

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o : 500-06-000487-096

SUPERIOR COURT
(Class Action)

KRISTA GENDRON, residing and domiciled at
1 Linden Crescent, in the City of Kirkland,
District of Montreal, Province of Quebec, H9H
3K5;

Petitioner

-vs-

LE PROCUREUR GENERAL DU QUEBEC, 1,
Notre-Dame Est, 8th floor, in the City and
District of Montreal, Province of Quebec;

Respondent

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND
TO ASCRIBE THE STATUS OF REPRESENTATIVE**
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER
STATES THE FOLLOWING:

GENERAL PRESENTATION

1. Petitioner wishes to institute a class action on behalf of the following group, of which she is a member, namely:

All physical persons in the Province of Quebec who received a Statement of Offense (or ticket) for excessive speeding, since April 1, 2008;

(hereinafter, Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", the "Member(s)");

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

2. On April 1, 2008, certain sections of Bill 42 (2007, chapter 40) entitled “An Act to amend the Highway Safety Code and the Regulation respecting demerit points”, came into effect, which purported to double the fines imposed under the *Highway Safety Code* (R.S.Q., chapter C-24.2) (hereinafter the “**Code**”) and the number of demerit points prescribed under the Regulation respecting demerit points for excessive speeding, the whole as more fully appears from a copy of Bill 42, filed herewith as **Exhibit R-1**;
3. These purported amendments made to the Code are further explained on the *Société de l'assurance automobile du Québec* website (“**SAAQ**”) (www.saaq.gouv.qc.ca), the whole as more fully appears from certain extracts of said website and certain documents posted on said website, filed herewith, *en liasse*, as **Exhibit R-2**;
4. In order to explain the effect of Bill 42 to the public, the SAAQ defines “Excessive Speeding” on its website (included in Exhibit R-2) as follows:

“You are committing an excessive speeding offense if you exceed the speed limit:

 - by 40 km/h or over in a zone of 60 km/h or less;
 - by 50 km/h or over in a 60 km/h to 90 km/h zone;
 - by 60 km/h or over in a zone of 100 km/h.”
5. Notwithstanding Bill 42, the previously applicable legislation remained in effect before and after April 1, 2008, which legislation obviously provided for less severe minimum fines and fewer demerit points for excessive speeding offenses;
6. Furthermore, as appears from Bill 42 (R-1), as of April 1, 2008, “a person who was convicted of more than two speeding offences (...) during the 10 years before the conviction is liable to triple the fine set” under the new legislation. This was not the case prior to April 1, 2008;
7. This issue was reported to the Public by the media as of November 19, 2009, the whole as more fully appears from certain articles published by the media as of November 19, 2009, filed herewith, *en liasse*, as **Exhibit R-3**;

8. Respondent, namely through its police force who issues speeding tickets, has committed a legal fault by not applying the pre-April 1, 2008 legislation which provides for lesser amounts of minimum fines and fewer demerit points in cases of excessive speeding offenses, which legislation is still in effect;
9. Due to this error and fault by Respondent, all excessive speeding Statements of Offense (or tickets) are null, making Respondent liable to reimburse the full amounts collected for such offences, from the Class Members, since April 1, 2008 (unless, of course, if the offender was charged under the pre-April 1, 2008 legislation still in effect). This includes the amounts collected by the Respondent for the minimum fines, the registry fees, the contributions to IVAC (*Indemnisation des victimes d'actes criminels*), Court fees, and/or any other amounts paid by Class Members with regard to said Statements of Offenses;
10. The Respondent must also retroactively rescind and erase the demerit points from the Class Members' driving records;
11. Subsidiarily, should the Court rule that the Statements of Offense in question are not fully annulled, then Respondent must at least reimburse the increase in the minimum fines and retroactively rescind and erase the additional amount of demerit points on the Class Members' driving records;
12. Furthermore, the increase in demerit points also has or will have the effect of increasing the amounts paid by the Class Members in order to renew their driver's license and the amounts of their insurance premiums, all said amounts Respondent being liable to reimburse to the Class Members;
13. Finally, certain Class Members had or will have their driver's licenses suspended due to the accumulation of the additional and illegal demerit points. This has or will cause damages to the Class Members such as transportation costs, inconvenience, moral damages, etc.;
14. Petitioner received such a Statement of Offence on November 21, 2008, for allegedly having driven a road vehicle at a speed of 95 km/h in a 50 km/h zone, the whole as more fully appears from a copy of the Statement of Offence bearing number 765 623 305, filed herewith as **Exhibit R-4**;
15. As appears from the Statement of Offence received by Petitioner, R-4, Respondent charged her with the excessive speeding offence and required her to pay the total amount of \$528 (namely \$390 in Minimum Fine + \$128 in Costs + \$10 Contribution to the IVAC), which Petitioner indeed paid;

16. Petitioner had no way of knowing that she was being asked to pay an excessive amount in fines under the Law and was being given an excessive amount of demerit points (namely 6) under the Law for her alleged offence;
17. Under the Law, Petitioner should have been required to pay half the amount in fines and should have been given half the amount of demerit points for the said offence;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

