

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Actions)

---

NO: 500-06-001170-212

KARINE PEILLON

Applicant

v.

AUDI CANADA INC.

and

VOLKSWAGEN GROUP CANADA INC.

Defendants

---

**RE-AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS  
ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF  
(ARTICLES 571 AND FOLLOWING C.C.P.)**

---

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. The Applicant seeks to institute a class action on behalf of the following class of which she is a member, namely:

**Class:**

All persons who purchased and/or leased one or more of the following Audi vehicles recalled under Transport Canada Recall # 2021-169 because of the defective Passenger Occupant Detection System (“**PODS**”) manufactured, distributed, supplied, wholesaled and/or imported by Audi:

- Audi A3 (model years 2016 to 2020)
- Audi A3 E-TRON (model years 2016 to 2018)
- Audi RS3 (model years 2018 to 2020)
- Audi S3 (model years 2016 to 2020)

(hereinafter the “**Defective Vehicles**”)

for which Audi did not have replacement parts and repair service within 30 days following the original recall date.

or any other Class to be determined by the Court.

**I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

2. The Applicant is a consumer within the meaning of Quebec's *Consumer Protection Act* ("CPA");
3. On September 10, 2020, the Applicant entered into an agreement to lease a brand-new Audi A3 2020 from Audi Prestige Gabriel Ouest, for a period of 48-months, for \$537.25 per month, as it appears from a copy of her lease disclosed as **Exhibit P-1**;
4. The Applicant is the only person making payments to VCCI and has been making her monthly payments to VCCI since September 2020;
5. The Applicant is the registered driver of the vehicle, as it appears from the SAAQ registration certificate disclosed as **Exhibit P-2**;
6. The Applicant decided to lease this Audi A3 because she was looking for a vehicle that was safe, made by a reputable manufacturer and within her budget;
7. At the time of entering into her lease, the Applicant was under the impression that she was leasing a vehicle that was free of any production/safety issues, as well as any design and/or manufacturing defects – and because she thought that she was leasing a safe vehicle;
8. Unbeknownst to her, she overpaid, as, up until the recall repair was finally performed by Audi on March 1, 2022 (see paragraphs 40.1 and following below) her Audi A3 was in fact suffering from a serious safety defect – which the Defendants failed to inform her about contrary to section 228 CPA – as described in the following paragraphs;
9. Around the month of February 2021, the Applicant's vehicle started exhibiting the following problems:
  - a) beeping / chiming constantly [...];
  - b) the warning light on the console, described in the vehicle user manual as the "front passenger airbag off indicator" (see page 9 of Exhibit P-5, item number 25) lit up when it was not supposed to, indicating that the airbag was off, as it appears from a picture taken by the Applicant on November 30, 2021,

communicated as **Exhibit P-13**; and

- c) the screen (just above the steering wheel) described in the vehicle user manual as the “instrument cluster” (see page 9 of Exhibit P-5, item number 8) was also indicating “Passenger airbag off” (when the airbag should have been on), as it appears from a picture taken by the Applicant on November 30, 2021, communicated as **Exhibit P-14**;**
10. In March 2021, as the beeping problem persisted, the Applicant contacted Audi Prestige Gabriel Ouest to inform them about the constant passenger airbag light and beeping sound that she was experiencing with her vehicle. They advised her that they were looking into the issue and informed her that she was not the only customer experiencing this problem. They further advised her that she would be contacted as soon as a repair was available;
  11. After this call ended, the Applicant was worried about passenger safety and called back Audi Prestige Gabriel Ouest to ask whether it was safe for her to have passengers in the front seat. The agent in the service department, who handled the call initially, hesitated and then informed the Applicant that it would be safer not to have passengers in that seat in case of an accident and airbag malfunction;
  12. The Applicant listened to the advice of the Audi Prestige Gabriel Ouest service representative and no longer drove her vehicle with passengers in the front seat, until the safety issue was remedied on March 1, 2022 (see paragraphs 40.1 and following below);
  13. Around the month of May 2021, the Applicant received a letter by regular mail from the Defendant Audi Canada Inc. titled “IMPORTANT SAFETY RECALL” (the “**Recall Letter**”), as it appears from a copy of said letter disclosed as **Exhibit P-3**;
  14. According to the Recall Details on Transport Canada’s website for Recall # 2021-169, the recall date was March 22, 2021, as it appears from **Exhibit P-4** (which also mentions that the recall was issued by Defendant Volkswagen Group Canada Inc.);
  15. In its title, the Recall Letter specifies in bold letters that the “recall repair is not yet available”. As of the initial filing of the authorization application on November 23, 2021 (i.e. 8 months after the recall date of March 22, 2021, as indicated in Exhibit P-4), the Defendants had still not repaired the vehicle despite many requests by the Applicant, who had been informed by Audi Prestige Gabriel Ouest and by Audi Canada Inc. (agent named Antonette) that the repair was still not available (see update provided at paragraphs 40.1 to 40.10 below);
  16. The Applicant made several requests to Audi asking to receive a loaner vehicle for the period of time during which her vehicle suffered from a serious safety defect (i.e. until she brought her vehicle in to have the recall repair finally

