IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Crawford v. FCA Canada Inc.,* 2026 BCSC 172

Date: 20260203
Docket: S226271
Registry: Vancouver

Between:

Samantha Crawford

Plaintiff

And

FCA Canada Inc. and FCA US LLC

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

Before: The Honourable Mr. Justice Milman

Reasons for Judgment

Counsel for the Plaintiff:	A. Leoni, K.C.
Counsel for the Defendants:	A. Borrell P. Pliszka H. Fawzy
Place and Date of Hearing:	Vancouver, B.C. January 16, 2026
Place and Date of Judgment:	Vancouver, B.C. February 3, 2026

Table of Contents

I. INTRODUCTION

[1] This is an application by the defendants in this proposed class action seeking leave under Rule 22-1(4)(a) of the *Supreme Court Civil Rules* to cross-examine Jeff Hall, an automotive technician who has affirmed two affidavits in support of the plaintiff's application for certification under s. 4 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [*CPA*].

[2] At the certification hearing, the defendants intend to challenge the admissibility of those affidavits, or failing that, the weight they should be given, on the basis that Mr. Hall purports to provide the court with expert opinion evidence while lacking the requisite credentials and without having undertaken adequate research, investigation or analysis. The defendants submit that the proposed cross-examination will assist the court in assessing those matters.

[3] The plaintiff opposes the application on the basis that the proposed cross-examination would serve no useful purpose but instead would unnecessarily add to the cost of the proceeding and risk further delay.

[4] For the reasons that follow, I have concluded that the application should be dismissed.

II. BACKGROUND

A. The Claim

[5] The plaintiff commenced this action on August 3, 2022.

[6] The amended notice of civil claim alleges that a number of motor vehicles manufactured by the defendants between the years 2013 and 2020 were prone to

various defects. Foremost among them is the tendency of the affected vehicles to burn or consume inordinate amounts of engine oil.

[7] It is common ground that the defendants recognised that there was a problem of that kind and sought to address it with a software calibration. The defendants also acknowledge that in a few cases, the software update could reduce the affected vehicles' fuel efficiency, but in those cases, the defendants say, they addressed the problem by replacing the engine long block at no charge to the vehicle owners.

[8] The plaintiff alleges that those fixes did not entirely resolve the oil consumption defect or the associated reduction in fuel efficiency. Moreover, the plaintiff also alleges that the affected vehicles were also prone to a number of other defects, including, the so-called "Oil Level Defect" (which caused the engine to shut down when the oil level dropped below a certain level) and the "Oil Indicator Defect" (a defect preventing the warning light on the dash from illuminating even when the oil level was too low).

[9] At the certification hearing, the plaintiff will be seeking an order certifying a national class comprised of everyone in Canada who either owned or leased one or more of the affected vehicles. There are 44 proposed common issues.

B. The Certification Schedule

[10] The certification hearing is currently scheduled to take place over five days, from May 11-15, 2026.

[11] The plaintiff delivered her unfiled certification application and supporting affidavits to the defendants on October 6, 2023.

[12] On April 3, 2025, the parties agreed on a schedule setting deadlines for the exchange of materials leading to the certification hearing.

[13] In the emails exchanged between counsel leading to that agreement, plaintiff's counsel advised defendants' counsel that the plaintiff would not agree to any cross-examinations on affidavits in advance of the certification hearing. The email added that if the defendants wished to pursue one or more cross-examinations, then they should do so "by application brought in a timely way."

[14] At the request of the defendants, the schedule was later amended by agreement to extend those deadlines by approximately five weeks. The new deadline for the completion of any cross-examinations was December 8, 2025.

[15] On November 17, 2025, the deadline set in the revised schedule for the delivery of the plaintiff's reply evidence, the plaintiff delivered only one new affidavit in reply, namely, the second affidavit of Mr. Hall.

[16] There followed an exchange of emails in which defendants' counsel asked to cross-examine a number of the plaintiff's affiants and to extend the deadline to allow that to occur. In an email sent December 11, 2025, plaintiff's counsel refused to agree to this, asserting that the defendants had not met the test for leave and, in any event, were now out of time to conduct any cross-examinations.

C. This Application

[17] On December 23, 2025, defendants' counsel informed plaintiff's counsel that they planned to seek leave to examine Mr. Hall only. The parties then agreed on a date for the hearing of that application. The defendants filed the application on January 6, 2026.

III. THE LEGAL TEST

[18] The parties generally agree on the test to be applied on an application of this kind. The factors to be considered have been set out in a number of decisions of this court and the Court of Appeal, including *Stephens v. Altria Group, Inc.*, 2021 BCCA 396 at para. 5; *Acciona Wastewater Solutions LP v. Greater Vancouver Sewerage and Drainage District*, 2023 BCSC 782 at paras. 28-29; and *Leonard v. The Manufacturers Life Insurance Company*, 2020 BCSC 1051 at paras 17, 27.