18. Every member of the Group was, since April 1, 2008, charged with excessive speeding under the Code and asked to pay double the amount of minimum fines that are applicable under the current Law (and the Class Members also paid registry fees, contributions to IVAC, Court fees, and/or other amounts in relation to said Statements of Offense);
19. Every member of the Group was, since April 1, 2008, charged with excessive speeding under the Code and received double the amount of demerit points that are provided for under the applicable Law;
20. Every member of the Group paid or will pay an increased amount in driver license renewal fees, due to the fact that they received an excessive amount of demerit points on their driving record, as stated above;
21. Every member of the Group paid or will pay an increased amount in insurance premiums, due to the fact that they received an excessive amount of demerit points on their driving record, as stated above;
22. Every member of the Group suffered other damages such as inconvenience, stress, additional transportation costs, other expenses, etc., stemming from the excessive amount of demerit points and fines charged;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

23. The composition of the group makes the application of Article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below;
24. The number of persons included in the Group is estimated at being approximately 20,000, as appears from Exhibit R-3;
25. The names and addresses of all persons included in the Group are not known to the Petitioner but are known to Respondent;

26. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondent. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondent would increase delay and expense to all parties and to the Court system;
27. Moreover, a multitude of actions instituted in different judicial districts risks having contradictory judgments on questions of fact and law that are similar or related to all Members of the Class;
28. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
29. 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;
30. The recourses of the Members raise identical, similar or related questions of fact or law, namely:
 - a) Was Respondent legally authorised to double the amount of minimum fines and demerit points for excessive speeding offenses under the *Highway Safety Code* (R.S.Q., chapter C-24.2) as of April 1, 2008?
 - b) Is Respondent liable to reimburse all amounts paid by Class Members for fines, registry fees, and contributions to IVAC (*Indemnisation des victimes d'actes criminels*), Court costs, or other costs stemming from the Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), since April 1, 2008?
 - c) Is Respondent liable to retroactively rescind and erase all demerit points posted on Class Members' driving records, stemming from Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), since April 1, 2008?
 - d) Is Respondent liable to pay damages to the Class Members, such as the reimbursement of additional amounts paid in driver license renewal fees, additional amount paid in insurance premiums, additional transportation costs, other expenses, amounts to compensate inconvenience, stress or other moral damages suffered, all of which are a result of Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), received since April 1, 2008?

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

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

32. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages;
33. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Plaintiff's action against Defendant;

CONDEMN Defendant to reimburse to the Members of the Group all amounts paid for fines, registry fees, and contributions to IVAC (*Indemnisation des victimes d'actes criminels*), Court costs, other costs stemming from Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), received since April 1, 2008, plus interest as well the additional indemnity since the date of payment;

ORDER Defendant to retroactively rescind and erase all demerit points posted on Class Members' driving records, stemming from Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), received since April 1, 2008;

CONDEMN Defendant to pay damages to Class Members, such as the reimbursement of additional amounts paid in driver license renewal fees, additional amount paid in insurance premiums, additional transportation costs, expenses, amounts to compensate inconvenience, stress or other moral damages suffered, all of which are a result of Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), received since April 1, 2008;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's

fees and publication fees to advise members;

34. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Many Class Members, including Petitioner, are domiciled in the District of Montreal;
 - b) Many of the Statements of Offenses in question, including the one received by Petitioner (Exhibit R-4), were issued in the District of Montreal;
 - c) Class Counsel are domiciled in the District of Montreal;
35. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:
- a) received a Statement of Offence for excessive speeding since April 1, 2008 and paid the excessive fine and received an excessive amount of demerit points (as appears from Exhibit R-4);
 - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
 - c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
 - d) is ready and available to manage and direct the present action in the interest of the Class Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
 - e) does not have interests that are antagonistic to those of other members of the Group;
 - f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
 - g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

36. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the Group herein described as:

All physical persons in the Province of Quebec who received a Statement of Offense (or ticket) for excessive speeding, since April 1, 2008;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Was Respondent legally authorised to double the amount of minimum fines and demerit points for excessive speeding offenses under the *Highway Safety Code* (R.S.Q., chapter C-24.2) as of April 1, 2008?
- b) Is Respondent liable to reimburse all amounts paid by Class Members for fines, registry fees, and contributions to IVAC (*Indemnisation des victimes d'actes criminels*), Court costs, or other costs stemming from the Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), since April 1, 2008?
- c) Is Respondent liable to retroactively rescind and erase all demerit points posted on Class Members' driving records, stemming from Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), since April 1, 2008?
- d) Is Respondent liable to pay damages to the Class Members, such as the reimbursement of additional amounts paid in driver license renewal fees, additional amount paid in insurance premiums, additional transportation costs, other expenses, amounts to compensate inconvenience, stress or other moral damages suffered, all of which are a result of Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), received since April 1, 2008?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendant;

CONDEMN Defendant to reimburse to the Members of the Group all amounts paid for fines, registry fees, and contributions to IVAC (*Indemnisation des victimes d'actes criminels*), Court costs, other costs stemming from Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), received since April 1, 2008, plus interest as well the additional indemnity since the date of payment;

ORDER Defendant to retroactively rescind and erase all demerit points posted on Class Members' driving records, stemming from Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), received since April 1, 2008;

CONDEMN Defendant to pay damages to Class Members, such as the reimbursement of additional amounts paid in driver license renewal fees, additional amount paid in insurance premiums, additional transportation costs, expenses, amounts to compensate inconvenience, stress or other moral damages suffered, all of which are a result of Statements of Offense for excessive speeding under the *Highway Safety Code* (R.S.Q., chapter C-24.2), received since April 1, 2008;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Group in accordance with article 1006 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, November 23, 2009

(s) Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for Petitioner and the
Class Members