

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001081-203

(Class Action)
SUPERIOR COURT

STEVE [REDACTED]
[REDACTED]

Applicant

-vs-

RESTAURANT BRANDS INTERNATIONAL INC., legal person having its head office at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

and

RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP, legal person having its head office at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

and

THE TDL GROUP CORP., legal person having its establishment at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

Defendants

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

I. INTRODUCTION

1. The Defendant, Restaurant Brands International Inc. (hereinafter "**RBI**"), is a publicly traded company on the Toronto Stock Exchange (symbol: QSR.TO) and on the New York Stock Exchange (symbol: QSR). The Applicant discloses herewith a copy of RBI's *CIDREQ* report as **Exhibit P-1**;

2. The Defendant, Restaurant Brands International Limited Partnership (“**RBILP**”), is a subsidiary of RBI and the indirect parent of The TDL Group Corp. The Applicant discloses herewith a copy of RBI LP’s *CIDREQ* report as **Exhibit P-2**;
3. The Defendant, The TDL Group Corp. (“**TDL**”), is registered as a restaurant and also operates under the name “Tim Hortons”, as it appears from copy of its *CIDREQ* report disclosed as **Exhibit P-3**;
4. Together, the Defendants RBI, RBILP and TDL operate the Tim Hortons coffee chain (include the mobile application) and are collectively referred to herein as “Tim Hortons”;
5. In the “About Us” section of its website (www.timhortons.ca), Tim Hortons describes itself as “*Canada’s largest restaurant chain*” and a “*proud symbol of our country and its values*”, Applicant disclosing **Exhibit P-4**:

“Tim Hortons is now proud to be Canada's largest restaurant chain serving over 5 million cups of coffee every day with 80% of Canadians visiting a Tims in Canada at least once a month. More than a coffee and bake shop, Tim Hortons is part of the fabric of Canada and a proud symbol of our country and its values.”

6. One of Canada’s values is that her citizens have a fundamental right to respect for their private lives, which was violated by Tim Hortons who used its mobile application to invasively track and monitor its customers without their knowledge;
7. On June 12, 2020, a Financial Post article by James McLeod titled “*Double-double tracking: How Tim Hortons knows where you sleep, work and vacation*” first reported that the Tim Hortons mobile application is logging detailed location data of its customers (unbeknownst to them) and was using a location-tracking service from a company called Radar Labs Inc., who boasts that it can ping its customers’ phones as often as every three to five minutes, as it appears from **Exhibit P-5**;
8. In his article (Exhibit P-5), Mr. McCleod details his personal experience using the Tim Hortons mobile application, which enabled him (with the assistance of experts) to conclude that Tim Hortons has been tracking the movements of all of its customers in exacting detail through its mobile application for more than a year;
9. Mr. McCleod highlights how, until the week of June 8, 2020, Tim Hortons privacy “FAQ” stated “***the app uses your location only while you have the app open***” but that in response to his inquiries Tim Hortons acknowledged that this statement was misleading:

“We absolutely agree that our FAQ on location data could have been more clear,” Fulton said, adding that the company was planning to send an updated statement to customers.

10. On June 29, 2020, the Office of the Privacy Commissioner of Canada announced that several Privacy Commissioners across Canada, including la *Commission d'accès à l'information du Québec* (CAI) have launched a joint investigation into the Tim Hortons mobile application and how it may be collecting and using data about people's movements as they go about their daily lives, as it appears from **Exhibit P-6**;
11. On June 29, 2020, a Financial Post article titled "*Tim Hortons scaling back data collection as four privacy watchdogs announce joint investigation into app*", reported that Tim Hortons announced that it had discontinued its detailed location tracking after coming under public scrutiny, as it appears from **Exhibit P-7**;
12. The Applicant is a consumer who has been using Tim Hortons mobile application since 2019 and who was completely unaware that Tim Hortons was intrusively tracking his movements, even when the application was closed;
13. Consequently, the Applicant seeks to institute a class action on behalf of the following class of which he is a member:

Class:

All Quebec residents who downloaded the Tim Hortons mobile application.

(hereinafter referred to as the "**Class**").

