

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

No.: 500-09-031502-255
(500-06-001288-238)

MINUTES OF HEARING

DATE: June 13, 2025

THE HONOURABLE PETER KALICHMAN, J.A.

APPLICANT	COUNSEL
FORD MOTOR COMPANY OF CANADA, LIMITED	Mtre LAURENT NAHMIASH Mtre JOSÉE CAVALANCIA (<i>INF</i>) Absents
RESPONDENT	COUNSEL
NATHALIE CHARBONNEAU	Mtre ROBERT ASTELL (<i>Astell & Associés avocats</i>) Absent

DESCRIPTION: **Application for leave to appeal a class action authorization judgment** (articles 357 and 578 C.C.P.).

Clerk at the hearing: Myriam Villeneuve

Courtroom: RC-18

HEARING

Continuation of the hearing held on June 10, 2025. The parties were excused from appearing in Court.

BY THE JUDGE: Judgment – see page 3.

Myriam Villeneuve, Clerk at the hearing

JUDGMENT

[1] The applicant seeks leave to appeal a judgment of the Superior Court (the honourable Pierre Nollet)¹, authorizing the institution of a class action based on damages allegedly suffered in relation to a vehicle recall.

[2] The recall notice was sent in regard to the “Battery Engine Control Module” in 2019 and 2020 Ford Fusion Energi Plug-in-Hybrid Electric Vehicles and specified the following:

“There is a chance a fire may break out in the trunk area while driving, increasing the risk of injury. We are asking you to please avoid charging your vehicle until a remedy is available.

Some Ford Fusion Energi Plug-in Hybrid models may not start or may display a ‘Stop Safely Now’ message while driving, followed by a loss of power within a few seconds.”

[3] After determining that the *criteria* of article 575 *C.C.P* had been met, the judge authorized the class action on behalf of the following class:

Sub-Group 1: Any person who leased or purchased on a long-term basis in the province of Quebec a 2019 or 2020 model year Ford vehicle, Fusion hybrid/PHEV Energi model, covered by recall 23S33 issued on June 23, 2023 by Ford Motor Company and or Ford Motor Company of Canada Limited and who still owned or leased it on July 19, 2023;

Sub-Group 2: Any person who has leased or purchased on a long-term basis in the province of Quebec a 2019 or 2020 model year Ford vehicle, Fusion hybrid/PHEV Energi model, covered by recall 23S33 issued on June 23, 2023 by Ford Motor Company and or Ford Motor Company of Canada Limited and who ceased to own or lease it before July 19, 2023;

[4] The applicant argues that in authorizing the class action, the judge committed the following reviewable errors:

- (a) The judge erred in concluding that the respondent had demonstrated an arguable case and that she had standing to represent the class;
- (b) The judge erred in concluding that “no factual basis was required to support a class-wide claim based on premature battery deterioration”;

¹ *Charbonneau c. Ford du Canada limitée*, 2025 QCCS 1322.

- (c) The judge erred in concluding that the claims of the members raised “identical, similar, or related issues of law or fact”; and
- (d) The judge erred in authorizing a sub-class of members which had not been contemplated in the respondent’s application.

[5] A judgment authorizing a class action may be appealed “only with leave of a judge of the Court.”² Leave is only granted “exceptionally” where the applicant succeeds in demonstrating that on its face, the judgment contains a determinative error in the interpretation of the conditions for authorizing a class action, in the appreciation of the facts relating to those conditions or where this a flagrant lack of jurisdiction.³

[6] The applicant has failed to convince me of this.

[7] As far as the first ground of appeal is concerned, the judge’s analysis does appear to have been undertaken from the perspective of the respondent. There is a difference between drawing logical presumptions based on the evidence and making vague, baseless assumptions and the judge clearly appears to have understood that distinction and applied it.

[8] For the same reason, the applicant’s second ground of appeal must fail. There is no clear error in the judge’s determination – reached solely at the authorization stage of the proceeding – that driving without using the battery will result in increased fuel costs and increased wear and tear on certain vehicle components. Moreover, these allegations are set out in the *Demande pour autorisation d’exercer une action collective et pour être nommée représentante*, and are directly tied to the respondent and not to a hypothetical member of the class.

[9] As far as the third ground is concerned, the applicant raises the same argument the judge rejected and there is no clear error in his determination that the applicant’s offer to buy back the affected vehicles at above-market price, did not render the first and second common questions academic. As the judge points out, the applicant’s offer may eventually have relevance, in particular to a possible failure on the part of the respondent to mitigate her damages, but at this stage the details of the offer are subject to interpretation, notably regarding how depreciation will be calculated.

[10] Lastly, I agree with the respondent, that the question of whether the judge erred in establishing a second sub-group does not constitute a determinative error in the interpretation of the conditions for authorizing a class action.

² Art. 578 C.C.P.

³ *Centrale des syndicats du Québec c. Allen*, 2016 QCCA 1878, paras. 58-59.

FOR THESE REASONS, THE UNDERSIGNED:

[11] **DISMISSES** the application for leave to appeal with judicial costs.

PETER KALICHMAN, J.A.