

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-001360-250

DATE: August 3, 2026

BY THE HONOURABLE SHAUN E. FINN, J.S.C.

VALERIE OHAYON
Applicant

v.

AUDI CANADA INC.

-and-

VOLKSWAGEN GROUP CANADA INC.
Respondents

JUDGMENT

OVERVIEW

[1] Applicant Valerie Ohanyon has filed an application for authorization to institute a class action against Respondents Audi Canada Inc. and Volkswagen Group Canada Inc. The Applicant alleges that she leased an electric vehicle from the Respondents that is riddled with serious defects. Among other things, she alleges that her battery does not function adequately. These defects allegedly impact various electric vehicle models sold and leased by the Respondents.

[2] In response to the application for authorization, the Respondents have filed two preliminary applications. The first application seeks leave to adduce documentary evidence. The second application seeks leave to examine the Applicant before the

authorization hearing. In both cases, the Respondents submit that the proposed documentary evidence and examination “aim to correct and complete certain allegations of the Application for authorization.”¹ They further submit that these elements “are essential for the Court to adequately assess the relevance of the recall referenced in the Application for authorization and analyze the Applicant’s personal cause of action.”²

ISSUES

[3] The preliminary applications brought by the Respondents raise two issues:

1. Should the Court grant the application for leave to file two internal compliance recall documents and two internal safety recall documents?
2. Should the Court grant the application for leave to examine the Applicant for 45 minutes on four specific themes?

[4] For the following reasons, the Court concludes that:

1. It should not do so because the Respondents failed to provide the Court with a supporting affidavit; and
2. It should do so because the proposed examination of the Applicant is both essential and indispensable to the authorization hearing and proportionate.

PROCEDURAL CONTEXT

[5] On February 12, 2025, the Applicant filed an *Application to Authorize the Bringing of a Class Action*. This application was amended, with leave, on July 29, 2025 (the **Application for Authorization**).

[6] The Application for Authorization alleges that the Applicant leased a 2023 Audi Q4 e-tron and became the registered driver of the vehicle (the **Vehicle**). Thereafter, the Plaintiff allegedly discovered safety and manufacturing defects that form the basis of her proposed class action lawsuit:

10. [...] [I]t is widespread that the Audi e-tron is a lemon, suffers from many serious defects, was not adequately tested before being sold, and was clearly not ready to be put on the market [...];
11. Applicant’s vehicle suffers from the same issues as those described by the other Class Members in Exhibit P-3 and P-4, all of whom, including the Applicant, clearly overpaid, as their Audi e-tron has serious safety and manufacturing defects;

¹ Respondents’ Argument Brief, para. 3.

² *Ibid.*

12. The defects in the e-tron vehicles have been confirmed by Audi's dealership representatives [...];
13. In the Applicant's case, in particular, her battery does not function adequately, effectively transforming her Q4 e-tron from a long-range vehicle to a short-range city vehicle. She also experienced issues with starting the car and has brought her vehicle to the dealership for these issues;
14. When trying to charge her Q4 e-tron, the Audi mobile application will often indicate that it takes more than 30 hours for a full battery charge, which is absurd and never disclosed by Audi (and contrary to what Audi promised and advertised when marketing the e-tron);
15. Applicant will often charge her Q4 e-tron overnight, and the battery will only gain a handful of kilometres, making it virtually impossible for her to use her vehicle without constantly charging it, which, again, was not a "feature" disclosed or advertised by Audi;
16. Applicant's Audi dealership has advertised that they were looking into the issue and informed her that she was not the only customer experiencing major defects with the Audi e-tron model. They further advised her that there was no repair timeline in sight for the issues that she and other Class Members are experiencing;
17. The Applicant made several requests for Audi to repair the defects in her Q4 e-tron, but Audi has neglected to do so until this day (February 12, 2025); [...]

