

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

(Class Action Division)  
SUPERIOR COURT

No.: 500-06-001288-238

NATHALIE CHARBONNEAU

Applicant

v.

FORD MOTOR COMPANY OF CANADA,  
LIMITED

Defendant

---

DEFENDANT'S APPLICATION FOR LEAVE TO ADDUCE EVIDENCE  
(DEPOSITION OF THE APPLICANT)  
(Article 574 al. 3 C.C.P.)

---

TO THE HONOURABLE PIERRE NOLLET, S.C.J., SITTING IN THE CLASS ACTION DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE DEFENDANT FORD MOTOR COMPANY OF CANADA LIMITED RESPECTFULLY SUBMIT THE FOLLOWING:

I. BACKGROUND

1. On or about December 21, 2023, the Applicant, Nathalie Charboneau, filed a *Demande pour autorisation d'exercer une action collective et pour être nommée représentante* (the "**Application for Authorization**") against the Defendant on behalf of the following class:

*"Any person who has leased or purchased in the province of Québec, a 2019 or 2020 Ford Fusion Hybrid/PHEV Energi vehicle covered by recall 23S33 issued on June 23, 2023 by Ford MOTOR COMPANY and/or FORD DU CANADA LIMITÉE".*

*(hereinafter the "**Vehicle**")*

2. The Vehicle is a plug-in hybrid automobile equipped with two power sources, namely electricity and gasoline.
3. On or about June 23, 2023, Ford issued a recall notice (#23S33) for the Vehicle concerning degradation of "PHEV" (plug-in hybrid electrical vehicle) battery modules and advising customers not to charge the battery and stop using the "electric" mode, the whole as alleged in the Application for Authorization and as appears from its Exhibits P-8 and P-9.
4. The Application for Authorization seeks leave to institute a class action in order to obtain monetary compensation for the members of the Class due to this alleged defect, the recall

of which has advised members against using the Vehicle's "electric" mode since at least June 23, 2023.

## II. NECESSITY AND USEFULNESS OF DEPOSING THE APPLICANT

5. The Defendant's Application for leave to depose the Applicant Nathalie Charbonneau is intended to allow the Court to determine whether the conditions at 575 CCP are met, and more particularly, to provide an actual factual basis for the Court to assess whether the alleged damages are an issue that can be addressed on a common basis.

6. By its Application for Authorization, the common issues allegedly involving each member of the class that the Applicant seeks to have authorized are as follows:

- a. Is the vehicle affected by a defect that renders it unfit for its intended use and/or its performance?*
- b. Is Ford liable for the damages caused to the Class members by the defect affecting the Vehicle, notably as a result of the impossibility to use its "electric" mode?*
- c. What are the damages suffered by the Class members?*
- d. Should the claims of the Class members be recovered collectively?*

7. Consequently, the related conclusion sought by the class action is to:

CONDEMN the Defendant to pay damages to be determined by the Tribunal, equivalent to the pecuniary loss related to the exclusive use of gasoline, with interest at the legal rate and additional indemnity as of June 23, 2023;

[...]

8. As alleged in paragraph 20 of the Application for Authorization, the defect of the Vehicle supposedly caused the Applicant an estimated loss of \$1,120.00 annually, to be perfected, which is attributable to the exclusive use of gasoline rather than the use of the electrical mode since the June 23, 2023 recall.

9. As appears from paragraph 26 of the Application for Authorization, the pecuniary loss for additional fuel costs is estimated using the following variables:

- a. Average annual use of the Vehicle: 25,000 kilometers;*
- b. Vehicle range in electric mode: 41 kilometers;*
- c. Estimate of additional gasoline costs annually on the basis of a 50% use of the Vehicle's electric function: 12,500 kilometers annually;*
- d. Vehicle gasoline consumption: 5.6 litres / 100 km;*
- e. Gasoline price: 1 liter of gasoline costs about \$1.60;*
- f. Vehicle's annual gas consumption: \$1,120.00;*

