is incompatible with article 229 of the Code of Civil Procedure (C.C.P.):</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>The protocol was not signed by the parties or was not notified to them:</b>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

**RÉSERVÉ AU GREFFIER : Cocher si protocole trié pour saisie CHEM\*EXA**

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SUPERIOR COURT  
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**Karin Levy**

Plaintiff

v.

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Error!

Reference source not found.

**PLAINTIFD'S PROPOSED AMENDED CASE PROTOCOL**  
**Superior Court of Québec, Montréal Division**  
**(article 148 of the Code of Civil Procedure)**

1.	Nature of the dispute: Data Breach Class Action as a result of the data breach that occurred on or before December 11, 2017.	
2.	Value of the subject matter of the dispute: Undetermined	
3.	Latest date on which the application was served on all the parties:	July 27, 2021
4.	All the parties are requesting a stay of the proceeding in order to allow them to negotiate an out-of-court agreement (C.C.P., a. 156):  Duration: (where applicable, indicate a maximum stay of 3 months)  If the application is allowed by the Court, the proceeding will therefore be stayed until:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  <input type="checkbox"/> 1 month <input type="checkbox"/> 2 months <input type="checkbox"/> 3 months
5.	All the parties undertake to hold a settlement conference. (C.C.P., aa. 148(2) and 161 to 165)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
6.	All the parties are requesting an extension of the time limit for trial readiness (C.C.P., a. 173):  Duration:  If the Court allows the application, the six-month time limit will be extended until:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO  <input type="checkbox"/> 3 months <input type="checkbox"/> 6 months <input type="checkbox"/> 9 months  To be set down by the Court

PRELIMINARY EXCEPTIONS		
7.	<b>Declinatory exceptions</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
8.	<input type="checkbox"/> Referral to competent court or dismissal (C.C.P., a. 167)	
9.	<input type="checkbox"/> Other exception (with a reference to the C.C.P. article):	
10.	Submitted by (enter the name of the party):	

11.	<b>Exceptions to dismiss</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
12.	<input type="checkbox"/> Dismissal (C.C.P., a. 168):	
13.	Submitted by (enter the name of the party):	

14.	<b>Other preliminary exceptions</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
15.	<input type="checkbox"/> Clarifications regarding (C.C.P., a. 169):	
16.	<input type="checkbox"/> Disclosure of documents (C.C.P., a. 169):	
17.	<input type="checkbox"/> Striking of immaterial allegations (C.C.P., a. 169):	
18.	<input type="checkbox"/> Requirement to provide suretyship (C.C.P., a. 492):	
19.	<input type="checkbox"/> Other exception (indicate its nature):	
20.	Submitted by (enter the name of the party):	

21.	<b>Application under article 51 C.C.P.</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
22.	<input type="checkbox"/> Application under article 51 C.C.P.	
23.	Submitted by (enter the name of the party):	

OTHER PROCEEDINGS		
24.	<b>Safeguard measures (C.C.P., a. 169 1st para.):</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
25.	<input type="checkbox"/> Application for safeguard measures	
26.	Submitted by (enter the name of the party):	

27.	<b>Other incidental procedures</b>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
		Deadline for filing
28.	<input type="checkbox"/> Amendment of a pleading	
29.	<input type="checkbox"/> Determination of an issue of law	
30.	<input type="checkbox"/> Declaration of disqualification	
31.	<input checked="" type="checkbox"/> Other (indicate its nature):  Application for permission to examine class members/third parties (Art. 587 C.C.P.)	30 days after the Order closing Ms. Levy's examination
32.	Submitted by (enter the name of the party): Defendant	

DEFENCE	
33.	<p><b>Under article 171 C.C.P., the case is subject to the rules of oral defence. Despite this, all the parties are applying for authorization from the Court for the case to be subject to the rules of written defence, on the following grounds (C.C.P., aa. 148(5) and 171) (indicate the grounds):</b></p> <p>The complexity of the case and proper case management considering the nature of the issues in dispute and the scope of the questions in litigation.</p> <p><b>In the absence of an application for authorization for a written defence, the defendant must state the grounds by oral defence (C.C.P., aa. 154 and 170 2nd para.) (indicate the grounds):</b></p>

