

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO. : 500-06-000920-187

PAUL BENJAMIN

Applicant

vs

CRÉDIT VW CANADA INC., *Et al.*

Respondents

APPLICATION BY THE RESPONDENT TOYOTA CREDIT CANADA INC. FOR
LEAVE TO ADDUCE RELEVANT EVIDENCE
(article 574 C.C.P.)

TO ONE OF THE JUDGES OF THE SUPERIOR COURT APPOINTED TO MANAGE
THE PRESENT CASE, THE RESPONDENT TOYOTA CREDIT CANADA INC.
RESPECTFULLY SUBMITS THE FOLLOWING:

1. The Applicant Paul Benjamin filed an *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* (the "Application"), in which he proposes the following class:

«Toutes les personnes physiques, personnes morales de droit privé, sociétés ou associations résidant ou ayant résidé au Québec, qui ont contracté avec l'une des défenderesses un bail de véhicule à long terme et qui se sont vu facturer des frais pour effectuer la cession du bail de véhicule depuis le 5 avril 2015 (le « Groupe Collectif »)

Tous les consommateurs résidant ou ayant résidé au Québec, qui ont contracté avec l'une des défenderesses un bail de véhicule à long terme et qui se sont vu facturer des frais pour effectuer la cession du bail du véhicule depuis le 5 avril 2015 (le « Sous-Groupe Consommateur »)

Collectivement, le « Groupe » ou les « Membres du Groupe »

2. This Application was filed against ten (10) Respondents, including the Respondent Toyota Credit Canada Inc. ("TCCI").
3. TCCI wishes to file appropriate evidence for the following reasons.

4. In the Application, Mr. Benjamin alleges that some of the Respondents (including TCCI) did not divulge or only partially divulged in their lease agreements the fee to be paid by their customers in order to transfer the lease.
5. Mr. Benjamin further alleges that all of the Respondents bill their customers lease transfer fees which exceed the "reasonable expenses" incurred by them.
6. It is further alleged in the Application that a lease transfer fee should not exceed \$175.00.
7. The Application presents an incomplete picture of the facts relevant to the authorization debate with respect to TCCI's practice.
8. TCCI requests permission to adduce relevant evidence which will assist the Court in considering whether the conditions of article 575 C.C.P. are fulfilled and whether the bringing of a class action should be authorized against TCCI or not.
9. TCCI wishes to file a sworn statement, as found at **Annex A**, that explains TCCI's lease transfer process, including the tasks and expenses that are covered by the transfer fee charged by TCCI.
10. TCCI also wishes to file the standard *Transfer Agreement – Prepaid Lease*, in French and English, for Toyota vehicles (**Exhibit T-1**), which shows the terms of the lease transfer, as well as how the transfer fee is agreed upon.
11. While the exhibits communicated in support of the Application include a *Lease Transfer Agreement* between the Applicant and VW Credit Canada Inc. (exhibit P-2), there was no such agreement communicated with respect to TCCI.
12. Such evidence will be useful for analyzing whether the criteria of article 575 C.C.P. are met against TCCI.
13. For instance, while the Application states, *inter alia*, that (i) there is no valid renunciation to the "*régime de droit commun établi par les articles 1871 et 1872 C.c.Q.*", (ii) that the transfer fee is abusive, and that (ii) the transfer fee is not disclosed, the Applicant failed to communicate the most important document which would allow the Court to study these claims with respect to TCCI.
14. In par. 96 of the Application, the Applicant tried to summarize the steps required to transfer a lease agreement and the costs associated therewith. This description is incomplete and omits some of the steps which are more fully described in the proposed sworn statement. The Application also fails to explain the involvement of the dealer in the completion of the transfer and how the transfer fee is split between TCCI and the relevant dealer.
15. It would be contrary to the interests of justice for the Court to analyze the Application without having a minimal understanding of the lease transfer process and the costs associated therewith, when a transfer fee is charged by TCCI to its customers.

16. Moreover, such evidence would also be helpful to determine an appropriate group description and identify the questions to be dealt with collectively, if necessary, as required by article 576 C.C.P.
17. TCCI requests the Court's permission to present this evidence in order to be fully heard at the authorization stage, in accordance the *audi alteram partem* rule.