[Underlining added]

[7] Notably, the Application for Authorization alleges two Transport Canada recalls:³

- Transport Canada Recall #2025-099 targeting the:
 - 2022 and 2023 Audi Q4 e-tron models; and
 - 2021, 2022, and 2023 Volkswagen ID.4 models; and
- Transport Canada Recall #2025-100, targeting the:
 - 2024 Audi Q4 e-tron model;
 - 2024 Volkswagen ID.4 model; and
 - 2025 Audi Q4 e-tron model.

³ Application for Authorization, paras. 17.1 to 17.5; Exhibits P-5.1 and 6.3.

[8] The Application for Authorization describes the class as:⁴

Class: All persons who purchased and/or leased an Audi e-tron or a Volkswagen ID.4 vehicle manufactured, distributed, supplied, wholesaled and/or imported by Audi and/or Volkswagen[,] or any other Class to be determined by the Court.	Groupe: Toutes les personnes qui ont acheté et/ou loué un véhicule Audi e-tron ou une Volkswagen ID.4 fabriquée, distribuée, fournie, vendue en gros et/ou importée par Audi et/ou Volkswagen[,] ou toute autre groupe à être déterminé par la Cour.
---	--

[9] The Application for Authorization lists several “identical, similar, or related questions of fact or law.”⁵

- a) Are the Defendants’ Audi e-tron and Volkswagen ID.4 vehicles defective?
- b) If so, did the Defendants fail to satisfy the requirements of sections 37, 38, 39, 40, 41, 53, 215, 219, 220(a), 221(g), or 228 CPA, or of articles 1728-1730 CCQ? Can section 53.1 CPA be involved by the Class members?
- c) Did the Defendants breach section 6 of the *Quebec Charter*?
- d) Are Class members entitled to:
 - i. a reduction of their obligations (or of the vehicle purchase price) and in what amount? Alternatively, the cancellation of their contracts?
 - ii. damages for trouble and inconvenience and in what amount?
 - iii. moral damages and in what amount?
 - iv. punitive damages of \$5000.00 per Class Member?

[10] Finally, the proposed class action is characterized as “an action in damages, or, alternatively, in nullity of contract.”⁶

[11] On September 29, 2025, the Respondents filed an *Application for Leave to Adduce Relevant Evidence* (the **Application to Adduce Documents**) and an *Application for*

⁴ Application for Authorization, para. 1.

⁵ Application for Authorization, para. 44.

⁶ Application for Authorization, para. 54.

Leave to Examine the Applicant (the **Application to Examine**) pursuant to article 574 of the *Code of Civil Procedure (C.C.P.)*. The Applicant contests both applications.

[12] A hearing on the Application to Adduce Documents and the Application to Examine was held on October 29, 2025.

ANALYSIS

1. THE PROPOSED DOCUMENTARY EVIDENCE IS NOT SUPPORTED BY AN AFFIDAVIT

1.1 Position of the Parties

[13] The Respondents submit that the proposed documentary evidence, which consists of internal documents relating to compliance and safety recalls, “will enable this Court to make determinations as to the relevance of the recalls alleged by the Applicant and in turn as to whether the Applicant is an appropriate representative for the proposed class [...]”.⁷ According to the Respondents, this evidence will provide the Court with necessary details on the recalls alleged by the Applicant “which are directly relevant to the analysis of the authorization criteria.”⁸

[14] According to the Respondents:⁹

- “Courts have permitted evidence dealing with recalls or corrective actions implemented by respondents allegedly in relation to the class action at hand;”
- The proposed documentary evidence will demonstrate that:
 - “Recall #2025-099 is unrelated to the other recall mentioned in the Application for authorization, namely Recall #2025-100;
 - It is inaccurate to state that Recall #2025-099 and Recall #2025-100 state that ‘the repair is not ready yet;’ and
 - The issue targeted by Recall #2025-099 is unrelated to the purported issues alleged by the Applicant [...]”
- “All these facts are relevant to assess the Applicant’s personal cause of action in the context of a claim targeting the vehicles included in Recall #2025-100.”

[15] For her part, the Applicant argues that:¹⁰

⁷ Application to Adduce Documents, para. 5.

⁸ *Ibid.*, para. 9.

⁹ Respondent’s Argument Brief, para. 10 to 12.

