

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

No : 500-06-000957-189

SUPERIOR COURT OF  
QUÉBEC  
(Class Actions)

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DANIEL POULIN

*Petitioner*

v.

MARRIOTT INTERNATIONAL INC.

-and-

LUXURY HOTELS INTERNATIONAL  
OF CANADA, ULC

-and-

STARWOOD CANADA ULC,

*Respondents*

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APPLICATION FOR A STAY OF PROCEEDINGS  
(Articles 3137 CCQ, 49 CCP, and 577 CCP)

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TO THE HONOURABLE CHANTAL TREMBLAY OF THE SUPERIOR COURT,  
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFF  
RESPECTFULLY SUBMITS THE FOLLOWING:

1. On December 3, 2018, the Petitioner Won Kil Bai filed an Application to Exercise a Class Action and to be Appointed as Representative Plaintiff at the Superior Court of Québec (the “**Initial Application**”), disclosed as **Exhibit R-1**.
2. The Initial Application was filed on behalf of the following national class:  

“all persons or entities resident in Canada who stayed at one of the Starwood Properties hotels operated by the Defendants between January 1, 2014 and November 30, 2018.”
3. The petitioner Won Kil Bai subsequently notified counsel that he could no longer act in the capacity of a representative plaintiff due to personal circumstances. He was replaced in the role of proposed representative plaintiff by petitioner Daniel Poulin. On July 30,

2019, the petitioner Poulin filed a Re-Modified Application for Authorization to Exercise a Class Action and to be Appointed as Representative Plaintiff (the “**Poulin Application**” or “**Québec proceeding**”), disclosed as **Exhibit R-2**.

4. The Poulin Application was filed on behalf of the following provincial class:

“All persons residents of Québec who stayed at one of the Starwood Properties hotels operated by the Defendants prior to November 30, 2018.”

5. On December 3, 2018, a Notice of Action was filed in the Ontario Superior Court of Justice in *Kogut, Schnarr and Brown v. Luxury Hotels International of Canada ULC and Marriott International, Inc.* (“**Kogut Action**”)

6. On December 20, 2018, Statement of Claim was filed at the Ontario Superior Court of Justice in *Winder v Marriott International Inc. et al.* (the “**Winder Action**” or “**Ontario proceeding**”), on behalf of the following national class, as appears from a copy of said Notice of Action, disclosed as **Exhibit R-3**. The purported class definition in the Winder Action was:

“All Canadian residents whose Personal Information was accessed by unauthorized parties in or as a result of the Data Breach.”

7. Two other actions were commenced in Ontario: *Arthur v. Marriott International, Inc.* (CV-18-00610076-00CP) and *Martineau v. Marriott International, Inc.* (CV-18-00610017-00CP), but counsel in those actions did not contest carriage.

8. Pursuant to the decision of Justice Paul Perell dated October 7, 2019, carriage in Ontario was awarded to the Winder Action, and the Kogut Action was stayed, along with all other Ontario class proceedings relating to the Data Breach.

9. The Winder Action alleges that the Defendants were negligent in failing to safeguard the personal information of Canadians who stayed at the hotel properties they operated. As a result, the Defendants suffered a data breach in which the personal data belonging to approximately 500 million clients was compromised, as the Defendants acknowledged in their November 30, 2018 announcement.

10. Subsequent to the resolution of the carriage motion in Ontario, counsel in the Winder Action and counsel in the Poulin Application agreed to jointly prosecute this litigation in Ontario, on behalf of a national class.

11. On May 29, 2020, counsel in the Winder Action and counsel in the Poulin Application, having agreed to prosecute this litigation jointly, amended the pleading in the Winder Action. The Amended Statement of Claim in the Winder Action now incorporates the allegations made in the Poulin Application. It is disclosed as **Exhibit R-4**.

12. The Winder Action is now brought on behalf of:

“all Canadian residents whose Personal Information was accessed by unauthorized parties in or as a result of the Data Breach.”

13. Like the Ontario Plaintiffs, the Petitioner alleges that the Respondents are liable to the putative class members due to failure to adequately safeguard their personal information.
14. Moreover, the Petitioner has brought the Application against a group of Respondents that are all named as Defendants in Ontario.
15. The Québec Petitioner and the Ontario Plaintiff are both seeking leave to bring a class action, and both are claiming compensatory and punitive damages on the merits.
16. Both the Québec and Ontario proceedings allege that class members suffered damages as a result of the Respondents' failure to take the necessary steps to safeguard their personal information and to prevent a breach of the database containing the personal information of guests who have stayed or made reservations at their hotel properties.
17. As set out in greater detail below, the Québec and Ontario proceedings share an identity of parties, facts, and object.
18. The Respondents consent to the stay of the Poulin Application.
19. Additional class actions in respect of the Defendants' Data Breach have been commenced in BC, Alberta and Nova Scotia. On June 3, 2020, the Respondents wrote to the Courts in BC, Ontario, Quebec, Nova Scotia and Alberta, stating their intention to "simultaneously bring motions in British Columbia, Alberta, Ontario, and Nova Scotia for stays of proceeding to settle how many class actions should proceed[.]" The Respondents' letter is disclosed as **Exhibit R-5**.
20. The Poulin Application should therefore be stayed in favour of the Winder Action, considering the following factors:
  - (a) The three required identities for *lis pendens* are present;
  - (b) Two of the three Respondents are domiciled outside Québec, and one of the three Respondents is domiciled in Ontario;
  - (c) The Respondents have substantial assets in Ontario;
  - (d) There is a risk of contradictory judgments affecting Québec class members should both class actions proceed in parallel;
  - (e) Proceeding in a single, national class action would be more efficient for the parties; and
  - (f) Imperatives of judicial economy and proportionality weigh in favour of a stay of the Québec action, especially in light of the highly complex and technical evidence to be adduced.