THE RESPONDENT TOYOTA CREDIT CANADA INC. THEREFORE ASK THIS COURT TO :

ALLOW the Respondent Toyota Credit Canada Inc. to file in the court record an executed sworn statement, substantially similar to the draft communicated as Annex A in support hereof, as well as the Transfer Agreement, Exhibit T-1, the whole within thirty (30) days of judgment to be rendered on this Application.

THE WHOLE without costs, save in case of contestation.

Montreal, July 31, 2018

Stikeman Elliott LLP

Me Yves Martineau
Me Guillaume Boudreau-Simard
STIKEMAN ELLIOTT LLP
Attorneys for the Respondent
Toyota Credit Canada Inc.
1155, René-Lévesque West, 41st Floor
Montreal (Quebec) H3B 3V2

Phone : 514 397 3380
Email : ymartineau@stikeman.com
Phone: 514 397 3694
Email: gboudreausimard@stikeman.com

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SWORN STATEMENT

I, the undersigned, ●, employee of Toyota Credit Canada Inc., exercising my profession at 80, Micro Court, Suite 200, Markham (Ontario), L3R 9Z5, solemnly declare the following:

1. I am a Manager – Customer Service for Toyota Credit Canada Inc. ("TCCI");
2. I am advised that an *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* (the "**Application**") has been filed against TCCI on behalf of all persons, including consumers, residing or having resided in Quebec who entered into a long-term vehicle lease with TCCI and who were charged fees for assigning the lease as of April 5, 2015 (the "**Proposed Class Period**");
3. The form of lease agreement in effect during the Proposed Class Period provides: "*You have no right to assign your interest in this Lease, transfer your right to use the Vehicle or sell or otherwise dispose of or sublease the Vehicle without our prior written consent.*", as appears from Exhibit P-24 communicated by the Applicant;
4. TCCI allows lease transfers subject to certain conditions being satisfied. These conditions include the prospective transferee being credit approved by TCCI, payment of any past due payments and the payment of a lease transfer fee in the amount of \$400.00, which is specifically disclosed in the Transfer Agreement;
5. A copy of the standard Transfer Agreement for Toyota vehicles is attached hereto, in French and in English, *en liasse*, as **Exhibit T-1**;
6. The lease transfer process is complex and requires both TCCI and the dealer to work in close collaboration;
7. When a customer requests a lease transfer, a TCCI Customer Service Associate will advise the customer to contact their Toyota, Lexus or Subaru dealer to make the necessary arrangements;

8. The prospective transferee will then need to attend at the dealership in order to complete a credit application which must be approved by a TCCI Credit Analyst who will conduct a credit check;
9. The cost of the credit application and credit check is included in the lease transfer fee;
10. Once this first step is completed, the dealer in Quebec must prepare the lease transfer package;
11. The dealer is responsible for completing and providing the following documents to a TCCI Customer Service Transfer Associate:
 - a. The signed Transfer Agreement;
 - b. The new certificate of insurance provided by the transferee's insurer;
 - c. A void cheque from the transferee;
 - d. A copy of the vehicle's new registration;
 - e. A customer identification verification form (if applicable);
 - f. A death certificate if the transferor is deceased;
12. The dealer must also register the vehicle to the transferee as plate holder at the *Registre des droits personnels et réels mobiliers* and pay the applicable fee;
13. Once these documents have been submitted to TCCI, a TCCI Customer Service Transfer Associate is responsible for processing the lease transfer and verifying that:
 - a. All the required signatures on the Transfer Agreement are present and have been dated prior to the expiry date;
 - b. The certificate of insurance shows TCCI as an Additional Named Insured or its equivalent Loss Payee;
 - c. The VIN on the certificate of insurance matches the Transfer Agreement;
 - d. The name on the void cheque matches the transferee or co-transferee;
 - e. The vehicle registration shows TCCI as owner and the transferee or co-transferee as plate holder;
 - f. The VIN on the vehicle registration matches the Transfer Agreement;
14. These verifications often require the Customer Service Transfer Associate to conduct follow-up queries where certain documents are missing or may not have been properly completed;