YES  NO

Deadline for filing of written defence:

March 31, 2023

34.	<b>The defendant intends to file a cross-application.</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
35.	Deadline for filing the cross-application	
36.	Deadline for filing the defence to cross-application	

37.	<p><b>Issues in dispute (C.C.P., a. 148):</b></p> <p>According to Court of Appeal decision of April 28, 2021:</p> <p>(a) Did Nissan Canada Inc. commit a fault regarding the storage and the safe-keeping of the financial and/or personal information of the Class Members?</p> <p>(b) Did Nissan Canada Inc. commit a fault by delaying the notification to Class Members that a data breach had occurred?</p> <p>(c) Did Nissan Canada Inc. commit a fault due to the deficiencies of the notices given to Class Members about the data breach?</p> <p>(d) Did Nissan Canada Inc. commit a fault due to its failure to inform the Class Members of the outcome of its investigation?</p> <p>(e) Is Nissan Canada Inc. liable to pay compensatory damages or punitive damages to the Class Members, as a result? And if so, in what amounts?</p>
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38.	<b>Third person intervention or impleading (C.C.P., aa. 151 and 158(4))</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
39.	Deadline for the intervention or impleading of a third person	

EXPERT OPINIONS	
40.	<p><b>Joint expert opinion (C.C.P. a. 232)</b></p> <p>Nature of and need for joint expert opinion:</p>  <p>Reasons for refusing joint expert opinion (C.C.P., a. 148(4)):</p>

YES  NO

	Deadline for filing joint expert opinion:	
41.	<b>Expert opinion for the plaintiff</b> (not more than one per area or matter of expertise) (C.C.P., a. 232): (indicate number, nature and need for each expert opinion)  One (1) expert on cybersecurity.	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
	Deadline for filing an expert opinion for plaintiff:	5 months after the Order closing the examination of the Defendant's representative (including undertakings, objections)
42.	<b>Expert opinion for the defendant</b> (not more than one per area or matter of expertise) (C.C.P., a. 232): (indicate number, nature and need for each expert opinion)  Expertise on cybersecurity and data protection.	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
	Deadline for filing an expert opinion for defendant:	2 months following the filing of Plaintiff's expert report
43.	<b>Expert opinion for third person or impleaded person</b> (not more than one per area or matter of expertise) (C.C.P., a. 232): (indicate number, nature and need for each expert opinion)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
	Deadline for filing an expert opinion for third person or impleaded person:	

EXAMINATIONS			
44.	<b>Pre-trial examination(s) by either party</b> (C.C.P., aa. 148(3), 158(3) and 221)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
45.	Value of the subject matter of the dispute is less than \$100 000 (C.C.P., a. 229):	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
46.	The parties intend to submit their anticipated objections before pre-trial examination (C.C.P., a. 228):	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
47.	<b>Number of examinations before defence</b>	1	
48.	<b>Number of examinations after defence</b>	1 (sauf à parfaire)	
49.	Name of persons to be examined for the plaintiff:		
	Defendant's representative Michael LaForgia  (Plaintiff reserves the right to request to examine more than one representative of the Defendant in the event that the proposed witness cannot testify on all the topics to be covered by the examination)	Before May 31, 2023	10h00  Virtual

	Given name, surname	Date	Time	Place
	Given name, surname	Date	Time	Place
50.	Name of persons to be examined for the defendant:			
	Karine Levy	Completed		
	Given name, surname	Date	Time	Place
	Given name, surname	Date	Time	Place
51.	<p><b>In order to avoid service of a subpoena, the parties agree that, in the 20 days preceding a pre-trial examination, the examining party will disclose in writing to the other parties a detailed list of all the documents that must be in the possession of the party to be examined at the pre-trial examination. List the documents below if the parties are currently able to identify them (an appendix of all the documents may be enclosed with this protocol):</b></p>			
	Defendant's representative	Plaintiff will provide its request for pre-undertakings in view of the examination of Defendant's representative at least <b>30 days</b> before the examination.		
		Documents to be communicated 7 days before the examination		
	Given name, surname	Documents		
	Karine Levy	Completed		
	Given name, surname	Documents		
52.	Deadline for filing transcripts for the plaintiff (C.C.P., a. 227)			With the joint declaration of readiness for trial
53.	Deadline for filing transcripts for the defendant (C.C.P., a. 227)			With the joint declaration of readiness for trial
54.	Deadline for filing transcripts for the impleaded person (C.C.P., a. 227)			N/A
55.	Deadline for presenting the objections set forth in the second paragraph of article 228 C.C.P., which were raised during the pre-trial examinations for the plaintiff			<p>15 days following receipt of stenographic notes to advise the Court of any objections requiring adjudication.</p> <p>A hearing will be scheduled, if necessary. The Court will issue an order closing this step (following a hearing, if necessary).</p>