## II. THE NECESSARY CONDITIONS FOR A STAY OF PROCEEDINGS ARE MET

### A) IDENTITY OF PARTIES

#### (i) *The Respondents*

21. The Respondents in both the Poulin Application and the Winder Action are the same: Marriott International, Inc., Luxury Hotels International of Canada, ULC and Starwood Canada ULC.

#### (ii) *The Class*

22. The class for which the Winder Action seeks certification is broader than the putative class in the Poulin Application. The Winder Action seeks to certify a national class:

“all Canadian residents whose Personal Information was accessed by unauthorized parties in or as a result of the Data Breach.”

23. In contrast, the Poulin Application seeks certification only on behalf of Québec residents. Thus, the putative class in the Winder Action includes all members of the putative class in the Poulin Application who sustained damages as a result of the Defendants’ Data Breach.

### B) IDENTITY OF FACTS

24. The Québec and Ontario proceedings advance substantially the same facts with respect to the nature and cause of the Data Breach suffered by the Respondents, the Respondents’ alleged knowledge of it, and the Respondents’ alleged conduct and failure to prevent the Data Breach.

25. The Québec and Ontario proceedings involve exactly the same alleged facts, and substantially similar allegations with respect to the Respondents’ alleged knowledge thereof.

26. The Québec and Ontario proceedings cover the same time period. Moreover, both proceedings allege that the Respondents had knowledge of an alleged earlier data breach (the “Starwood Incident”) since 2015. Both the Winder Action and the Poulin Application allege that despite the occurrence of the Starwood Incident, the Respondents continued collecting personal data from their guests without taking adequate precautions to prevent another data breach. Both actions allege that, as a result of their inaction and negligence after the Starwood Incident, the Respondents subsequently suffered the Data Breach affecting some 500 million guests, which was announced on November 30, 2018.

27. Thus, the Winder Action and the Poulin Application rely on the same facts and point to the same alleged failures by the respondents to take the necessary measures to safeguard putative class members’ personal information.

28. The identity of facts criterion is therefore also met.

**C) IDENTITY OF OBJECT**

29. The principal objects of the Québec and Ontario proceedings are the same.

30. Both the Winder Action and the Poulin Application seek authorization (or “certification”) of a class action.

31. Although this should suffice to meet the identity of object criterion, it is worth noting that on the merits, both proceedings claim compensatory damages on behalf of the proposed class, for similar reasons. Both the Winder Action and the Poulin Application also claim punitive damages on behalf of the proposed class, once again for substantially the same reasons.

32. Considering the foregoing, the identity of object criterion is met.

33. As the Québec and Ontario actions share an identity of parties, facts, and object, all of the necessary conditions for a stay of proceedings are met, and this Honourable Court should use its discretion to order such a stay.

**III. OTHER FACTORS WEIGH IN FAVOUR OF A STAY**

34. Several other factors weigh in favour of a stay.

35. *First*, two of the three respondents in this action are domiciled outside Québec, and one is domiciled in Ontario.

36. *Second*, the Respondents have substantial assets in Ontario.

37. *Third*, the Winder Action is also brought on behalf of a class that, if certified, would include the putative class in the Poulin Application, and would permit a more complete resolution of the litigation.

38. *Fourth*, several witnesses, such as the Respondents’ experts, are likely to be domiciled outside Québec, including in Ontario.

39. *Fifth*, should the Québec and Ontario proceedings both advance at the same time, there is a significant risk of contradictory judgments affecting the Québec class members.

40. *Sixth*, a single class action would result in greater efficiencies, and would cost less in terms of fees and disbursements, which would be paid out of any amounts awarded to the class.

41. *Seventh*, counsel in the Québec proceeding will work together with counsel who initiated the Ontario proceeding in advancing the Ontario proceeding. These counsel are familiar with the causes of action asserted in the Poulin Application and will ensure they are given due consideration by the Ontario Court;

42. *Finally*, imperatives of judicial economy and proportionality weigh in favour of the present matter being disposed of in a single class action, especially considering that it will involve evidence that is highly technical and complex.