15. In order to finalize the lease transfer process, the Customer Service Transfer Associate will generate a report which will be provided to a TCCI Product Accounting Associate for processing;
16. If there are any missing payments, the Customer Service Transfer Associate will review the account to determine if the transferor or the transferee is responsible for the past due amount and a TCCI Transfer Desk Associate will follow-up to obtain payment;
17. Finally, the Customer Service Transfer Associate will generate a welcome letter to the transferee and remove the account from the transfer list;
18. Once the lease transfer process is complete, the dealer may wash and detail the vehicle before it is picked-up by the transferee;
19. The lease transfer fee covers all costs incurred by TCCI and the dealer in connection with the various steps required to transfer the lease;
20. The lease transfer fee is distributed as follows between TCCI and the dealer:
 - a. For Toyota vehicles: \$300.00 to the dealer / \$100.00 to TCCI
 - b. For Subaru vehicles: \$200.00 to the dealer / \$200.00 to TCCI
 - c. For Lexus vehicles: \$300.00 to the dealer / \$100.00 to TCCI;
 - d. For Scion vehicles: \$300.00 to the dealer / \$100.00 to TCCI;
21. The dealer has a discretionary power to waive the lease transfer fee in its entirety. If the lease transfer fee is waived by the dealer, TCCI will also waive its portion of the lease transfer fee;
22. All the facts alleged herein are true.

AND I HAVE SIGNED:

SOLEMNLY DECLARED before me on

_____, 2018

Notary Public

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**LIST OF EXHIBITS IN SUPPORT OF THE APPLICATION OF THE RESPONDENT
TOYOTA CREDIT CANADA INC. FOR PERMISSION
TO FILE APPROPRIATE EVIDENCE**

Exhibit T-1	Transfer Agreement – Prepaid Lease in French and English for Toyota vehicles, <i>en liasse</i>
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Montreal, July 31, 2018



Me Yves Martineau

Me Guillaume Boudreau-Simard

STIKEMAN ELLIOTT LLP

Attorneys for the Respondent

Toyota Credit Canada Inc.

1155, René-Lévesque West, 41st Floor

Montreal (Quebec) H3B 3V2

Phone : 514 397 3380

Email : ymartineau@stikeman.com

Phone: 514 397 3694

Email: gboudreausimard@stikeman.com

CONVENTION DE CESSION (“Convention”) - BAIL AVEC OPTION D’ACHAT

Date :

Numéro de compte :

CÉDANT ET CO-CÉDANT (NOM ET ADRESSE)	CESSIONNAIRE ET CO-CESSIONNAIRE (NOM ET ADRESSE)
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Pour valeur reçue et sujet au consentement de Toyota Credit Canada Inc. et le concessionnaire identifié ci-après, les parties aux présentes conviennent de ce qui suit. Le cédant (qui signifie le cédant et le co-cédant, solidairement), vend, cède et transporte au cessionnaire (qui signifie aux termes de la présente cessionnaire et co-cessionnaire solidairement) tous les droits, titres et intérêts du cédant dans le Bail avec option d’achat intervenu entre le cédant et _____ (concessionnaire) daté du _____ (“bail”) et le véhicule y décrit, le tout sujet aux termes et conditions ci-après mentionnées (une copie du bail est jointe à la présente entente et en fait partie intégrante).

ANNÉE	MARQUE	MODÈLE	NO. IDENTIFICATION DU VÉHICULE

Paiements: Il ne reste que _____ paiements _____ de _____ \$ débutant le _____ _____. La terminaison de ce bail est prévue le _____. Le prix de l’option d’achat est de _____ \$. _____.	Frais de cession \$ TPS/THV \$ TVP/TVQ \$ Total \$
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TERMES ET CONDITIONS