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFFS (SECTION 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

14. In 2019, the Applicant downloaded the Tim Hortons mobile application on his Android smartphone;
15. He also downloaded the Burger King mobile application in 2019 (which is relevant because RDI uses location-tracking service supplied by Radar Labs Inc. for both its Burger King and Tim Hortons mobile applications);
16. The Applicant downloaded this application because he enjoys Tim Hortons coffees and food, and visits Tim Hortons regularly;
17. The Tim Hortons mobile application is useful for the Applicant because it notifies him of ongoing promotions that he would otherwise not know about;
18. Just as in the case of James McLeod (Exhibit P-5), the Applicant was unaware that Tim Hortons was constantly tracking his movements and personal activities, even when the application was not opened on his phone;

19. Had he been aware that Tim Hortons was engaging in this intrusive conduct, he would have never downloaded their mobile application;
20. Up until June 8, 2020, Tim Hortons falsely stated on its privacy “FAQ” section that: “***the app uses your location only while you have the app open***”, contrary to sections 40, 41, and 219 of Quebec’s *Consumer Protection Act* (“CPA”);
21. Tim Hortons and its agents - unlawfully and without consent - constantly streamed the Applicant’s location via his Android smartphone and kept logs of his activities;
22. The Applicant (or any reasonable person for that matter) could have never suspected that downloading an application for a coffee shop would enable a large corporation to watch virtually every single one of his moves and keep this data stored on foreign servers;
23. Tim Hortons actions of secretly tracking its customers was intentional and intended to further their own selfish business interests at the expense of Class Members’ personal privacy rights;
24. Tim Hortons has taken a cavalier and arbitrary attitude to their legal and moral duties to the Class Members;
25. At all material times, the conduct of Tim Hortons as set forth was malicious, deliberate, and oppressive towards their customers and Tim Hortons conducted themselves in a wilful, wanton and reckless manner as to Class Members’ privacy rights, such as to warrant punitive damages;
26. Tim Hortons violated: (i) the Applicant’s privacy rights; (ii) the Federal *Personal Information Protection and Electronic Documents Act* (PIPEDA); (iii) *An Act respecting the Protection of Personal and Private Information in the Private Sector*; and (iv) its own contractual undertaking that the application would only use its customers’ location while the application is open;
27. The Applicant’s claim for damages is based on breaches by Tim Hortons of the following legislation:
 - a) Articles 3, 35 and following, and 1457 C.C.Q.;
 - b) Articles 5 and 49 of the *Québec Charter*;
 - c) Articles 40, 41 and 219 CPA;
 - d) Articles 5 and 14 of *An Act respecting the Protection of Personal and Private Information in the Private Sector*; and
 - e) Sections 5 and following and Schedule 1 of PIPEDA.

28. The Applicant hereby claims \$100 in damages (including punitive damages), subject to adjustment;
29. The Applicant's damages are a direct and proximate result of Tim Hortons omissions, breaches and negligence;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

30. All Class members have a common interest in proving the Defendants' liability;
31. In this case, the legal and factual backgrounds at issue are common to all members of the Class;
32. Every Class member downloaded the Tim Hortons mobile application and their activities were tracked, without their consent, even when the application was closed;
33. Each Class member is also justified in claiming moral damages and punitive damages;
34. All of the damages to the Class members are a direct and proximate result of the Defendants' negligence and privacy violations;
35. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
36. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
 - a) Did Tim Hortons violate the privacy rights of its customers who downloaded the Tim Hortons mobile application?
 - b) Did Tim Hortons falsely or misleadingly state that "*the app uses your location only while you have the app open*"?
 - c) Should an award of aggregate damages be made?
 - d) Is Tim Hortons liable to pay punitive damages to the Class Members, and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

37. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;

38. Tim Hortons has hundreds of thousands of customers in Quebec;
39. According to Duncan Fulton, RBI's chief corporate officer, there are "a few million Canadians" using the Tim Hortons mobile application;
40. Class members are very numerous and are dispersed across the province and Canada;
41. These facts demonstrate that it would be impossible to contact each and every Class member to obtain mandates and to join them in one action;
42. 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 without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

43. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
 - a) he is a member of the Class and has a personal interest in seeking the conclusions proposed herein;
 - b) he is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) his interests are not antagonistic to those of other Class members;
44. Additionally, the Applicant respectfully adds that:
 - a) he has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
 - b) after learning about the situation, he mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they can be compensated;
 - c) he cooperates and will continue to fully cooperate with his attorneys, who have experience in consumer protection-related class actions;
 - d) he understands the nature of the action;
45. As for identifying other Class members, the Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very significant number of Class members that find themselves in an identical situation, and that it

would not be useful to attempt to identify each of them given their sheer numbers;