performed on February 28, 2022, as explained at paragraphs 40.1 and following below) and Audi Canada Inc. had ignored all of her requests regarding same;

17. Audi's Recall Letter is also misleading because Audi states that the purpose of the letter "*is to inform you that your vehicle **may** contain a defect that could affect the safety of a person*", when the reality is that the Applicant's vehicle **did**, in fact, contain a safety defect until March 1, 2022, as did all of the Defective Vehicles;
18. Indeed, the Recall Letter states the following under the title "**About this Recall**":

The passenger occupant detection system (PODS) may detect a malfunction **and switch off the passenger airbag even though the seat may be occupied**. However, the airbag system and the warning strategy operate as designed. If the PODS malfunctions, a warning light in the instrument panel comes on together with an acoustic warning sound and an error message is displayed in the instrument cluster. The airbag indicator light shows "passenger airbag off". This error often occurs sporadically and for a limited amount of time. When the error and consequently the warnings disappear, the passenger airbag works again as intended without any action/interaction necessary by the customer.

In the event of a crash necessitating passenger airbag activation, **there would be an increased risk of injury to the occupant seated in the front passenger seat** if the passenger airbag is switched off/not working.

19. In its Recall Letter, Audi goes on to state that a recall repair is not yet available and, under the title "What you can do now", Audi states the following:

You can continue driving your vehicle. **Please ensure that everyone who uses your vehicle has read the owner's manual** and is familiar with how the PODS works for the front passenger seat.

As designed, in case of a malfunction within the PODS, a warning light in the instrument panel will come on together with a warning sound and an error message will be displayed in the instrument cluster (the airbag indicator light shows "passenger airbag off"). If this happens, **stop using the front passenger seat and make arrangements to have the vehicle inspected/repaired at an Audi dealership as soon as possible**.

Please do not contact your dealer about this recall unless you believe your vehicle is experiencing the recall condition

described in this letter.

20. First, it is absurd for Audi to ask – or to expect – Class Members to have “everyone who uses [their] vehicle [to] read the owner’s manual”. The Applicant would have never leased this vehicle had she known that each of her passengers would be required to read a **400-page** manual as a prerequisite for riding as a passenger in her vehicle, a copy of the manual disclosed as **Exhibit P-5**;
21. Second, the Applicant’s vehicle did suffer from the issue described in the second paragraph cited at paragraph 19 above and she immediately contacted her Audi dealership (Audi Prestige Gabriel Ouest) upon receiving the Recall Letter, which advised the Applicant to “*stop using the front passenger seat and make arrangements to **have the vehicle inspected/repaired at an Audi dealership as soon as possible***”. However, at that time, the Defendants were well aware that they could not [...] perform the recall repairs. As explained at paragraphs 40.1 and following below, it was only as of February 15, 2022 (i.e. 11 months after the original Recall Letter) that the Defendants were finally able to perform the recall repairs;
22. According to the Recall Details on Transport Canada’s website (Exhibit P-4), Audi recommends that class members “*not transport a person in the front-passenger seat until the PODS has been repaired*”, meaning that – until the recall repair was performed on March 1, 2022 – the Applicant was not receiving full enjoyment or use of the vehicle she was paying full price for;
23. Third, the Applicant had been communicating with Audi Canada and her dealership in order to receive a loaner vehicle until such time that the repairs were completed and her vehicle is safe to drive in with passengers. She has also requested to be compensated monetarily due to the fact that she has been paying full price for a vehicle for which the passenger seat cannot be used for more than 11 months [...];
24. The Applicant hereby alleges that this delay of 11 plus months is unreasonable within the meaning of section 39 CPA (as interpreted and applied by the jurisprudence) which stipulates:

<p><b>39.</b> Where goods being the object of a contract are of a nature that requires maintenance, replacement parts and <b>repair service must be available for a reasonable time</b> after the making of the contract.</p> <p>The merchant or the manufacturer may release himself from this obligation by warning the consumer in writing, before the contract is entered into, that he does</p>	<p><b>39.</b> Si un bien qui fait l’objet d’un contrat est de nature à nécessiter un travail d’entretien, les pièces de rechange et <b>les services de réparation doivent être disponibles pendant une durée raisonnable</b> après la formation du contrat.</p> <p>Le commerçant ou le fabricant peut se dégager de cette obligation en avertissant le consommateur par écrit, avant la formation du contrat, qu’il ne fournit pas de</p>
--	---

not supply replacement parts or repair service.	pièce de rechange ou de service de réparation.
---	--

25. The Applicant was entitled to expect, and rightly expected, that the Defendants guarantee the quality of the vehicles they design, market and sell;
26. Until the recall repair was performed on her vehicle on March 1, 2022, that appears to have remedied the problem, the safety issue caused the Applicant's vehicle to make a "warning chime" not only when the Applicant had a passenger in the front seat, but even when she placed her purse or other items on the front seat. Of course, this made it extremely annoying and distracting to drive the vehicle – and something the Applicant was not aware of at the time of leasing her Audi vehicle;

**Applicant's experience with Audi after receiving the Recall Letter**

27. Immediately upon receiving the Recall Letter from Audi in May of 2021 (the Recall Date is March 22, 2021, according to Exhibit P-4), the Applicant contacted her dealership (Audi Prestige Gabriel Ouest) and was told that there was no repair available and that Audi would not provide her with a replacement vehicle in the interim;
28. She continued not having passengers sit in the front seat (she would often have passengers in the front seat prior to her phone call in March 2021 with the Audi Prestige Gabriel Ouest service representative);
29. As the safety issue persisted without being fixed, the Applicant continued following up and contacting her dealership and was finally told to contact Audi Canada Inc. if she wanted a replacement/loaner vehicle;
30. Appalled that no repair was yet available, in the months of October and November 2021, the Applicant continued contacting Audi Canada and her call was finally escalated to an agent at Audi Canada named "Antonette";
31. In particular, the Applicant noted the following phone calls between herself and Audi Canada or her Audi dealership:
  - a) **October 5, 2021:** The Applicant called Audi Prestige Gabriel Ouest to receive an update on the progress of the recall because she was still paying full price for a vehicle she could not make full use of. The dealer advised her that they would look into the matter and call her back, and that she should also call Audi Canada herself;
  - b) **October 5, 2021:** The Applicant called Audi Canada who informed her that they were expecting a fix by the end of the year (i.e. end of 2021) and that if

she wanted compensation or a loaner vehicle that she must call her Audi dealership (i.e. Audi Prestige Gabriel Ouest);

- c) **October 7, 2021:** Audi Prestige Gabriel Ouest called the Applicant back and told her that there was no offer of compensation or a loaner vehicle from the manufacturer (i.e. the Defendant Audi Canada) and that the manufacturer said that there was no repair available yet, but that there may be one “hopefully” by the end of this year;
- d) **October 7, 2021 (at 1:45 p.m.):** The Applicant received a phone call from “Antonette” from Audi Canada. The Applicant voiced her frustration with the fact that Audi was bouncing her between departments but that nobody was actually helping, and reiterated that the front passenger seat airbag problem made it unenjoyable for her to use her vehicle and that the safety issue was very stressful for her. The Applicant further reiterated her frustration that she was paying full price for a vehicle that she cannot fully use and that it was unacceptable that Audi has not offered her a loaner vehicle or any form of compensation. Antonette informed the Applicant that Audi may be able to offer the Applicant a loaner vehicle of equal or better value and that she would verify and call her back;
- e) **October 21, 2021:** Audi Canada left a voicemail to the Applicant saying they did not find a solution to the problem and that they would call her back once they did;
- f) **October 28, 2021:** The Applicant called Audi Canada back and spoke with “Zachary”. He seemed surprised that he could not access the Applicant’s file for some reason and put a note in her file for someone to call her back promptly, saying that she should receive a call back within 2 days at most;
- g) **November 4, 2021:** The Applicant received a phone call from Antonette from Audi Canada, which the Applicant answered. Antonette pretended not to hear the Applicant and hung up on her. The Applicant waited for 5 minutes, but Antonette did not call back, so the Applicant called Audi Canada back and was put on hold for 30 minutes. When an Audi representative finally answered her call, she was told that Antonette was on a call and that, in any event, they were still investigating and that they would call her back when they found a solution. This phone call made it clear to the Applicant that Audi was trying to avoid dealing with this systemic issue and that Audi would continue ignoring/refusing her request for compensation and/or a loaner vehicle until the safety recall issue is repaired;
- h) **November 12, 2021:** Antonette from Audi Canada left a voicemail to the Applicant saying that she called Audi Prestige Gabriel Ouest and that they are still “looking for a solution”. The Applicant called Antonette back, but the agent from Audi Canada’s customer service told her that Antonette was not available (it seemed to the Applicant that this agent was told not to transfer