1. Les parties aux présentes reconnaissent que le concessionnaire a cédé le bail à Toyota Credit Canada Inc. (“Toyota Crédit”). **La présente convention n’aura d’effet que lorsqu’elle aura été signée par Toyota Crédit et que les frais de cession auront été acquittés.** Lors de l’exécution de cette convention de cession, les frais de transfert seront déduits du compte bancaire du cédant. La présente convention doit être signée par le cédant, le cessionnaire et le concessionnaire (pour et au nom de Toyota Crédit) le ou avant le _____. Cette convention sera nulle et sans effet si elle n’est pas reçue par Toyota Crédit le ou avant le _____. La présente convention constitue une entente complète entre les parties relativement à la présente cession.
2. Afin d’inciter Toyota Crédit à consentir à la présente cession, le cessionnaire accepte de promptement payer, exécuter et satisfaire toutes les obligations et engagements du cédant prévus au bail comme si le cessionnaire était dans les faits le locataire original au bail.
3. Le cessionnaire (i) renonce à invoquer quelque irrégularité au bail; (ii) reconnaît que le bail entier est en force, valide et exécutoire; (iii) reconnaît que les loyers restant sont raisonnables, dus et payables selon leur échéance; et (iv) reconnaît que le véhicule aux termes du bail est conforme aux représentations faites par le cédant et qu’aucune garantie, expresse ou implicite, représentation, promesse ou déclaration a été faite par le cédant ou Toyota Crédit à moins que cette(s) dernière(s) soi(en)t consignée(s) par écrit aux présentes. Le cessionnaire reconnaît et accepte qu’il règlera directement avec le cédant toute réclamation, compensation ou demande que le cessionnaire pourrait avoir à l’encontre du cédant avant ou après la signature des présentes et à quelque autre moment que ce soit. Le cessionnaire n’opposera aucune réclamation, compensation ou demande à Toyota Crédit. Le cessionnaire sera responsable de tous les frais pour l’usure et la détérioration excessives ainsi que pour le kilométrage excédentaire, y inclus l’usage et la détérioration excessives et le kilométrage excédentaire encouru ou causé par le cédant.
4. **NOTE :** L’assurance crédit optionnelle et la Garantie Prolongée facultative ne peuvent être cédées aux termes de la présente convention. Si le bail inclus un montant pour l’assurance crédit optionnelle et/ou la Garantie Prolongée facultative sur le crédit, c’est la responsabilité du cédant et du cessionnaire de faire en sorte que tel(s) contrat(s) soi(en)t résilié(s). Tout remboursement de prime, s’il y a, sera ajouté au dépôt de garantie remboursable.
5. Le cessionnaire fournira une preuve d’assurance automobile à Toyota Crédit, laquelle devra être conforme aux exigences du bail.
6. Tous les avis seront transmis à l’adresse du cessionnaire ci-dessus mentionnée, à moins que Toyota Crédit reçoive un avis d’un changement d’adresse.
7. Le cédant et le cessionnaire autorisent et mandatent Toyota Crédit afin de compléter et produire tout document officiel nécessaire à la cession de tous les droits, bénéfices et intérêts dans le véhicule ci-dessus décrit.
8. Les parties aux présentes reconnaissent également que le cédant demeurera responsable de toutes les obligations dues aux termes du contrat, jusqu’à la date où Toyota Crédit aura signée la présente convention.

Cédant _____ Co-cédant _____ Date: _____

Cessionnaire _____ Co-cessionnaire _____ Date: _____

PROGRAMME DE PAIEMENTS PRÉAUTORISÉS

Je (nous) autorise(ons) Toyota Crédit à effectuer un prélèvement de mon(notre) compte ci-après décrit ou de tout autre compte que je(nous) pourrais(ons) indiquer à Toyota Crédit de temps à autre pour le paiement de toute somme due aux termes du bail, et ce, par tout moyen convenu entre Toyota Crédit et mon(notre) institution financière (banque). Également, je(nous) requiers et autorise (requérons et autorisons) ma(notre) banque à débiter mon(notre) compte de tout tel prélèvement ou chèque. Cette autorisation pourra être annulée par écrit en tout temps par le(s) soussigné(s). La remise de la présente autorisation constitue une remise effectuée par le(s) soussigné(s). Toyota Crédit, à sa discrétion, peut annuler le présent programme.

Nom et adresse de la banque _____ No. compte _____

LE CESSIONNAIRE SIGNE: _____ LE CO-CESSIONNAIRE SIGNE: _____

Par la présente, nous acceptons le transfert du bail et du véhicule y décrit, le tout sujet aux termes et conditions du bail.

Concessionnaire _____ Par _____ Titre _____ Date: _____

* Le concessionnaire signe la présente convention pour et à l’acquit de Toyota Crédit.

TRANSFER AGREEMENT (“Agreement”) - LEASE AGREEMENT WITH OPTION TO PURCHASE

Date:

Account Number:

TRANSFEROR AND CO-TRANSFEROR (NAME AND ADDRESS)	TRANSFEEE AND CO-TRANSFEEE (NAME AND ADDRESS)
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For value received, and subject to the consent of Toyota Credit Canada Inc. and the Dealer identified below, the parties hereto agree to the following. Transferor (which means the undersigned transferor and co-transferor jointly and severally), hereby sells, conveys and transfers to Transferee (which means the undersigned transferee and co-transferee jointly and severally) all of Transferor’s right, title and interest in and to the Lease Agreement between Transferor and _____ (Dealer) dated _____ (“Lease”) and the property covered thereby, subject to the Terms and Conditions set forth below (a copy of the original Lease is attached and acknowledged).