¹⁰ Applicant’s Argument Plan, para. 21 to 28.

- The proposed documents “are internal documents prepared by Audi/VW that were **‘intended for use only by skilled technicians;’**”
- The proposed documents were prepared by the Respondents and the Applicant should have the right to cross-examine their representatives on the “content and context” of the documents;
- The proposed class action precedes and “is entirely independent from the recalls;”
- The facts regarding the Transport Canada recalls are already alleged in the Application for Authorization;
- In a class action, a vehicle owner has standing even if her specific vehicle is not targeted by a recall; and
- The Respondents are not dispensed from “following basic procedural rules, such as filing an affidavit in support of the motion [...]”

1.2 Discussion

[16] The third paragraph of article 574 C.C.P. states that “[a]n application for authorization may only be contested orally, and the court may allow relevant evidence to be submitted.” As this provision indicates, to adduce evidence at the authorization stage of a class action, the respondent must seek leave to do so. The Court has discretion in deciding whether to admit the proposed evidence.

[17] As noted by the Supreme Court of Canada, “[w]hen undertaking an analysis with respect to the authorization of a class action, it is essential not to conflate or confound the authorization process with the trial of an authorized action on its merits. Each of these stages serves a different purpose [...]”¹¹ Indeed, “[a]t the authorization stage, the court plays the role of a filter. It need only satisfy itself that the applicant has succeeded in meeting the criteria set out in art. [575] of the C.C.P., bearing in mind that the threshold provided for in that article is a low one.”¹² In this regard, the authorization decision is “procedural in nature.”¹³

[18] This distinction between the authorization stage and the merits has a direct impact on the notion of relevant evidence. The proposed evidence must be relevant to one or more of the criteria contained in article 575 C.C.P.¹⁴ Importantly, the proposed evidence

¹¹ *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59 (CanLII), [2013] 3 SCR 600, para. 59 [*Infineon*].

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Lambert (Gestion Peggy) c. Écolait Itée*, 2016 QCCA 659, para. 38.

cannot relate to the merits or transform authorization into a trial before the trial.¹⁵ This would blur the clear procedural line drawn by the legislature.¹⁶

[19] Moreover, the proposed evidence cannot violate the principle of proportionality.¹⁷ According to article 18 C.C.P., “[t]he parties to a proceeding must observe the principle of proportionality and ensure that [...] the means of proof they use are proportionate, in terms of the cost and time involved, to the nature and complexity of the matter and the purpose of the application.” Article 18 C.C.P. adds that “[j]udges must likewise observe the principle of proportionality in managing the proceedings they are assigned, regardless of the stage at which they intervene.” Judges “must ensure that the measures and acts they order or authorize are in keeping with the same principle, while having regard to the proper administration of justice.”

[20] As noted by the Supreme Court of Canada, “the requirement of proportionality in the conduct of proceedings reflects the nature of the civil justice system, which, while frequently called on to settle private disputes, discharges state functions and constitutes a public service.”¹⁸ Proportionality “means that litigation must be consistent with the principles of good faith and of balance between litigants and must not result in an abuse of the public service provided by the institutions of the civil justice system.”¹⁹

[21] When assessing proposed evidence, the Court must choose a middle path “qui, entre la rigidité et la permissivité, est celle de la prudence, une prudence qui s’accorde avec le caractère sommaire de la procédure d’autorisation du recours collectif.”²⁰ It follows that parties should only seek leave to file – and the Court should only allow – what is truly essential and indispensable to that stage of the proceeding.²¹

[22] In *Ward c. Procureur général du Canada*, the Superior Court comprehensively summarized the case law as it relates to the notion of relevant evidence.²² This case law – and the principles it articulates – guide the analysis that follows.

[23] Here, the Respondents seek leave to file four documents into the Court record:²³

(a) Exhibit R-1, Compliance Recall 454R (Audi)

(b) Exhibit R-2, Compliance Recall 97H3 (Volkswagen)

¹⁵ *Allstate du Canada, compagnie d'assurances c. Agostino*, 2012 QCCA 678, para. 34 [*Allstate*].