the call to Antonette because he hadn't even accessed her file or tried to transfer her to Antonette).

32. To summarize, the Applicant asked Antonette to provide her with a replacement vehicle until the safety repairs were performed, as well as for compensation for the period of time during which the Applicant could not use the front seat of her vehicle due to a manufacturer's defect;
33. Antonette – acting on behalf of the Defendant Audi Canada – refused both of the Applicant's requests, and Audi had still not performed the safety repairs as of the original filing of this action on November 23, 2021;
34. It is clear to the Applicant that Audi is not taking the situation seriously and she is therefore bringing this action in order to hold Audi accountable and to obtain compensation from Audi for herself and all Class Members similarly situated;
35. The Applicant has suffered ascertainable loss as a result of Audi's failure to respect section 39 CPA, as well as its omissions and misrepresentations associated with the safety recall issue (as alleged at paragraphs 44 to 50 below), including, but not limited to: (i) overpayment for the vehicle; (ii) moral damages; and (iii) trouble and inconvenience;
36. Had the Applicant been aware of the safety defect, she would have never leased this 2020 Audi A3, regardless of the price;
37. The Applicant's damages are a direct and proximate result of the Defendants' misconduct and their violations of sections 37, 38, 39, 40, 41, 53, 215, 219, 220(a), 221(g), and 228 CPA, thus rendering section 272 applicable, section 6 of Quebec's *Charter*, as well as articles 1728-1730 C.C.Q.;
38. Quebec consumer law is a matter of protective public order;
39. As a professional seller, Audi has **presumed** and **actual knowledge** of the safety defect. Audi also admits that the Applicant's 2020 Audi A3 is defective in Exhibit P-1;
40. In consequence of the foregoing, the Applicant is justified in claiming the following damages pursuant to section 272 CPA, the Quebec *Charter* and the Civil Code:
  - a) Reduction of her obligations in an amount to be determined on the merits as of February 15, 2022 (i.e. the date that Audi was finally able to repair[...] the safety issue (s. 272(c));
  - b) Punitive damages of \$5,000.00;