46. For the above reasons, the Applicant respectfully submits that his interest and competence are such that the present class action could proceed fairly and in the best interest of Class members;

III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

47. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;

48. The conclusions that the Applicants wish to introduce by way of an originating application are:

GRANT the Representative Plaintiff's action against the Defendants on behalf of all Class members;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff damages, including punitive damages, in the amount of \$100, subject to adjustment;

DECLARE that an award of aggregate damages should be made;

CONDEMN the Defendants, solidarily, to pay punitive damages in an amount to be determined;

ORDER the collective recovery of all damages to the Class members;

CONDEMN the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;

ORDER the Defendants, solidarily, 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 Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

49. The interests of justice favour that this Application be granted in accordance with its conclusions;

IV. JURISDICTION

50. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal, since he is domiciled and resides in the district of Montreal and his attorneys practice in this district.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
3. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

Class:

All Quebec residents who downloaded the Tim Hortons mobile application.

(hereinafter referred to as the "**Class**").

or any other Class to be determined by the Court;

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
 - a) Did Tim Hortons violate the privacy rights of its customers who downloaded the Tim Hortons mobile application?
 - b) Did Tim Hortons falsely or misleadingly state that "*the app uses your location only while you have the app open*"?
 - c) Should an award of aggregate damages be made?
 - d) Is Tim Hortons liable to pay punitive damages to the Class Members, and, if so, in what amount?
5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
 - a) **GRANT** the Representative Plaintiff's action against the Defendants on behalf of all the Class members;
 - b) **CONDEMN** the Defendants, solidarily, to pay the Representative Plaintiff damages, including punitive damages, in the amount of \$100, subject to adjustment;

- c) **DECLARE** that an award of aggregate damages should be made;
 - d) **CONDEMN** the Defendants, solidarily, to pay punitive damages in an amount to be determined;
 - e) **ORDER** the collective recovery of all damages to the Class members;
 - f) **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;
 - g) **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
 - h) **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
 - i) **CONDEMN** the Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
6. **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;
7. **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;
8. **ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the “News” sections of the Saturday editions of Le Journal de Montréal and the Montreal Gazette;
9. **ORDER** that said notice be published on the Defendants’ various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating “Notice of a Class Action”;
10. **ORDER** the Defendants to notify Class members via a “pop-up” notification in their mobile application, with the subject line “Notice of a Class Action”, containing a hyperlink to the notice;

11. **ORDER** the Defendants to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";
12. **RENDER** any other order that this Honourable Court shall determine;
13. **THE WHOLE** with costs, including the court stamp, bailiff fees, stenographer fees and publication fees.

Montreal, June 30, 2020

Montreal, June 30, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Co-Counsel for Applicant

Me Joey Zukran

(s) Consumer Law Group Inc.

CONSUMER LAW GROUP INC.

Co-Counsel for Applicant

Me Jeff Orenstein

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main

residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for RBI Inc.;
- Exhibit P-2:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for RBI LP;
- Exhibit P-3:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for The TDL Group Corp.;
- Exhibit P-4:** Screen capture of the "about us" section of the Tim Hortons website;
- Exhibit P-5:** Financial Post article dated June 12, 2020, titled "*Double-double tracking: How Tim Hortons knows where you sleep, work and vacation*";
- Exhibit P-6:** Copy of the June 29, 2020, press release from the Office of the Privacy Commissioner of Canada titled "*Privacy Commissioners launch joint investigation into Tim Hortons mobile app*";
- Exhibit P-7:** Financial Post article dated June 29, 2020, titled "*Tim Hortons scaling back data collection as four privacy watchdogs announce*

joint investigation into app”.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, June 30, 2020

Montreal, June 30, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Co-Counsel for Applicant
Me Joey Zukran

(s) Consumer Law Group Inc.

CONSUMER LAW GROUP INC.

Co-Counsel for Applicant
Me Jeff Orenstein

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.C.P.)

TO: RESTAURANT BRANDS INTERNATIONAL INC.
130 King Street West, Suite 300
Toronto, Ontario, M5X 1E1

RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP
130 King Street West, Suite 300
Toronto, Ontario, M5X 1E1

THE TDL GROUP CORP.
130 King Street West, Suite 300
Toronto, Ontario, M5X 1E1

DEFENDANTS

TAKE NOTICE that Applicant's *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action Division.

Montreal, June 30, 2020

Montreal, June 30, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Co-Counsel for Applicant
Me Joey Zukran

(s) Consumer Law Group Inc.

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