[19] The following factors are identified in those cases:

a) whether there are material facts in issue;

b) whether the cross-examination is relevant to an issue that may affect the outcome of the substantive application;

c) whether the cross-examination will serve a useful purpose in terms of eliciting evidence that would assist in determining the issue on the

application;

d) whether the information sought is available by other means; and

e) whether cross-examination will lead to unreasonable delay to unreasonable cost.

[20] Several decisions of this court have addressed the question of how that test should be applied where, as here, a defendant seeks to cross-examine one or more of the plaintiff's affiants in advance of the certification application in a proposed class action. The principles that are emphasised in that context were described by W.J. Harris J. in *Cantlie v. Canadian Heating Products Inc.,* 2016 BCSC 660, at paras. 6-8, as follows:

> [6] Courts have discretion to order cross-examination prior to certification of a class action. The test applicable to granting leave to cross-examine in these circumstances was stated by Justice Myers in *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2008 BCSC 1263 at para. 56. Cross-examination is permitted where it is first established that there is a conflict in evidence on a point germane to certification. If a conflict is found, discretion to allow cross-examination will be exercised depending on the factors of each case, including the importance of the issue, whether the cross-examination will unduly delay the certification application and whether the cross-examination is likely to elucidate the relevant issues.
>
> [7] Leave to permit cross-examination is an order that courts are generally reluctant to make and is rarely granted prior to certification: *Collette v. Great Pacific Management et al.*, 2001 BCSC 237 at para. 29; *Cantlie v. Canadian Heating Products Inc.*, 2014 BCSC 1170 at para. 6.
>
> [8] In considering what is germane to certification, I note that a certification hearing does not assess the merits of a claim, but instead considers whether the plaintiff has demonstrated some basis in fact for the requirements in s. 4 of the *CPA* with the exception of the requirement that the pleadings disclose a cause of action: *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 99.

IV. THE PARTIES' ARGUMENTS

A. The Defendants

[21] The defendants submit that all of the factors identified in that body of jurisprudence support the application.

[22] In particular, they say that there are material facts in issue, inasmuch as the plaintiff seeks to rely on an expert report that the defendants contend is inadmissible.

[23] Further, they say that Mr. Hall's first affidavit is central to the plaintiff's case for certification because he provides the only evidence adduced by the plaintiff to prove the existence of the Oil Indicator Defect and Oil Level Defect and that the defendants' fixes failed to remedy the oil consumption problem and reduced fuel efficiency.

[24] The defendants rely on a number of authorities which they say support the proposition that, to succeed on the certification application, the plaintiff must demonstrate some basis in fact to show that the proposed common issues exist, as the first step in evaluating the "commonality" element of the certification test under s. 4(1)(c) of the *CPA* (citing *Charlton v. Abbott Laboratories, Ltd.*, 2015 BCCA 26 at para. 85; *Kirk v. Executive Flight Centre Fuel Services Ltd.*, 2019 BCCA 111 at para. 65; *Sharp v. Royal Mutual Funds Inc.*, 2021 BCCA 307 at para. 103.; *Rorison v. Insurance Corporation of British Columbia*, 2023 BCCA 474 at para. 118.; *Bhangu v. Honda Canada Inc.*, 2021 BCSC 794 at para. 99; *Krishnan v. Jamieson Laboratories Inc.*, 2021 BCSC 1396 at para. 115, aff'd *WN Pharmaceuticals Ltd. v. Krishnan*, 2023 BCCA 72 at para. 38.; *Hansma v. Atira Property Management Inc.*, 2024 BCSC 2023 at para. 25).

[25] The defendants submit further that in seeking to certify a product liability claim like this one, the plaintiff must adduce evidence demonstrating some basis in fact indicating that the subject products actually exhibit the pleaded design or manufacturing flaw: *Nissan Canada Inc. v. Mueller*, 2022 BCCA 338 [*Mueller*] at paras. 140, 147; *Hyundai Auto Canada Corp. v. Engen*, 2023 ABCA 85 at para. 12.

[26] The defendants add that a similar requirement arises under s. 4(1)(d) of the *CPA* in the context of the "preferable procedure" analysis. In that context, they say, the plaintiff must show a basis in fact to support the allegation that any product repair or replacement program offered by the defendant has not adequately compensated the putative class members: *Richardson v. Samsung Electronics Canada Inc.*, 2018 ONSC 6130 at paras. 73-74, aff'd 2019 ONSC 6845 (Div. Ct.); *Maginnis v. FCA Canada Inc.*, 2021 ONSC 3897 (Div. Ct.), aff'g 2020 ONSC 5462; *Bowman v. Kimberly-Clark Corporation*, 2023 BCSC 1495 [*Bowman*]; *Larsen v. ZF TRW Automotive Holdings Corp.*, 2023 BCSC 1471 at para. 83.

[27] The defendants submit that the proposed cross-examination will assist the court in assessing the admissibility of Mr. Hall's affidavits, or at least the weight

that his opinions ought to receive, and that there is no other way for them to obtain the information that the proposed cross-examination will provide.