¹⁶ *Pharmascience inc. v. Option Consommateurs*, 2005 QCCA 437, para. 25 to 30.

¹⁷ *Vivendi Canada Inc. v. Dell’Aniello*, 2014 SCC 1 (CanLII), [2014] 1 SCR 3, para. 66.

¹⁸ *Marcotte v. Longueuil (City)*, 2009 SCC 43 (CanLII), [2009] 3 SCR 65, para. 43.

¹⁹ *Ibid.*

²⁰ *Allstate*, *supra*, note 15, para. 35.

²¹ *Asselin c. Desjardins Cabinet de services financiers inc.*, 2017 QCCA 1673, para. 38., upheld by the Supreme Court of Canada, *Desjardins Cabinet de services financiers inc. c. Asselin*, 2020 CSC 30 (CanLII), [2020] 3 RCS 298 [*Asselin*].

²² 2021 QCCS 109, para. 17-20 [*Ward*].

²³ Application to Adduce Documents, para. 8.

(c) Exhibit R-3, Safety Recall 93FR (Audi)

(d) Exhibit R-4, Safety Recall 93CJ (Volkswagen)

[24] These documents contain some combination of the following:²⁴

- Background information on the nature and scope of the recall;
- Claim-entry instructions;
- Draft letters for U.S. customers and Canadian customers;
- Instructions on the tools required for the repairs;
- Repair instructions;
- Software instructions;
- Safety warnings;
- Campaign stamps; and
- A human-machine interface path.

[25] Each proposed document specifies that “[t]he repair information in this document is intended for use only by skilled technicians who have the proper tools, equipment and training to correctly and safely maintain your vehicle [...]”.²⁵

[26] The Court concludes that it cannot grant the Application to Adduce Documents because these documents are not supported by an affidavit. Article 101 C.C.P. clearly states that an “[a]n application in the course of a proceeding that is grounded on facts not supported by evidence filed in the record must be supported by an affidavit of the person alleging the facts.”

[27] In this case, the documents that the Respondents seek leave to adduce contain facts not supported by evidence in the file. Neither the Application for Authorization nor its exhibits refer to these facts. Furthermore, the Applicant and the Court are unable precisely to determine, on the face of the documents, when they were prepared, by whom, or for whom, nor when or to whom they were distributed. This demonstrates the utility, indeed the necessity, of a supporting affidavit. As this Court has already noted:²⁶

²⁴ Exhibits R-1, R-2, R-3, and R-4.

²⁵ *Ibid.*

²⁶ *Hand c. Denso International America Inc.*, 2021 QCCS 1671

[43] Au troisième alinéa de l'article 101 C.p.c., la règle de base est édictée comme suit :

101. [...]

La demande (faite en cours d'instance) qui repose sur des faits dont la preuve n'est pas au dossier doit être écrite et appuyée du serment de celui qui les allègue.

[44] L'article 574 C.p.c. ne fait voir aucune modification de cette règle générale, ou d'exception à celle-ci.

[45] La demande de Subaru Canada (29 janvier 2021) invoque plusieurs faits qui, jusque-là, ne sont pas énoncés au dossier, dont notamment:

- le rappel survenu au Canada;
- l'entente avec le CCATM;
- le taux de remédiation obtenu par le rappel canadien.

[46] La demande de Subaru Canada doit donc être appuyée par une déclaration assermentée.

[28] The fact that an affidavit is not required for the filing of public documents²⁷ demonstrates the need for an affidavit where non-public documents are concerned. In the case at bar, it cannot seriously be argued (and was not argued) that the proposed documents are public. They were clearly crafted by the Respondents and bear the logos of same.

[29] In short, when a class action respondent wishes to adduce non-public documents, it cannot submit them to the Court in a disincarnated manner. An appropriate affiant must make minimal factual statements, under oath, to identify and situate these documents.

[30] The absence of a supporting affidavit was raised by the Applicant in her written arguments. It was also raised and debated during the hearing on the Application to Adduce Documents. Nevertheless, the Respondents did not ask for a postponement of the hearing nor offer to file an affidavit to cure an apparent procedural defect.