**NEW FACTS CONCERNING THE RECALL REPAIR SINCE THE FILING OF THIS PRESENT ACTION**

- 40.1 On December 15, 2021, “Jean-Pierre” from Audi Ville St-Laurent called the Applicant by phone to ask her if she had any questions about her last appointment, which the Applicant found random and odd. The Applicant asked him about the recall and Jean-Pierre asked her if the lights and sounds still occur and the Applicant answered yes and that it occurs every day;
- 40.2 Jean-Pierre then asked the Applicant if she had ever verified if a bottle of water or something else was left under her passenger seat because, according to him, that could be a cause of disruption for the detection system. The Applicant answered no and that even if someone did have a water bottle or “something” under their passenger seat, it certainly should not cause such a safety disfunction;
- 40.3 In early January 2022, the Applicant received a letter from Audi dated “December 2021” informing her (and presumably all class members) to “***Please contact your authorized Audi Dealer without delay to schedule this recall repair***”, Applicant discloses the letter as **Exhibit P-11**. It appears that around the same time, Audi sent a letter to its dealerships informing them that the recall repair was finally available, as it appears from a copy of the “Audi Dealer Communication” letter dated December 16, 2021, communicated as **Exhibit P-15** (as alleged at paragraphs 40.5 and 40.8 below, contrary to this letter stating that the repair was available as of December 17, 2021, the repair was not in fact available until February 15, 2022);
- 40.4 The Applicant promptly called Audi Ville St-Laurent who scheduled her recall repair for **February 2, 2022**;
- 40.5 On **January 24, 2022**, the Applicant called Audi Ville St-Laurent to ask whether they could add her armrest repair on the same date that was scheduled for her recall repair (i.e. on February 2, 2022). The woman on the phone “Lana” told her that Audi Ville St-Laurent had just received an email from Audi Canada explaining that the production of parts concerning the recall was at a standstill and that, as a result, repairs were not going to be possible until further notice;
- 40.6 Audi Ville St-Laurent cancelled the Applicant’s previously scheduled February 2, 2022, appointment for the recall repair and Lana told her that they were going to communicate this information to all of their customers concerned by the recall (i.e. that they cannot perform the recall at this time, despite sending the letter communicated as Exhibit P-11 stating the opposite). The Applicant hereby requests that the Defendants communicate a copy of this email to her;
- 40.7 This new notice (Exhibit P-11) contained misleading information (because the repair could not be done “without delay” as the letter incorrectly stated) and was

therefore in violation of section 10.4(1) of the *Motor Vehicle Safety Act*, S.C. 1993, c. 16 and of the *Motor Vehicle Safety Regulations*, CRC, c 1038;

40.8 On **February 15, 2022**, Audi Ville St-Laurent called the Applicant to inform her that they finally received the piece required in order to perform the recall repair, as it appears from a recording of the voicemail left on the Applicant's phone, communicated as **Exhibit P-12**, which is reproduced as follows:

« Bonjour, j'appelle d'Audi St-Laurent. Je vous appelle concernant votre A3 2020. Je vous appelle parce que nous avons reçu une pièce concernant le rappel 69BY et nous voulons prendre rendez-vous avec vous pour cela. Veuillez nous rappeler dès que possible au (514) 364-7777 extension [inaudible], (514) 364-7777 extension [inaudible]. Merci. »

40.9 The Applicant returned the call and her appointment was scheduled for February 28, 2022;

40.10 On the morning of **February 28, 2022**, the Applicant brought her vehicle to Audi Ville St-Laurent and the recall repair was finally performed on her vehicle. Her vehicle was left overnight (during which time she received a rental) and Audi called her to retrieve her vehicle on **March 1, 2022**, which she did;

40.11 Even if we consider **February 15, 2022**, as the recall repair date (which Audi admits in Exhibit P-12 as being the date "*que nous avons reçu une pièce concernant le rappel 69BY*"), the delay of 12 months since the defect first started manifesting itself (see para. 9 above) – or of 11 months from the [...] recall date (see para. 14 above and Exhibit P-4) – are both not a "reasonable time" within the meaning of article 39 CPA. Indeed, this Honourable Court has already authorized a class action when the delay to perform the recall repair was less than in the present case (see: *Hadida c. Nissan Canada inc.*, 2019 QCCS 184, paras. 11, 28 & 29);

40.12 Since retrieving her vehicle back from Audi Ville St-Laurent on March 1, 2022, the Applicant believes that the serious safety defect (as alleged herein, notably at paragraph 8 above) was remedied by way of the recall repair performed by Audi on that date;

40.13 The Applicant confirms that following said March 1, 2022, repair, the defects alleged and described at paragraph 9 above ceased, namely:

**a)** the beeping / chiming no longer occurs;

**b)** the warning light on the console, described in the vehicle user manual as the "front passenger airbag off indicator" (see page 9 of Exhibit P-5, item number 25, as well as the picture communicated as Exhibit P-13) no longer turns on, indicating that the problem has been fixed;

c) the screen (just above the steering wheel) described in the vehicle user manual as the “instrument cluster” (see page 9 of Exhibit P-5, item number 8, as well as the picture communicated as Exhibit P-14) no longer displays “Passenger airbag off”, further indicating that the problem has been fixed.