10. However, the Applicant fails to provide any actual information and or data demonstrating or corroborating these estimates, including the details, circumstances and nature of use of the Vehicle, fuel consumption, odometer reading, and distance actually travelled before and from the moment she stopped using the electric mode.
11. Given the Applicant's reliance on vague variable estimates, the Defendant is entitled to verify the supposed commonality of the alleged damages claimed.
12. The examination of the Applicant concerning her own vague damage claims and those allegedly suffered by the members of the Class is necessary and useful, and also consistent with the principles of proportionality.
13. In addition, the Applicant's own allegation, at paragraph 36 of the Application for Authorization, that "*le montant de la réclamation individuelle de certains membres étant modique*" is inconsistent with and undermines her proposed conclusion that damages be adjudicated on a common basis.
14. Based on the Applicant's allegations, the conclusion sought, and the questions of fact and law proposed, it is appropriate to allow the examination of the Applicant as it will provide an essential and indispensable factual basis for the Court to assess the criteria of 575 CCP.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANTS** the Defendant's Application for Leave to Adduce Evidence (Deposition of the Plaintiff);

**GRANTS** the Defendant **LEAVE** to Depose the Applicant Nathalie Charbonneau for a duration of sixty (60) minutes, subject to the modalities this Court deems necessary;

**THE WHOLE** without costs, save in case of contestation.

Montréal, April 25, 2024

**INF S.E.N.C.R.L./LLP**

---

**INF LLP**

Lawyers for the Defendant Ford Motor  
Company of Canada, Limited

Mtre Laurent Nahmiash

Mtre Josée Cavalancia

[lnahmiash@infavocats.com](mailto:lnahmiash@infavocats.com)

[jcavalancia@infavocats.com](mailto:jcavalancia@infavocats.com)

255, St Jacques Street, 3rd Floor

Montréal, Québec H2Y 1M6

Tel : 514-312-0289 / 514-312-0293 ext. 205

Fax : 514-312-0292

O/F : 08067-0002

## NOTICE OF PRESENTATION

---

**TO: Mtre Robert Astell**  
**Mtre Meriem Amir**  
**Mtre Amélie Mas**  
**ASTELL & ASSOCIÉS, AVOCATS**  
408, McGill Street  
Montreal, Québec H2Y 2G1  
Tel. : 514-879-9201  
Fax : 514-879-9091  
[robert.astell@astellavocats.ca](mailto:robert.astell@astellavocats.ca)  
[mamir@astellavocats.ca](mailto:mamir@astellavocats.ca)  
[amas@astellavocats.ca](mailto:amas@astellavocats.ca)

*Lawyers for the Applicant Nathalie  
Charbonneau*

**TAKE NOTICE** that the present *Defendant's Application for Leave to Adduce Evidence (Deposition of the Applicant)* will be presented before the Honourable Pierre Nollet, Judge of the Superior Court of Quebec, sitting in and for the district of Montreal, on **June 17, 2024**, at 9:15, and in a room to be determined by the Court, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, April 25, 2024

**INF S.E.N.C.R.L./LLP**

---

**INF LLP**

Lawyers for the Defendant Ford Motor  
Company of Canada, Limited

Mtre Laurent Nahmiash  
Mtre Josée Cavalancia  
[lnahmiash@infavocats.com](mailto:lnahmiash@infavocats.com)  
[jcavalancia@infavocats.com](mailto:jcavalancia@infavocats.com)  
255, St Jacques Street, 3rd Floor  
Montréal, Québec H2Y 1M6  
Tel : 514-312-0289 / 514-312-0293 ext. 205  
Fax : 514-312-0292  
O/F : 08067-0002

No.: 500-06-001288-238

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

(Class Action Division)  
**SUPERIOR COURT**

**NATHALIE CHARBONNEAU**

Applicant

v.

**FORD MOTOR COMPANY OF CANADA,  
LIMITED**

Defendant

**DEFENDANT'S APPLICATION FOR LEAVE TO  
ADDUCE EVIDENCE  
(DEPOSITION OF THE APPLICANT)  
(Article 574 al.3 C.C.P.)**

**INF** SENCRL  
LLP

AVOCATS | BARRISTERS

Mtre Laurent Nahmiash

Mtre Josée Cavallancia

[lnahmiash@infavocats.com](mailto:lnahmiash@infavocats.com)

[jcavallancia@infavocats.com](mailto:jcavallancia@infavocats.com)

255, St Jacques Street, 3<sup>rd</sup> Floor

Montréal, Québec H2Y 1M6

Tel : 514-312-0289 / 514-312-0293 ext. 205

Fax : 514-312-0292

O/F : 08067-0002

[B10114](http://B10114)

[infavocats.com](http://infavocats.com)