[28] On the issue of timeliness, the defendants submit that they sought to pursue the cross-examination soon after receiving Mr. Hall's second (reply) affidavit on November 17, 2025. They say that they could not reasonably have been expected to bring the application before then. In any event, they submit that the proposed cross-examination can easily be accommodated in the time remaining until the certification hearing without causing any delay.

B. The Plaintiff

[29] The plaintiff disputes all of this.

[30] The plaintiff says that there is no conflict in the evidence that is germane to the issues that will be decided at the certification hearing.

[31] In particular, the plaintiff disagrees with the defendants' characterisation of the evidentiary burden that the plaintiff must meet to succeed on the certification application. She says that the defendants are really seeking to introduce a merits-based element to the certification test, contrary to numerous authorities.

[32] For example, she cites *Mueller* and *Bowman* at para. 136, for the proposition that a plaintiff in a product liability case need not adduce evidence of negligence in order to satisfy the commonality element of the certification test. She also cites *Mentor Worldwide LLC v. Bosco*, 2023 BCCA 127 at para. 33, where the Court held that "regarding the commonality requirement, the plaintiff must show some basis in fact that the issues are common to all class members, not some basis in fact that the acts alleged actually occurred".

[33] In the plaintiff's submission, the commonality inquiry, at least in British Columbia, should proceed in one step, not two, citing: *British Columbia v. Apotex Inc.*, 2025 BCSC 92, *Mayer v. Merchant Law Group LLP*, 2025 BCSC 1106 at para. 80; and *Moiseiwitsch v. Canadian National Railway Company*, 2025 BCSC 2377 at paras. 1-10.

[34] In addition, the plaintiff submits that the defendants are wrong in asserting that Mr. Hall's affidavits serve as the sole source of evidence on the matters that

the defendants have identified. Rather, in the plaintiff's submission, those matters are also attested elsewhere, including in the defendants' own affidavits and in the other affidavits adduced by the plaintiff.

[35] The plaintiff also disputes that the proposed cross-examination can add anything to what is already apparent on the face of Mr. Hall's affidavits. Indeed, the plaintiff submits that, if anything, the proposed cross-examination could only serve to bolster the plaintiff's case.

[36] Finally, the plaintiff complains that the defendants' application ought not even to be entertained because it was brought too late, well after the deadline for cross-examinations had already passed. If leave is granted, she says, then her counsel will want to cross-examine the defendants' affiants, leading to more cost and delay, and putting the certification hearing dates at risk.

V. DISCUSSION

[37] The plaintiff is correct to point out that the application was brought late, well after the agreed-upon deadline for cross-examinations had already passed. It is also apparent that the plaintiff had, early on in this process, put the defendants on notice of its position that there would be no agreement to cross-examinations and that a timely application for leave would have to be brought if the defendants wished to pursue them.

[38] However, it also appears that the parties provided for very little time in their schedule to allow the defendants to assess whether cross-examinations would be required after delivery of the plaintiff's reply evidence. It was not unreasonable for the defendants to wait until after they had received that reply evidence before deciding if they wished to pursue cross-examinations. For that reason, I am not persuaded that the application ought not to be considered on its merits, merely because of its timing.

[39] Turning then to the substance of the issue, the parties spent much of their time at the hearing of this application addressing the elements of the certification test, particularly the dispute between them as to whether the inquiry about commonality should proceed in one or two steps. However, I am not persuaded that it is necessary for me to resolve that question in deciding this application.

[40] Rather, the issue at hand turns primarily on the utility of the proposed cross-examination. In particular, I agree with the plaintiff that the arguments that the defendants wish to raise at the certification hearing about Mr. Hall's lack of qualifications and his failure to conduct the appropriate investigations, research and analysis, can all be made with the information already available to them on the face of the affidavits. The defendants have not explained how the proposed cross-examination would be likely to yield any other relevant information to assist the court in deciding the issues that will be addressed at the certification hearing, even assuming the defendants are correct about the elements of the certification test.

[41] I also agree with the plaintiff that if leave were to be granted, the proposed cross-examination might delay the certification schedule, given the deadlines that have been agreed upon for the exchange of written submissions in February and March 2026. While I disagree with the plaintiff's premise that granting leave to the defendants would automatically entitle plaintiff's counsel to conduct their own cross-examinations, there would still be a risk of delay even with only one cross-examination to be done before arguments could be exchanged.

[42] In summary, I am not persuaded that the defendants have demonstrated a need for the proposed cross-examination, and certainly not one that outweighs the attendant risks of delay and additional cost.

VI. DISPOSITION

[43] For those reasons, I am dismissing the application.

[44] Both parties sought costs against the other if they were successful on the application. Although I have refused the application, I am not satisfied that any of the circumstances set out in s. 37 of the *CPA* are present so as to justify an award of costs in favour of the plaintiff at this time. The parties will therefore bear their own costs.

"Milman J."