40.14 For the purposes of the present authorization application, the Applicant suggests that February 15, 2022, be considered as the recall date because this is the date on which Audi finally had the part available for repair (see para. 40.8 above);

### **Punitive Damages (s. 272 CPA and the Quebec Charter)**

41. Punitive damages are appropriate in this situation in order to send a strong message to vehicle manufacturers that vehicle owners should never have to wait more than 11 plus months for safety repairs and that manufacturers should not conceal safety issues from their customers and the public at the time of sale;
42. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
43. Moreover, section 6 of Quebec’s *Charter of Human Rights and Freedoms* guarantees that every person has a right to the peaceful enjoyment his/her property and section 49 stipulates that moral and punitive damages can be awarded in the case of an unlawful and intentional interference of this right;
44. Indeed, Audi’s conduct can only be qualified as “intentional”, as it has been aware of the PODS safety issue for several years, and has concealed it from its customers in order to continue profiting from the sales of its Defective Vehicles (thereby failing in their duty to inform consumers, including the Applicant, of important safety information within the meaning of section 228 CPA);
45. For instance, in an article published on the website [www.carcomplaints.com](http://www.carcomplaints.com) on March 28, 2021, consumer and investigative reporter David A. Wood wrote that the recall at issue (i.e. reference #69BY) “*is an **expansion of a June 2019 Audi recall**, and all vehicles allegedly repaired during that recall must return to dealers for new repairs*”, as it appears from **Exhibit P-6**;
46. The June 2019 recall (reference #69Z4) concerned the same issue, as it appears from a copy of Mr. Wood’s June 28, 2019, article communicated as **Exhibit P-7**:

“The automaker traced the defect to an electrical contact that may **cause the passenger occupant detection systems [PODS] to mistakenly malfunction.**

The automaker says a “*mostly temporary loose contact at the connector*” causes the malfunction **that turns off the airbag, something that should activate a warning light, a warning message and an audible warning.**

**Audi opened an investigation in March 2018** because of growing field reports about replacements of the passenger occupant detection systems [*PODS*].

Engineers with Audi and the supplier performed multiple tests to determine the root cause of the failures as new stronger connectors were developed. In addition, engineers changed the way cables were routed.

Audi found a widening of the plug-in contacts at the connectors underneath the seats may cause loose contacts, causing the systems to detect errors.

The automaker says new more robust connectors and better cable routing to the electronic control units should take care of the problems. Better cable routing will help prevent sharp bending, according to Audi.

47. The Applicant communicates the Technical Service Bulletin sent by Audi to its dealers on **June 25, 2019**, titled “Safety Recall 69Z4 – A3 Passenger Occupant Detection Systems (PODS) – Dealer Toolkit Update”, herewith as **Exhibit P-8**;
48. The Applicant communicates the Technical Service Bulletins (“**TSB’s**”) sent by Audi to its dealers concerning the PODS defect (reference **#69BY**) on December 9, 2020, February 23, 2021, and April 2, 2021, herewith *en liasse* as **Exhibit P-9**. Each of these TSB’s refers to Audi’s June 2019 recall (reference **#69Z4**);
49. The Applicant communicates herewith the FAQs sent by Audi to its dealers for recall campaign code 69BY in March 2021 as **Exhibit P-10**. This document also refers to Audi’s **June 2019** recall (reference **#69Z4**);
50. As it appears from the above, Audi had already opened an investigation about the PODS safety defect in **March 2018**, more than two years before the Applicant leased her vehicle and there was still no fix for the defect as of the original filing of this application (i.e. **November 23, 2021**); The remedy was only made available to the Applicant as of February 15, 2022, and finally performed on her vehicle on March 1, 2022;
51. The reality is that Audi is more concerned about its bottom line, and it was more profitable for Audi to conceal the safety issues (i.e. the PODS defect) from the Applicant and Class Members, since no reasonable person would purchase/lease a luxury-brand vehicle whose front seat cannot be used for almost one year;
52. Audi’s violations are intentional, malicious, vexatious, and dangerous. Audi could have offered the Applicant (and Class Members) a replacement vehicle of similar value until the safety repairs are performed, but chose not to (once again, in order to make more money);

53. In these circumstances, the Applicant's claim for punitive damages in the amount of \$5,000.00 per Class Member is justified;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

54. As manufactures, distributors, suppliers, wholesalers and/or importers of the Defective Vehicles, Audi is bound to warrant Class Members that the vehicles and its accessories are, at the time of the sale, free of latent defects which render them unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if she had been aware of them;

