

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

**S U P E R I O R C O U R T**  
(Class Action)

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No.: 500-06-001088-208

**LESLIE HAND**

*Applicant*

v.

**DENSO INTERNATIONAL AMERICA, INC.,  
et al.**

*Defendants*

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**APPLICATION BY THE DEFENDANT, HONDA CANADA INC., FOR LEAVE TO  
SUBMIT RELEVANT EVIDENCE AT THE HEARING FOR AUTHORIZATION**

**(ART. 574 al.3 C.C.P.)**

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**TO THE HONOURABLE PIERRE-C. GAGNON OF THE SUPERIOR COURT, ACTING  
AS THE DESIGNATED JUDGE IN THE PRESENT CASE, DEFENDANT HONDA  
CANADA INC. RESPECTFULLY SUBMITS AS FOLLOWS:**

**Introduction**

1. The Defendant Honda Canada Inc. ("**Honda**") seeks leave from this Honourable Court to file relevant evidence to be used in the context of the hearing of the *Application to authorize the bringing of a class action and to appoint the applicant as representative* (the "**Application for Authorization**"), the whole pursuant to article 574 al. 3 of the *Code of Civil Procedure* (the "**CCP**");
2. Specifically, Honda seeks leave to adduce a solemnly affirmed declaration from Kenneth Eric Dick (the "**Sworn Declaration**"), Assistant Vice-President Technical Operations of Honda, together with Exhibits H-1 to H-4, in order to ensure that the Court has the necessary facts for it to fairly consider the criteria for authorization set out at article 575 of the CCP. The Sworn Declaration is communicated thereto as **Exhibit H-1A**;

**The Application for Authorization**

3. By way of his Application for Authorization dated July 24, 2020, Mr. Hand seeks to initiate a class action proceeding against Honda and several other defendants on behalf of the following class:

*“all persons, entities, or organizations resident in Quebec who purchased and/or leased a Subject Vehicle equipped with a fuel pump designed and manufactured by DENSO, or any other group to be determined by the Court” (the “Proposed Class”);*

4. At paragraph 2 of the Application for Authorization, Mr. Hand lists the “Subject Vehicles” he seeks to include in the class action, including a number of Honda and Acura vehicles, that allegedly *“contain defective fuel pumps designed and manufactured by the DENSO Defendants”;*
5. At paragraph 6 of the Application for Authorization, Mr. Hand alleges that, to date, 136,035 Canadian Subject Vehicles containing a defective fuel pump designed and manufactured by Denso have been recalled by three (3) vehicle manufacturers, including but not limited to Honda;
6. Mr. Hand alleges that Honda and the other vehicle manufacturer defendants have violated their obligations to provide a vehicle exempt from any manufacturing or design defect;
7. At paragraph 3 of the Application for Authorization, Mr. Hand makes reference to allegedly *“defective low-pressure fuel pumps and assemblies”;*
8. In paragraph 7 of the Application for Authorization, Mr. Hand describes the alleged defect as follows: *“the impeller, which is manufactured with a lower density with lower surface strength can become cracked and deformed, which causes the fuel pump to become inoperative, in turn causing systematic fuel system failures, and causing rough engine running, engine no start and vehicle stalling”*, and he defines this alleged defect as both the **“Design Defect”** and the **“Fuel Pump Defect”**;
9. Mr. Hand alleges that on November 30, 2018, he entered into a 48 month lease of a 2019 Acura TLX 4 door sedan 2.4L bearing VIN No. 19UUB1F32KA800607 containing a Denso fuel pump, (the **“Vehicle”**), and that the Vehicle was suffering from the Design Defect;
10. Mr. Hand alleges that he suffered losses, including *“overpayment for the Vehicle itself, substantially lower resale values associated with the [V]ehicle because the problems with the fuel pump have become notoriously defective in the industry, pain and suffering, and trouble and inconvenience”;*
11. Mr. Hand incorrectly infers (without any factual basis pleaded in support) that all Honda and Acura Subject Vehicles in his proposed class action - and his own Vehicle - have the Design Defect/Fuel Pump Defect;

### **The Unrelated Honda Recalls**

12. The Application for Authorization contains unsubstantiated allegations and assumptions regarding recalls involving Honda and Acura vehicles that are

unrelated to the Design Defect/Fuel Pump Defect that is the subject of this Application for Authorization;

