

CANADA

**SUPERIOR COURT**  
**(Class Action)**

**PROVINCE OF QUEBEC**  
**DISTRICT OF MONTREAL**

N<sup>o</sup>: 500-06-000875-175

**HERMINE ANGLE HERRCHE**, residing and domiciled at [REDACTED];

*Applicant*

-vs-

**GENERAL MOTORS OF CANADA COMPANY**, a legal person, incorporated under the laws of Nova Scotia and having its principal place of business at 1969 Upper Water Street, Suite 1300, in the city of Halifax, province of Nova Scotia, B3J 3R7, Canada;

-and-

**GENERAL MOTORS COMPANY.**, incorporated under the laws of the State of Delaware having its principal place of business at 300 Renaissance Center in the city of Detroit in the state of Michigan in the United-States of America 48265-0001;

*Defendants*

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**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF**  
**(Art. 574 C.C.P. and following)**

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

## GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the following Class, of which he is a member, namely:
  - All persons in Quebec who own or have owned, or lease or have leased a Chevrolet Cruze model years 2011 to the present affected by the Antifreeze Leakage Defect asserted by this claim.

### The Defendants

2. The Defendant, General Motors Company, is a corporation incorporated pursuant to the laws of the State of Delaware with its principal place of business at 300 Renaissance Center, Detroit, Michigan, United States, as it appears in the corporate registry maintained by the Delaware Department of State, produced herein as **Exhibit P-1**. General Motors Company was incorporated in 2009 when General Motors Corporation went bankrupt. General Motors Company was incorporated in 2009 as a part of reorganizations of General Motors Corporation, and inter alia, General Motors Company purchased all the assets of General Motors Corporation pursuant to 11 U.S.C. §.363;
3. The Defendant General Motors of Canada Company ("**General Motors Canada**"), is a corporation incorporated pursuant to the laws of the province of Nova Scotia. General Motors Canada maintains its registered office at 1969 Upper Water Street, Suite 1300, in the city of Halifax, province of Nova Scotia, B3J 3R7, Canada, as it appears in a copy of an extract from the Nova Scotia *Registry of Joint Stock Companies*, produced herein as **Exhibit P-2**. General Motors Canada also has a principal establishment in Quebec at 5000, Route Trans-canadienne Pointe-Claire, Québec, H9R 4R2, as it appears in a copy of an extract from the *Registraire des entreprises du Québec*, produced herein as **Exhibit P-3**. The same corporation has not experienced bankruptcy;

4. The business of each of General Motors Canada and General Motors Company involves the designing, developing, testing, manufacturing, sale, and distribution of vehicles in Canada and Quebec in particular, including the subject vehicles identified above;
5. The Applicant or Class Members could not reasonably be expected to know which of the Defendants has committed which individual act or omission at this stage;
6. Each of the Defendants are part of a common enterprise, one worldwide corporate entity, acting together for common goals. Each created and executed a common business plan to manufacture and sell their vehicles throughout the world including in Quebec. The Defendants are therefore solidarily liable for the acts and omissions of the other;
7. Hereinafter, General Motors Company and General Motors Canada will collectively be referred to as “**General Motors**”;

General Facts:

8. The Chevrolet Cruze is a four-door, five passenger sedan, which the Defendants began selling in Canada in 2008;
9. General Motors has consistently, through press releases, sales literature, brochures and other consumer documents, marketed and promoted the Chevrolet Cruze as being “safe”, “reliable” and “more for your money”;
10. As with all vehicles, the Chevrolet Cruze requires engine coolant (also called “antifreeze”) to protect the vehicle’s various mechanical components by keeping water in the car’s radiator and engine from freezing in cold temperatures and overheating in hot temperatures;
11. The Chevrolet Cruze has a serious latent mechanical defect that causes antifreeze to leak from the cooling system and create fumes in the passenger compartment (hereinafter referred to as the “Antifreeze Leakage Defect”);