55. As professional sellers, Audi is presumed to have known about the safety defect in the Defective Vehicles (i.e. year models 2016 to 2020) since they were manufactured and sold as of 2015;

56. Class Members benefit from the legal presumption that the defect existed at the time of the sale, since the Defective Vehicles sold by Audi to Class Members malfunction prematurely in comparison with identical vehicles or vehicles of the same type;

57. Audi cannot rebut this presumption because it has admitted in the Recall Letter, Exhibit P-1, that the defect is due to a production issue and not due to improper use of the vehicle by Class Members;

58. The Recall Letter, Exhibit P-1, is an admission by Audi that it sold and leased vehicles to Class Members that suffered from a safety defect for at least 11 months;

59. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;

60. **The recourses of the Class members raise identical, similar or related questions of fact and law, namely:**

a) Did the Defendants fail to satisfy the requirements of sections 37, 38, 39, 40, 41, 53, 215, 219, 220(a), 221(g), or 228 CPA, or of articles 1728-1730 CCQ?

b) Did the Defendants breach section 6 of the Quebec Charter?

c) Did the Defendants commit a fault in relation to their recall program or otherwise fail to satisfy their obligations in that regard?

d) Did the Defendants violate s. 10.4(1) of the *Motor Vehicle Safety Act* and the *Motor Vehicle Safety Regulations*?

- e) Are Class Members entitled to:
  - i. a reduction of their obligations (or of the vehicle purchase price) and in what amount?
  - ii. damages for trouble and inconvenience and in what amount?
  - iii. moral damages and in what amount?
  - iv. punitive damages of \$5000.00 per Class Member?

**C) THE COMPOSITION OF THE CLASS**

- 61. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
- 62. According to Transport Canada, Audi's recall concerns 18,204 vehicles (Exhibit P-4);
- 63. The Applicant was told by her Audi dealership that many other Class Members have complained about the same issue that she now brings before the Court;
- 64. Class members are very numerous and are dispersed across the province and country;
- 65. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action;
- 66. 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 without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

- 67. The Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
  - a) She is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
  - b) She is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) Her interests are not in conflict with those of other Class members;

68. As for identifying other Class Members, the Applicant draws certain inferences from the situation, and this based on the information provided to her by her Audi dealership and the information provided by Transport Canada, Exhibit P-4, that 18,204 vehicles have been recalled to date. The Applicant realizes that by all accounts, there is an important number of Class Members that find themselves in a similar situation, and that it would not be useful for her to attempt to identify them given their sheer number;

## **II. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

69. The action that the Applicant wishes to institute on behalf of the Class Members is an action in damages;
70. The conclusions that the Applicant wishes to introduce by way of an originating application are:
1. **ALLOW** the class action of the Representative Plaintiff and the Class Members against the Defendants;
  2. **CONDEMN** the Defendants, solidarily, to pay to each Class Member compensatory damages in an amount to be determined, and **ORDER** collective recovery of these sums;
  3. **CONDEMN** the Defendants, solidarily, to pay to each Class Member \$5000.00 in punitive damages and **ORDER** collective recovery of these sums;
  4. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;
  5. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  6. **ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
  7. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

## **III. JURISDICTION**

71. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because she is a consumer and resides in this district.

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

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
2. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

**Class:**

All persons who purchased and/or leased one or more of the following Audi vehicles recalled under Transport Canada Recall # 2021-169 because of the defective Passenger Occupant Detection System (“**PODS**”) manufactured, distributed, supplied, wholesaled and/or imported by Audi:

- Audi A3 (model years 2016 to 2020)
- Audi A3 E-TRON (model years 2016 to 2018)
- Audi RS3 (model years 2018 to 2020)
- Audi S3 (model years 2016 to 2020)

(hereinafter the “**Defective Vehicles**”)

for which Audi did not have replacement parts and repair service within 30 days following the original recall date.

or any other Class to be determined by the Court.