56.	Deadline for presenting the objections set forth in the second paragraph of article 228 C.C.P., which were raised during the pre-trial examinations for the defendant	15 days following receipt of stenographic notes to advise the Court of any objections requiring adjudication.  A hearing will be scheduled, if necessary. The Court will issue an order closing this step (following a hearing, if necessary).
57.	Deadline for disclosure of all the undertakings made during the pre-trial examinations for the plaintiff	30 days following receipt of stenographic notes to communicate undertakings (for which no objections have been raised).
58.	Deadline for disclosure of all the undertakings made during the pre-trial examinations for the defendant	30 days following receipt of stenographic notes to communicate undertakings (for which no objections have been raised).

<b>EXHIBITS</b>		
	<b>Exhibits and other evidence (C.C.P., aa. 145 and 158)</b>	<b>Deadline</b>
59.	Filing of exhibits for the plaintiff	With joint declaration of trial readiness
60.	Filing of exhibits for the defendant	With the joint declaration of trial readiness
61.	Filing of exhibits for the third person, impleaded person or intervening person	N/A
62.	List of exhibits admitted by plaintiff:	
63.	List of exhibits admitted by defendant:	
	<b>Filing of affidavits in lieu of testimony</b>	<b>Deadline</b>

64.	Filing of affidavits for plaintiff	With the joint declaration of trial readiness
65.	Filing of affidavits for defendant	With the joint declaration of trial readiness

OTHER		
66.	<b>Legal costs</b> (C.C.P., aa. 148 1st para., and 339) <ul style="list-style-type: none"> <li>Evaluation of legal costs for plaintiff (including expert opinions):</li> <li>Evaluation of legal costs for defendant (including expert opinions):</li> <li>Evaluation of legal costs for other parties (including expert opinions):</li> </ul>	\$ 150,000 \$ 150,000 \$ n/a

67.	<b>Methods of notification the parties intend to use</b> (C.C.P., aa. 109 to 140 and 148(9)): By email notification. For the Plaintiff : David Assor : davidassor@lexgroup.ca  For the Defendant : Margaret Weltrowska: <a href="mailto:margaret.weltrowska@dentons.com">margaret.weltrowska@dentons.com</a> / Erica Shadeed: <a href="mailto:erica.shadeed@dentons.com">erica.shadeed@dentons.com</a>	
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68.	<b>Appointment of a lawyer to a minor or a person of full age considered incapable</b> If yes, name of proposed lawyer:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
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N.B. Non-compliance with this protocol may constitute a breach punished under articles 341 and 342 C.C.P.

On February 24, 2023

On March \_\_\_ 2023

*David Assor*

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Mtre. David Assor  
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erica.shadeed@dentons.com



## David Assor

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**From:** David Assor  
**Sent:** February 24, 2023 3:11 PM  
**To:** Pierre-C. Gagnon  
**Cc:** Carole Bélanger; margaret.weltrowska@dentons.com; erica.shadeed@dentons.com  
**Subject:** RE: Action collective : 500-06-000907-184 - Karine Levy vs. Nissan Canada  
**Attachments:** Plaintiff's proposed Second Case Protocol.docx

Dear Honorable Justice Gagnon:

Thank you for your prompt response.

Plaintiff's proposed second case protocol is attached.

Yours very truly,



**David Assor**  
Attorney / Trade-mark Agent  
Avocat / Agent de Marques de Commerce  
**Lex Group Inc.**  
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