YEAR	MAKE	MODEL	VEHICLE IDENTIFICATION NUMBER

Payments: There are _____ remaining _____ payments of \$ _____ commencing on _____ . This lease is scheduled to end _____. The Lease End Purchase Option Price is \$ _____.	Transfer Fee \$ GST / HST \$ PST / QST \$ Total \$
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TERMS AND CONDITIONS

1. The parties hereto acknowledge that Dealer has assigned the Lease to Toyota Credit Canada Inc. (“Toyota Credit”). **This Agreement shall not become effective until it is executed by Toyota Credit and the Transfer Fee has been paid.** Upon execution of this Agreement, the Transfer fee shall be withdrawn from the Transferor’s account. This Agreement must be executed by the Transferor, Transferee and the Dealer (on behalf of Toyota Credit) no later than _____. This Agreement is null and void and of no force and effect if not received by _____. This Agreement represents the entire agreement of the parties hereto with respect to its subject matter.
2. In order to induce Toyota Credit to consent to the transfer, Transferee hereby agrees to promptly pay, perform and discharge all of the obligations and covenants of Transferor contained in the Lease as though Transferee were the original Lessee on the Lease.
3. Transferee (i) waives any irregularities in the Lease; (ii) agrees that the Lease is a good, valid and subsisting contract and is binding in all respects with all provisions in full force and effect; (iii) agrees that the remaining Payments are just, due and shall become owing as prescribed by the terms of the Lease; and (iv) agrees that the property covered by the Lease is as represented by Transferor and that no warranties, express or implied, and no representations, promises or statements have been made by Transferor or Toyota Credit unless endorsed hereon in writing. Transferee understands and agrees that Transferee will settle directly with Transferor all claims, setoffs, counterclaims and defenses Transferee may have at any time, both before and after the date hereof, and from time to time against Transferor. Transferee will not set up any such claims, setoffs, counterclaims and defenses against Toyota Credit. Transferee will be liable for all excess wear and tear and excess kilometre charges, including excess wear and tear or excess kilometres charges incurred or occasioned by the Transferor.
4. **NOTE:** Optional Credit Insurance and Optional Extended Warranty are not transferable. If the Lease includes a charge for Optional Credit Insurance, Optional Extended Warranty or both, it is the responsibility of the Transferor and Transferee to arrange for the cancellation of such optional services. Premium refunds, if any, will be added to the Security Deposit.
5. Transferee shall provide evidence to Toyota Credit of insurance coverage that complies with the terms of the Lease.
6. Transferee agrees to advise Toyota Credit without delay of any change of address. Until such notice is received, all notices will be sent to the above noted address of the Transferee in accordance with the Lease.
7. Transferor and Transferee hereby appoint Toyota Credit as attorney-in-fact to execute and file all official forms necessary to transfer all rights, benefit and interest in the above-described property.
8. The parties further agree that the Transferor shall remain liable for all obligations due under the Lease to Toyota Credit up to the date Toyota Credit has signed this Agreement.
9. Les parties aux présentes ont expressément requis que la présente entente soit rédigée en langue anglaise. The parties have expressly agreed that the present agreement be drafted in the English language.

Transferor _____ Co-Transferor _____ Date: _____

Transferee _____ Co-Transferee _____ Date: _____

DIRECT PAYMENT PLAN

I (We) hereby request and authorize Toyota Credit to effect withdrawals from my (our) account identified below or any other account I (we) may identify to Toyota Credit from time to time, for payment of all amounts due under the Lease by any means agreed upon between Toyota Credit and my (our) financial institution (Bank). I (We) also request and authorize my (our) Bank to debit my (our) account for all such cheques or other withdrawals. This authorization may be cancelled at any time by me (us) upon written notice. Any delivery of this authorization constitutes delivery by me (us). Toyota Credit, in its sole discretion, may cancel this payment option.

Bank Name and Address _____ Account No. _____

TRANSFEEE SIGNS: _____ CO – TRANSFEEE SIGNS: _____

We hereby consent to the transfer of the leased property and corresponding Lease obligations subject to the terms of the Lease.

Dealer _____ By _____ Title _____ Date: _____

* Dealer is signing on behalf of Toyota Credit.