3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
  - a) Did the Defendants fail to satisfy the requirements of sections 37, 38, 39, 40, 41, 53, 215, 219, 220(a), 221(g), or 228 CPA, or of articles 1728-1730 CCQ?
  - b) Did the Defendants commit a fault in relation to their recall program or otherwise fail to satisfy their obligations in that regard?
  - c) Did the Defendants breach section 6 of the Quebec Charter?
  - d) Did the Defendants violate s. 10.4(1) of the *Motor Vehicle Safety Act* and the *Motor Vehicle Safety Regulations*?
  - e) Are Class Members entitled to:
    - i. a reduction of their obligations (or of the vehicle purchase price) and in what amount?



ii. damages for trouble and inconvenience and in what amount?

iii. moral damages and in what amount?

iv. punitive damages of \$5000.00 per Class Member?

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

1. **ALLOW** the class action of the Representative Plaintiff and the Class Members against the Defendants;
2. **CONDEMN** the Defendants, solidarily, to pay to each Class Member compensatory damages in an amount to be determined, and **ORDER** collective recovery of these sums;
3. **CONDEMN** the Defendants, solidarily, to pay to each Class Member \$5000.00 in punitive damages and **ORDER** collective recovery of these sums;
4. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;
5. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
6. **ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
7. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**ORDER** the publication of a notice to the Class Members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

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

manner provided for by law;

**THE WHOLE** with costs including publication fees.

Montreal, March 28, 2022

*(s) LPC Avocat Inc.*

---

**LPC AVOCAT INC.**

Mtre Joey Zukran

Attorney for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

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 Actions)

---

NO: 500-06-001170-212

**KARINE PEILLON**

Applicant

v.

**AUDI CANADA INC.**

and

**VOLKSWAGEN GROUP CANADA INC.**

Defendants

---

**RE-AMENDED LIST OF EXHIBITS**

---

- Exhibit P-1:** Copy of the Applicant's Audi lease dated September 10, 2020;
- Exhibit P-2:** Copy of the Applicant's SAAQ registration certificate;
- Exhibit P-3:** Copy of Audi Recall Letter dated May 2021;
- Exhibit P-4:** Recall Details from Transport Canada's website for Recall # 2021-169;
- Exhibit P-5:** Copy of the Audi 2020 A3 Owner's Manual;
- Exhibit P-6:** Copy of article published on [www.carcomplaints.com](http://www.carcomplaints.com) by David A. Wood on March 28, 2021;
- Exhibit P-7:** Copy of article published on [www.carcomplaints.com](http://www.carcomplaints.com) by David A. Wood on June 28, 2019;
- Exhibit P-8:** Copy of the Bulletin sent by Audi to its dealers on June 25, 2019, titled "Safety Recall 69Z4 – A3 Passenger Occupant Detection Systems (PODS) – Dealer Toolkit Update";

- Exhibit P-9:** *En liasse*, copies of the Technical Service Bulletins sent by Audi to its dealers concerning the PODS defect (reference **#69BY**) on December 9, 2020, February 23, 2021, and April 2, 2021;
- Exhibit P-10:** Copy of FAQ document sent by Audi to its dealers in March 2021;
- Exhibit P-11:** Copy of letter from Audi dated “December 2021” to contact Audi in order to schedule the recall repair “without delay”;
- Exhibit P-12:** Recording of the voicemail left by Audi Ville St-Laurent on February 15, 2022;
- Exhibit P-13:** Picture of the “front passenger airbag off indicator” in the Applicant’s vehicle;
- Exhibit P-14:** Picture of the “instrument cluster” in the Applicant’s vehicle;
- Exhibit P-15:** Copy of a “Audi Dealer Communication” letter dated December 16, 2021.

These exhibits are available on request.

Montreal, March 28, 2022

*(s) LPC Avocat Inc.*

**LPC AVOCAT INC.**

Mtre Joey Zukran

Attorney for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

500-06-001170-212

---

(Class Action)  
SUPERIOR COURT OF QUEBEC  
DISTRICT OF MONTREAL

---

**KARINE PEILLON**

*Applicant*

v.

**AUDI CANADA INC.**  
and  
**VOLKSWAGEN GROUP CANADA INC.**

*Defendants*

---

**RE-AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
**AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

---

**ORIGINAL**

---

Mtre Joey Zukran  
**LPC AVOCAT INC.**  
276 Saint-Jacques Street, Suite 801  
Montréal, Québec, H2Y 1N3  
Telephone: (514) 379-1572 • Fax: (514) 221-4441  
Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

**BL 6059**

**N/D: JZ-235**

---