13. In the Application for Authorization, Mr. Hand refers to two different recalls conducted in the United States involving Honda and Acura vehicles (Exhibit R-13 and Exhibit R-14a);
14. Both of these recalls involve different Honda and Acura vehicles or different issues from the Design Defect/Fuel Pump Defect that is the subject of this Application for Authorization;
15. Pleaded together - and in the absence of critical background information – these two recalls paint an inaccurate picture that they involve the Design Defect/Fuel Pump Defect, and that the issues underlying these recalls have all manifested in Canada;

### **The Evidence in the Sworn Declaration**

16. The Sworn Declaration seeks to clarify the circumstances surrounding the different recalls by explaining that:
  - a. Exhibit R-13 is a NHTSA Part 573 Safety Recall Report describing a recall in the United States by American Honda Motor Co. involving certain Honda and Acura vehicles in which “*Sodium particulates contained in low quality fuels can adhere to certain internal components in the fuel pump, increasing electrical and mechanical resistance and reducing fuel pump performance*” (the “**U.S. Sodium Particulates Recall**”);
  - b. Honda did not undertake a recall in Canada corresponding to the U.S. Sodium Particulates Recall because the issue did not manifest in Canada due to unique differences between U.S. and Canadian fuel supply and climate;
  - c. The issue underlying the U.S. Sodium Particulates Recall involves different vehicles, fuel pump models, assemblies, component parts and issues than the Denso-manufactured impeller issue alleged by the Plaintiff to be the Design Defect/Fuel Pump Defect;
  - d. While the same make and model year as Mr. Hand’s Vehicle was recalled in the United States in the U.S. Sodium Particulates Recall, the Vehicle is not the subject of any Denso fuel-pump related recall in Canada;
  - e. Exhibit R-14a is a NHTSA Part 573 Safety Recall Report describing a recall in the United States by American Honda Motor Co. involving certain Honda vehicles in which “*Car wash detergents containing sulfuric acid could drain from the truck bed and seep into the fuel pump’s fuel feed port. If not rinsed off, sulfuric acid seepage can crack the fuel feed port, resulting in a pressurized fuel leak*” (the “**U.S. Car Wash Detergent Recall**”);

- f. While a similar recall to the U.S. Car Wash Detergent Recall was undertaken by Honda in Canada, the underlying issue involves different vehicles, fuel pump models, assemblies, component parts and issues than the Denso-manufactured impeller issue alleged by the Plaintiff to be the Design Defect/Fuel Pump Defect;
  - g. Honda undertook an Impeller Recall in Canada, and the Sworn Declaration clarifies which Honda and Acura vehicles were the subject of said recall in Canada;
17. Other relevant factual background in the Sworn Declaration and Exhibits H-1 to H-4 includes:
- a. evidence about the Canadian Impeller Recall, which involves certain Honda and Acura vehicles containing Denso-manufactured impellers, including an explanation of the Impeller Issue (as defined in the Sworn Declaration) involving the fuel pumps manufactured by Denso;
  - b. a copy of the Transport Canada Recall Notice for Honda's Canadian Impeller Recall, which was omitted from the Application for Authorization (**Exhibit H-1**);
  - c. copies of Honda's dealer service bulletins and customer communications delivered in the course of the Canadian Impeller Recall describing the issue and the corrective measures offered by Honda free of charge to the customer (**Exhibit H-2**);
  - d. evidence about why the issues that the U.S. Sodium Particulate Recall addresses in Honda and Acura vehicles were unique to the United States, and why that recall was not conducted in Canada;
  - e. evidence that there are no confirmed failures or warranty claims in Canada relating to diminished fuel pump performance or stall risk caused by sodium particulate adhesion in Honda or Acura vehicles;
  - f. an explanation of why the U.S. Sodium Particulate Recall is unrelated to the Impeller Issue;
  - g. evidence about a similar recall to the U.S. Car Wash Detergent Recall undertaken by Honda in Canada, and an explanation of why the issues associated with the U.S. and Canadian Car Wash Detergent Recall are unrelated to the Impeller Issue;
  - h. the Transport Canada Recall Notice for Honda's Car Wash Detergent Recall, which was omitted from the Application for Authorization (**Exhibit H-3**);

- i. Honda's service records for the Vehicle, which do not disclose any service work on the Vehicle involving the fuel pump (**Exhibit H-4**);
- j. evidence that, while the same vehicle make and model year as Mr. Hand's Vehicle (2019 Acura TLX) was recalled in United States as part of the U.S. Sodium Particulate Recall, his Vehicle is not part of any fuel pump recall conducted by Honda in Canada; and
- k. evidence that Honda has no record of Mr. Hand contacting Honda's customer service department.