[31] Given these circumstances, it is unnecessary for the Court to determine whether the proposed documents are relevant evidence pursuant to article 574 C.C.P.

²⁷ *Govan c. Loblaw Companies Limited*, 2023 QCCS 4278, para. 24; *Karras c. Maple Leaf Foods Inc.*, 2024 QCCS 1664, para. 35; *Abicidan c. Shakepay Inc.*, 2025 QCCS 1738, para. 42 to 48.

2. THE PROPOSED EXAMINATION OF THE PLAINTIFF IS ESSENTIAL AND INDISPENSABLE

2.1 Position of the Parties

[32] The Respondents submit that they “request leave to examine the Applicant, on the grounds that the Application for authorization is vague, ambiguous and self-serving with respect to the Applicant[’s] standing to represent the proposed class.”²⁸ A limited examination would enable the Court “to make determinations as to whether the Applicant is an appropriate representative for the proposed class action pursuant to art. 574(4) CCP.”²⁹

[33] More specifically, the Respondents argue that the Applicant:

- “[E]ntertains a factual void regarding her personal cause of action as to the defect allegedly impacting her vehicle;”³⁰
- “[D]id not file work orders, repair orders, or invoices from a dealership regarding her alleged issues” nor provide “details as to the current status of the vehicle;”³¹
- Alleges a recall that does not target her vehicle;³²
- Leases a vehicle that is the target of a recall that is “manifestly irrelevant to the case at hand;”³³ and
- “Failed to introduce any evidence objectively informing the Court of the issue(s) allegedly impacting her vehicle.”³⁴

[34] For her part, the Applicant submits that the facts alleged in the Application for Authorization “are exhaustive, complete, precise and supported by documentary evidence and must be taken as proven.”³⁵ Accordingly, the examination themes proposed by the Respondents “are not useful, not appropriate, nor relevant at the authorization stage to ascertain whether Ms. Ohanyon has an arguable case.”³⁶

[35] In effect, the Applicant argues that:

²⁸ Application to Examine, para. 2.

²⁹ *Ibid.*, para. 5.

³⁰ Respondents’ Argument Brief, para. 15.

³¹ *Ibid.*, para. 16.

³² *Ibid.*, para. 18.

³³ *Ibid.*, para. 19.

³⁴ *Ibid.*, para. 20.

³⁵ Applicant’s Argument Plan, para. 19.

³⁶ *Ibid.*, para. 20.

- She “alleges on multiple occasions that she visited the Audi dealerships” and “even reports the discussions/representations made by Audi’s dealership representatives and the purpose of her visits;”³⁷
- The Respondents have information on the diagnostic(s) performed on her vehicle “and are better placed to provide this information to the Court;”³⁸
- She alleges that her vehicle “suffers from the same issues as those described by the other Class Members” and goes on to describe these issues in detail;³⁹ and
- She clearly alleges that she made several repair requests and alleges what she was told by the Audi dealership with respect to these requests.⁴⁰

2.2 Discussion

[36] When it comes to the proposed examination of an applicant, the courts have elaborated principles comparable to those outlined above:⁴¹

- 28.1. un interrogatoire n’est approprié que s’il est essentiel à la vérification des critères de l’article 575 C.p.c. Il doit aussi respecter les principes de la conduite raisonnable et de la proportionnalité énoncés aux articles 18 et 19 C.p.c.;
- 28.2. un interrogatoire dont l’objectif est de faire une préenquête sur les allégations de la demande d’autorisation ou sur la qualité de la preuve au soutien de celle-ci ne devrait pas être autorisé;
- 28.3. la vérification de la véracité des allégations de la demande ainsi que l’exploration de d’éléments qui s’apparentent à des moyens de défense contestés relève du fond;
- 28.4. comme pour le dépôt d’une preuve appropriée, le fardeau de démontrer la nécessité de l’interrogatoire repose sur la partie qui le demande.