12. General Motors also received reports of antifreeze related complaints that placed General Motors on notice of the serious design and mechanical defects presented by the Antifreeze Leakage Defect;
13. Dating back to at least 2011, Ford was aware of the Antifreeze Leakage Defect , having issued several Technical Service Bulletins to notify dealers of problems in the affected vehicles related to the Antifreeze Leakage Defect but without publicising these problems to potential customers (**Exhibits P-4, P-5, and P-6**);
14. Despite General Motors notice of the Antifreeze Leakage Defect in Subject Vehicles, General Motors did not disclose to consumers that the Subject Vehicles - which General Motors for years had advertised and /or warranted as “safe” and “reliable”- were in fact not safe or reliable as a reasonable consumer expected due to the Antifreeze Leakage Defect;
15. However rather than disclose the truth, General Motors concealed the existence of the Antifreeze Leakage Defect;
16. General Motors offered a recall to fix the water pump in October 2014, as appears more fully in Service Bulleting No. 14371A (**Exhibit P-7**). However, a faulty water pump is not the only possible source of the Antifreeze Leakage Defect;

Latent Defect:

17. General Motors has since 2008 and onward marketed Chevrolet Cruze as “safe” and “durable” and impliedly warranted that the Subject Vehicles cars were of good merchantable quality, fit and safe for their ordinary intended use;
18. The Defendants produced promotional material which was made available to the public conveying the wrong and incorrect impression that Chevrolet Cruze was of high quality and would work properly, safely and be free from defect, as appears for example in a communiqué on GM’s website entitled “Chevrolet Cruze Named “2011 Canadian Car of the Year” by the Automobile Journalists Association of Canada”, 2011-02-17, produced herein as **Exhibit P-8**;

19. The Antifreeze Leakage Defect leads to one or more of the following damaging effects:
  - a) need to service the vehicle multiple times to replace coolant and/or make repairs to the vehicle;
  - b) reduced ability of the driver to operate the vehicle due to coolant odors;
  - c) health effects of breathing in coolant odor and vapor;
20. The Antifreeze Leakage Defect existed at the time the Subject Vehicles left General Motors' manufacturing facilities and at the time they were sold to the Class Members;
21. At all material times, General Motors owed a duty of care to the Plaintiff and Class Members and breached the standard of care expected in the circumstances;
22. General Motors had a duty to design, manufacture, and market vehicles that are reasonably safe for their intended uses, and to provide true and accurate information to the public with respect its products and their reliability;
23. Prior to and during the design, manufacturing, marketing, and sale of the Subject vehicles and thereafter, General Motors knew, or in the exercise of reasonable care should have known, that other feasible and safer design alternatives were available;
24. General Motors negligently failed to utilize such other and feasible safer designs in their design of the cooling system in the Subject Vehicles, and took actions to hide the defect from the unsuspecting public and Class Members;
25. Since at least 2011, General Motors has been aware of the Antifreeze Leakage Defect in the Subject Vehicles, yet General Motors continued to install the defective components in the Subject Vehicles knowing that they were defective;

26. Moreover, General Motors not only refused to disclose the problem to consumers since 2011, but it also actively concealed, and continues to conceal, its knowledge concerning the Antifreeze Leakage Defect;
27. General Motors breached their duty to the Plaintiff and Class Members by:
  - a) Failing to properly and adequately design, develop, and test the Subject Vehicles to ensure that they were without any defect, such as the Antifreeze Leakage Defect;
  - b) Failing to discover, through reasonably expected adequate testing, that the Subject Vehicles were defective;
  - c) Failing to properly and adequately design or manufacture components for Subject Vehicles do not produce odour;
  - d) Failing to properly and adequately test the cooling system of the Subject Vehicles;
  - e) Failing to adequately monitor the safety and post-market performance of the Subject Vehicles and their component parts and to warn the Plaintiff and Class Members of the dangers associated with Antifreeze Leakage Defect; and,
  - f) Failing to promptly recall the Subject Vehicles from the Canadian market upon notice of their propensity to produce odour illegal under conditions of ordinary usage;
28. As designers, manufacturers, and marketers of the Subject Vehicles in Canada, General Motors was in a position of legal proximity to the Class Members;
29. It was reasonably foreseeable that a failure by General Motors to design and manufacture a reasonably safe and reliable cooling system for the Subject Vehicles, and to monitor the performance of such systems following market introduction, would cause harm to the Plaintiff and Class Members;
30. The Representative Plaintiff and other members of the Class (as defined below) would not have bought the Subject Vehicles or would have paid a lower price had they known about the Antifreeze Leakage Defect;

Negligence:

31. General Motors was negligent, inter alia, through the following acts and omissions:
- a) Failure to properly and adequately design and/or manufacture Chevrolet Cruze vehicles which resulted in the Antifreeze Leakage Defect;
  - b) Failure to properly and adequately disclose the Antifreeze Leakage Defect to potential and present customers of the affected vehicles;
  - c) Failure to furnish a long-term repair and/or recall solution to the Antifreeze Leakage Defect;
  - d) Failure to properly and adequately warn potential and present customers of the safety risks of using vehicles equipped with the Antifreeze Leakage Defect;
32. As a result of General Motor's faults, the Applicant and Class Members have sustained economic and moral damages, and faced unreasonable danger;
33. The Antifreeze Leakage Defect was the direct and proximate cause of the damages to the Class Members;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT**

34. The Applicant, Hermine Herrche, is a resident of [REDACTED];
35. The Applicant purchased a 2011 Chevrolet Cruze in late 2011;
36. In June of 2016, she was offered a free oil change from the dealership where she purchased her vehicle (**Exhibit P-9**);

37. During the oil change inspection she was advised that her coolant was leaking on to the engine and into the cabin and that it would have to be repaired at a cost of \$800.00;
38. Ms. Herrche subsequently took it to a mechanic that she knows and it cost her \$224.64 to repair the leak (**Exhibit P-10**); however the engine light still stays on;
39. She was told by her dealership that this defect was not covered by the warranty;
40. Her vehicle only has 34,000 kilometers;
41. The Applicant had to have the radiator and oil pan replaced because of the leakage;
42. The Applicant incurred costs to replace the timing radiator, and oil pan of her vehicle and repair her vehicle;
43. The Applicant therefore has suffered and continues to suffer damages due to the defect affecting her vehicle;
44. In addition, due to the Antifreeze Leakage Defect , the Applicant's vehicle's resale value has diminished considerably;
45. Had the Applicant known about this defect and danger, she would not have purchased her vehicle;
46. The damages suffered by the Applicant are a direct and proximate result of the Defendants' conduct;
47. As a consequence of the foregoing, the Applicant is justified in claiming damages;

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

48. Every Member of the Class owns, leases or otherwise possesses one of the motor vehicles comprised in the Subject Vehicles;



49. Each Member of the Class is justified in claiming at least one or more of the following:
- a) Resiliation of the sale or lease of the Vehicle and reimbursement of the purchase price or lease amounts paid, including but not limited to taxes, license and registration fees, security deposit, down payment, etc., or subsidiarily, damages for the diminished value (or resale value) of the Subject Vehicles;
  - b) Damages for the costs associated with the defects or repairs to the Subject Vehicles;
  - c) Damages for any injury suffered and costs related to said injuries;
  - d) Damages for loss of use and enjoyment of their Subject Vehicles;
  - e) Damages for trouble, inconvenience and loss of time;
  - f) Damages for anxiety and fear;
  - g) Punitive and/or exemplary damages;
  - h) Such further and other relief as counsel may advise and this Honourable Court may allow.
50. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;

#### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

**The composition of the Class makes the application of Article 91 or 143 C.C.P. impractical or impossible for the reasons detailed below:**

- 51. The number of persons included in the Class is estimated to be in the thousands;
- 52. The names and addresses of all persons included in the Class are not known to the Applicant but are known to the Defendants;
- 53. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Defendants. 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 Defendants would increase delay and expense to all parties and to the Court system;

54. 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;
55. 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;

**The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:**

56. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
- a) Is there a latent defect in the Antifreeze coolant system of Subject Vehicles?
  - b) Is there a safety defect in the Subject Vehicles?
  - c) Are the Subject Vehicles fit for the purpose they were intended?
  - d) Did the Defendants know or should the Defendants have known about these defects affecting the Subject Vehicles?
  - e) Did the Defendants fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Subject Vehicles, or thereafter?
  - f) Have the Class Members suffered damages as a result of the defect in question?
  - g) Are the Defendants liable to pay compensatory damages to Class Members stemming from the defect?
  - h) What are the categories of damages that the Defendants are responsible to pay to Class Members, and in what amount?

- i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?