### **Usefulness Of The Proposed Evidence For Authorization Assessment**

18. Honda respectfully submits that the Sworn Declaration is necessary to provide this Court with the relevant facts necessary for the determination of whether Mr. Hand has met the criteria set out at article 575 of the CCP. In particular, the Sworn Declaration and the Exhibits H-1 to H-4:
  - a. provide the Court with relevant factual information concerning the circumstances and scope of the recalls referred to by the Plaintiff which have either been incorrectly described, misconstrued, or omitted by Mr. Hand in the Application for Authorization;
  - b. will assist the Court in determining if Mr. Hand has sufficiently pleaded a personal cause of action;
  - c. will assist the Court in determining if the Plaintiff has demonstrated all of the constituting elements of his proposed claim;
  - d. shed light on the status of Mr. Hand's Vehicle (including that it has not been recalled in Canada for a fuel pump issue), and call into question the appropriateness of Mr. Hand to serve as the class representative; and
  - e. will assist the Court in determining the scope of the proposed class as it pertains to Honda and Acura Subject Vehicles, if any such class is to be authorized, which is denied by Honda;
19. The Sworn Declaration and Exhibits H-1 to H-4 will assist this Court in deciding whether the criteria for authorization are met by providing a more complete understanding of the material facts relating to the various recalls and the alleged Design Defect/Fuel Pump Defect;
20. The proposed evidence is required to complete the factual matrix raised by the Plaintiff's allegations. The Sworn Declaration and Exhibits H-1 to H-4 will provide this Court with relevant information concerning whether similar recalls to the U.S. recalls referenced by the Plaintiff were carried out in Canada (and if not, why not), the issues underlying the recalls and their relation – if any – to the Design

Defect/Fuel Pump Defect alleged by the Plaintiff, and the corrective measures undertaken by Honda in relation to the latter;

21. The evidence which Honda seeks leave to file is relevant for this Court to properly and fairly assess the application of the statutory criteria for authorizing class actions in Quebec laid out by Article 575 C.C.P.;
22. Under the circumstances, the request for leave to file the Sworn Declaration is proportional and in the interest of justice; and
23. This application is well founded in fact and in law.

**WHEREFORE, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Application for Leave to Submit Relevant Evidence*;

**AUTHORIZE** the Defendant, Honda Canada Inc., to submit and file into the court record the Declaration of Kenneth Eric Dick affirmed January 29, 2021 (Exhibit H-1A), and the following Exhibits:

**Exhibit H-1:** a copy of the Transport Canada Recall Notice for Honda's Canadian Impeller Recall;

**Exhibit H-2:** copies of Honda's service bulletins and customer communications delivered in the course of the Canadian Impeller Recall (*en liasse*);

**Exhibit H-3:** a copy of the Transport Canada Recall Notice for Honda's Car Wash Detergent Recall;

**Exhibit H-4:** copies of Honda's service records for Mr. Hand's vehicle;

**THE WHOLE** without costs except in the event of contestation.

Montreal, January 29, 2021



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CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

**SUPERIOR COURT**  
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*Defendants*

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**NOTICE OF PRESENTATION**

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Attorney for Defendant, Subaru  
Canada Inc.

**TAKE NOTICE** that the *Application by the Defendant Honda Canada Inc. for Leave to Submit Relevant Evidence* will be presented for adjudication before the Honourable Pierre-C. Gagnon, at a time and room to be determined by the Court and by a technological means to be determined and communicated to the parties.

**PLEASE GOVERN YOURSELF ACCORDINGLY.**

Montreal, January 29, 2021

*McMillan LLP*

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**LIST OF EXHIBITS**

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- Exhibit H-1A:** Sworn Declaration of Kenneth Eric Dick
- Exhibit H-1:** Copy of the Transport Canada Recall Notice for Honda's Canadian Impeller Recall
- Exhibit H-2:** Copies of Honda's service bulletins and customer communications delivered in the course of the Canadian Impeller Recall (*en liasse*)
- Exhibit H-3** Copy of the Transport Canada Recall Notice for Honda's Car Wash Detergent Recall
- Exhibit H-4:** Copies of Honda's service records for Mr. Hand's vehicle

Montreal, January 29, 2021

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SUBMIT RELEVANT EVIDENCE AT THE  
HEARING FOR AUTHORIZATION (ART. 574  
AL. 3 C.C.P.), NOTICE OF PRESENTATION,  
LIST OF EXHIBITS, EXHIBITS H-1A TO H-4**

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