[37] In this case, the Respondents seek leave to examine the Applicant on four specific themes:⁴²

- (a) The Applicant’s alleged visits at the dealership(s);
- (b) The diagnostic(s) performed on the Applicant’s Vehicle, if any;

³⁷ *Ibid.*, p. 7.

³⁸ *Ibid.*, p. 8.

³⁹ *Ibid.*, p. 9.

⁴⁰ *Ibid.*, p. 10.

⁴¹ *Parent c. 9129-0213 Québec inc.*, 2025 QCCS 372, para. 28.

⁴² Application to Examine, para. 5.

(c) The exact issues allegedly affecting the Applicant's Vehicle, if any; and

(d) Repair(s) attempts executed on the Applicant's Vehicle, if any.

[38] As for the duration and format of the examination, the Respondents indicate that it "would be no longer than 45 minutes" and "could be held by videoconference if preferred by the Applicant."⁴³

[39] The Court concludes that the examination proposed by the Respondents should be allowed.

[40] In the first place, the examination will enable the Court to better determine whether the Applicant meets the criteria of article 575 C.C.P. While it is true that the Application for Authorization already contains allegations about the Vehicle's defects, the Applicant's visits to the dealership, and the information provided to her by the dealership, some of these allegations contain gaps that could prove meaningful, notably with respect to the Respondents' inability or unwillingness to repair the Vehicle.⁴⁴ This factual issue goes to the heart of some of the common issues and to some of the conclusions sought by the Applicant. It is essential and indispensable that the underlying facts of the proposed class action be understood, especially if, as the Respondents argue, these facts demonstrate the implausibility or falsity of certain allegations.

[41] Allowing the Respondents to conduct a limited examination of the Applicant based on predetermined themes is consistent with the existing case law.⁴⁵ Importantly, the purpose of this examination is not to improve the Applicant's pleading (an admittedly improper reason),⁴⁶ but rather to provide the Court with the basic facts it needs to make an enlightened decision.

[42] In the second place, the examination aligns with the principle of proportionality. It is moored to four distinct themes, will not exceed 45 minutes, and does not require the physical presence of the Applicant. The Court is satisfied that the examination will not devolve into a pre-trial discovery, much less a fishing expedition.

CONCLUSIONS

FOR THESE REASONS, THE COURT:

[43] **DISMISSES** the *Respondents' Application for Leave to Adduce Relevant Evidence*;

⁴³ *Ibid.*, para. 12.

⁴⁴ Application for Authorization, paras. 16 to 17.1.

⁴⁵ *Décary-Gilard c. General Motors of Canada*, 2021 QCCS 4948, par. 35; *Parent c. 9129-0213 Québec inc.*, 2025 QCCS 372, paras. 38 to 42.

⁴⁶ *Li c. Equifax inc.*, 2018 QCCS 1892, para. 86 (application for leave to appeal denied, *Equifax inc. c. Li*, 2018 QCCA 1560; application for leave to Appeal the judgment of the Court of Appeal to the Supreme Court of Canada denied, *Equifax Inc., et al. c. Daniel Li*, 2019 CanLII 21187 (CSC)).

[44] **GRANTS** the Respondents' *Application for Leave to Examine the Applicant*;

[45] **AUTHORIZES** the Respondents to examine the Applicant, for no longer than 45 minutes, on the following themes only:

- (a) The Applicant's alleged visits at the dealership(s);
- (b) The diagnostic(s) performed on the Applicant's Vehicle, if any;
- (c) The exact issues allegedly affecting the Applicant's Vehicle, if any; and
- (d) Repair(s) attempts executed on the Applicant's Vehicle, if any.

[46] **AUTHORIZES** the Applicant to be examined by videoconference, if she so requests;

[47] **ALL OF WHICH**, with costs to follow.



SHAUN E. FINN, J.S.C.

Mtre Joey Zukran
Mtre Léa Bruyère
LPC Avocats
Mtre Michael Vathilakis
RENNO VATHILAKIS Inc.
Counsel for the Applicant

Mtre Stephane Pitre
Mtre Alexis Leray
Borden ladner Gervais LLP.
Counsel for the Defendants

Hearing date: October 29, 2025