**IV. THE QUÉBEC MEMBERS' RIGHTS AND INTERESTS WOULD NOT BE ADVERSELY AFFECTED BY A STAY**

43. A stay would not have an adverse effect on their rights and interests of Québec class members.
44. There is no reason to think that the rights and interests of the Québec members would be adversely affected by a stay of the Québec action in favour of the Ontario one.
45. Mr. Winder's counsel, Siskinds LLP, and Mr. Poulin's counsel, Rochon Genova LLP, have agreed to prosecute the Winder Action jointly in Ontario. Both firms consist of experienced class action practitioners who have dealt with multijurisdictional class actions on many prior occasions, including class actions that cover Québec class members.
46. Additionally, both firms have French-speaking attorneys and clerks on staff who would be able to handle requests for information from Québec members.
47. The Winder Action explicitly seeks relief for Québec residents pursuant to Québec statutes:

“2(g) with respect to the Class Members who are residents of the Province of Québec, a declaration that the Defendants violated articles 3 and 34-37 of the *Civil Code of Québec*, CQLR c CCQ-1991, section 5 of the *Charter of Human Rights and Freedoms*, CQLR c C-12 and sections 10 and 14 of the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ c P-39.1, each as amended.

[...]

(j) with respect to Class Members who are residents of Québec, an order annulling those Class Members' individual service contracts entered into with the Defendants for hotel accommodations at one or more of the Defendants' establishments, the whole pursuant to Article 272(F) of the *Consumer Protection Act*, CQLR, c P-40.1 and the collective recovery of the amounts paid by those Class Members under said contracts;”

48. Nothing suggests that Québec members would lose the benefit of having their local law applied in the Ontario proceedings, and the provincial statutes that may apply in the present matter are not so different that an Ontario judge would have any difficulty in applying Québec law.
49. Moreover, the Québec members will not lose any rights, as their recourses will simply be stayed, not eliminated.
50. Finally, the *Canadian Judicial Protocol for the Management of Multi-Jurisdictional Class Actions* provides that judges in different Canadian jurisdictions may communicate with one

another, such that an Ontario judge could communicate with this Honourable Court during the course of the Ontario proceeding, if necessary, as appears from a copy of the Protocol, disclosed as **Exhibit R-6**.

V. **IN THE ALTERNATIVE, THE QUÉBEC PROCEEDING SHOULD BE SUSPENDED**

51. To have two class actions moving forward in parallel in such a context would be costly and inefficient.
52. Thus, should this Honourable Court find that the conditions for a stay are not met, the facts alleged herein should nevertheless lead the Court to use its inherent powers to temporarily suspend the Québec proceeding until a certification judgment is rendered in Ontario.
53. At that time, the need to proceed on behalf of the same class members in two different jurisdictions can be reassessed.

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

**STAY** the action brought in Québec Superior Court file number 500-06-00957-189 until final judgment is rendered in Ontario Superior Court of Justice file number CV-18-00611365-00CP;

**IN THE ALTERNATIVE, SUSPEND** the action brought in Québec Superior Court file number 500-06-00957-189 until a certification judgment is rendered in Ontario Superior Court of Justice file number CV-18-00611365-00CP;

**THE WHOLE** with costs, if contested.

Montreal, June 12, 2020

Montréal, June 12, 2020

*Rochon Genova LLP*

*Woods LLP*

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**NOTICE OF PRESENTATION**

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**TAKE NOTICE** that the present *Application for a stay of proceedings* will be presented for  
adjudication before the Honourable Judge Chantal Tremblay, on such date and at such time as the  
Court may decide.

**DO GOVERN YOURSELF ACCORDINGLY.**

Montreal, June 12, 2020

Montréal, June 12, 2020

*Rochon Genova LLP*

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## LIST OF EXHIBITS

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- Exhibit R-1:** Application to Exercise a Class Action and to be Appointed as Representative Plaintiff at the Superior Court of Québec dated December 3, 2018;
- Exhibit R-2:** Re-Modified Application for Authorization to Exercise a Class Action and to be Appointed as Representative Plaintiff dated July 30, 2019;
- Exhibit R-3:** Statement of Claim filed at the Ontario Superior Court of Justice in *Winder v Marriott International Inc. et al.* December 20, 2018;
- Exhibit R-4:** Amended Statement of Claim in the Winder Action dated May 29, 2020;
- Exhibit R-5:** Repondents' letter to the Courts in BC, Ontario, Quebec, Nova Scotia and Alberta dated June 3, 2020;
- Exhibit R-6:** Canadian Judicial Protocol for the Management of Multi-Jurisdictional Class Actions.

Montreal, June 12, 2020

Montréal, June 12, 2020

*Rochon Genova LLP*

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**(CLASS ACTION)**  
**SUPERIOR COURT**  
DISTRICT OF MONTREAL  
PROVINCE OF QUÉBEC

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**DANIEL POULIN**

*Plaintiff*

vs.

**MARRIOTT INTERNATIONAL, INC. ET  
ALS.**

*Defendants*

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**APPLICATION FOR A STAY OF  
PROCEEDINGS  
(Articles 3137 CCQ, 49 CCP, and 577 CCP)  
AND EXHIBITS R-1 TO R-6**

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**ORIGINAL**

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