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

**NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

58. The action that the Applicant wishes to institute for the benefit of the members of the Class is an action in damages for latent defect and negligence;

59. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

**GRANT** Plaintiff's action against Defendants;

**ORDER** the rescission of the sale or lease of the Subject Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

**CONDEMN** Defendants to reimburse to the Class Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of the Subject Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Class

- d) is ready and available to manage and direct the present action in the interest of the Class Members that the Applicant 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 Class;
- 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 Class and to keep them informed;

62. The present application is well-founded in fact and in law;

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

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages;

**ASCRIBE** the Applicant the status of representative of the persons included in the Class herein described as:

- All persons in Quebec who own or have owned, or lease or have leased a Chevrolet Cruze model years 2011 to the present affected by the Antifreeze Leakage Defect asserted by this claim (the "Subject Vehicles");

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

- a) Is there a latent defect in the Antifreeze coolant System of Subject Vehicles?
- b) Is there a safety defect in the Subject Vehicles?

- c) Are the Subject Vehicles fit for the purpose they were intended?
- d) Did the Defendants know or should the Defendants have known about these defects affecting the Subject Vehicles?
- e) Did the Defendants fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Subject Vehicles, or thereafter?
- f) Have the Class Members suffered damages as a result of the defect in question?
- g) Are the Defendants liable to pay compensatory damages to Class Members stemming from the defect?
- h) What are the categories of damages that the Defendants are responsible to pay to Class Members, and in what amount?
- i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?

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

**GRANT** Plaintiff's action against Defendants;

**ORDER** the resiliation of the sale or lease of the Subject Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

**CONDEMN** Defendants to reimburse to the Class Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of the Subject Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

**GRANT** the class action of Applicant on behalf of all the Members of the Class;

**ORDER** the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

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

**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;

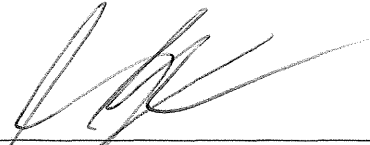
**DECLARE** that all Members of the Class that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**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 Class in accordance with Article 579 C.C.P.;

**THE WHOLE** with costs to follow.

**MONTREAL, July 20, 2017**

A handwritten signature in black ink, appearing to be 'D. P.', written over a horizontal line.

**MERCHANT LAW CLASS LLP**  
Attorneys for the Applicant

**SUMMONS**  
(Articles 145 and following C.C.P.)

**Filing of a Judicial Application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint a Representative Plaintiff in the office of the Superior Court of Quebec in the judicial district of Montreal.

**Defendants' Answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Street Est, Montréal, Québec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to Answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of Answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.



### **Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of Application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the Application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint a Representative Plaintiff, the Applicant intends to use the following exhibits:

**Exhibit P-1:** General Motors Company – extract from the corporate database of the Delaware Department of State, <https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>

**Exhibit P-2:** General Motors of Canada Company - extract from the *Registraire des entreprises du Québec*;

**Exhibit P-3:** Chevrolet Cruze Technical Service Bulletin no. 308281, February 2011 (Summary);

**Exhibit P-4:** Chevrolet Cruze Technical Service Bulletin no. 353418, May 2013 (Summary);

**Exhibit P-6:** Chevrolet Cruze Technical Service Bulletin no. 383393, January 2015 (Summary);

**Exhibit P-7:** Chevrolet Cruze Technical Service Bulletin no. 14371A, January 2015;

**Exhibit P-8:** Communiqué “Chevrolet Cruze Named “2011 Canadian Car of the Year” by the Automobile Journalists Association of Canada”, 2011-02-17, GM website.

**Exhibit P-9:** Oil Change Invoice (August 24, 2016)

**Exhibit P-10:** Repair Invoice (August 24, 2016)

These Exhibits are available upon request.

**Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

**Montreal, July 20, 2017**



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**Merchant Law Class LLP**

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Attorneys for the Applicant

**NOTICE OF PRESENTATION**  
**(Articles 146 and 574 al.2 C.P.C.)**

**TO: GENERAL MOTORS OF CANADA COMPANY**  
1969 Upper Water Street, Suite 1300  
Halifax, Nova Scotia  
B3J 3R7

and

**TO: GENERAL MOTORS COMPANY**  
c/o Corporation Service Company  
251 Little Falls Drive  
Wilmington, Delaware  
19808  
United States of America

**TAKE NOTICE** that the present FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF will be presented before one of the Honourable Judges of the Superior Court of Québec, at the Montreal courthouse, located at 1, rue Notre-Dame Est, in the city and District of Montréal, on the date set by the coordinator of the class actions chamber.

PLEASE ACT ACCORDINGLY.

**Montreal, July 20, 2017.**



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**Merchant Law Class LLP**  
Attorneys for the Applicant