

SUPERIOR COURT
(Class Action Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001393-251

DATE: June 2, 2026

BEFORE THE HONOURABLE ENRICO FORLINI, J.S.C.

MARK KASHETSKY
Plaintiff
v.
FCA CANADA INC.
And
FCA US LLC
Defendants

JUDGMENT
(Application to Adduce Relevant Evidence, art. 574 C.C.P.)

OVERVIEW

[1] The Plaintiff has filed an application for authorization to institute a nationwide class action against FCA Canada Inc. and FCA US LLC (collectively, “FCA”) on behalf of Canadian owners, lessees, and users of certain Jeep plug in hybrid electric vehicles (“PHEVs”) that he alleges are affected by defects (“Amended Application for Authorization”).

[2] The Defendants, FCA Canada Inc. and FCA US LLC (collectively “FCA”), seek leave to adduce evidence that they submit is necessary and indispensable for the Court to assess whether the proposed class action should be authorized. Specifically, they seek permission to file the affidavit of Ms. Anna Langlois, a product analysis engineer employed by FCA Canada Inc., consisting of twelve paragraphs (the “Langlois Affidavit”).

[3] The Plaintiff contests FCA’s Application for Authorization to File the Langlois Affidavit on the grounds that the proposed evidence is neither necessary nor indispensable, since portions of it already appear in the exhibits filed in support of the Amended Application for Authorization. Moreover, it argues that the proposed evidence seeks to introduce, at the authorization stage, issues that should instead be addressed on the merits. Finally, he submits that the purpose of the evidence is to contradict the allegations contained in the Amended Application for Authorization, which must be assumed to be true at this stage.

[4] Should the Court nonetheless allow FCA to file all or part of the affidavit, Plaintiff seeks permission to cross-examine the affiant pursuant to Article 105 of the *Civil Code of Procedure* (“C.C.P.”).

[5] For the reasons that follow, the Court will allow FCA to adduce a portion of the Langlois Affidavit.

[6] The Plaintiff will be entitled to orally examine Ms. Langlois, but only for a maximum period of 40 minutes and only with respect to the specific facts alleged in the paragraphs of her affidavit authorized by this judgement.

1. ANALYSIS

1.1 Context

[7] The Plaintiff seeks authorization to institute a nationwide class action against FCA on behalf of Canadian owners, lessees, and users of certain Jeep plug in hybrid electric vehicles (PHEVs) - specifically the 2022-2026 model year Jeep Grand Cherokee 4xe PHEV and the 2021-2026 model year Jeep Wrangler 4xe PHEV. These vehicles are defined as the “Subject Vehicles” in the Amended Application for Authorization.

[8] The Plaintiff alleges that these vehicles suffer from serious, latent, and dangerous defects that FCA knew about, concealed from consumers, failed to adequately remedy, and continued to commercialize, thereby violating Québec consumer protection, civil liability, and human rights legislation.

[9] The Amended Application for Authorization alleges that the “Subject Vehicles” are equipped with defective software and hardware giving rise to two defects : a) the vehicles inexplicably and without warning switch out of electric-only or electric assisted hybrid mode and temporarily lose acceleration power and torque (the “Loss of Power Defect”); and b) the vehicles automatically, inexplicably and frequently enter or become locked in Fuel and Oil Refresh Mode (“FORM”) for extended periods of time, thereby making electric-only or electric assisted hybrid driving impossible (the “FORM Related Defect”)¹.

[10] The Plaintiff alleges that FCA knew of the Loss of Power Defect and the FORM Related Defect (collectively the “Defects”) for years, failed to disclose them at the time of sale, delayed taking regulatory action, and failed to provide a timely or effective remedy.

[11] The Application for Authorization was filed on July 4, 2025, at which time no recall had been issued for the Plaintiff’s vehicle.

[12] On September 4, 2025, after the filing of the Application for Authorization, FCA announced Recall 73C (Transport Canada Recall 2025/453²), in which the issue is described as follows: “On certain vehicles, a software defect in the hybrid control processor could cause loss of power to the wheels”, which in turn “could increase the risk of a crash”.

[13] On December 15, 2025, the Plaintiff amended his pleading and filed the Amended Application for Authorization in which he refers to and files a copy of the Transport Canada Recall³, as well as a related recall issued by the U.S. National Highway Traffic Safety Administration (“NHTSA”).

[14] Among other amendments, the Plaintiff also alleges that as of December 15, 2025, his vehicle has still not been repaired⁴ and that no remedy yet exists for the Loss of Power Defect, although such a remedy was allegedly under development.⁵

[15] The Amended Application for Authorization alleges that the Defects render the Subject Vehicles seriously defective automobiles within the meaning of the *Québec Consumer Protection Act*, expose users to real safety risks, causes Group Members to incur increased fuel costs and diminished resale value, and result in stress, anxiety, inconvenience and loss of use.

¹ Amended Application for Authorization, notably at par. 8, 12, 13. The Loss of Power Defect and the FORM Related Defect are collectively defined as the “Defects” in the Amended Application for Authorization.

² Exhibit P-28: TC-Recall.

³ Exhibit P-28: TC-Recall.

⁴ Amended Application for Authorization, par. 29.2.

⁵ Amended Application for Authorization, notably, par. 29.6, 114.5, 114.6 and 114.14.

[16] On behalf of the proposed Class, the Plaintiff seeks the following remedies: court-ordered recalls and free repairs; annulment or rescission of the sales and lease agreements, with full reimbursement; compensatory damages for financial losses, fuel costs, loss of value, inconvenience, and loss of time; moral damages for stress, fear, and anxiety; and punitive damages intended to deter future misconduct.

2. SHOULD THE COURT AUTHORIZE THE DEFENDANTS TO FILE THE LANGLOIS AFFIDAVIT?

2.1 Legal Framework: Application for Authorization to Adduce Relevant Evidence

[17] According to article 574 *C.C.P.*, a person who wishes to institute a class action must obtain authorization of the court. The criteria to obtain this authorization are set forth in article 575 *C.C.P.*

[18] Article 574 *C.C.P.* also provides that an application for authorization may only be contested orally. However, it further states that “the court may allow relevant evidence to be submitted” (“*le tribunal peut permettre la présentation d’une preuve appropriée*”) at the authorization hearing.

[19] The criteria that the Court must apply when considering an application to file relevant evidence are well established and can be summarized as follows⁶:

- 19.1. The decision to authorize the filing of evidence at the authorization stage is discretionary. The court is not bound by the consent or agreement of the parties on this issue and must exercise its own judgment.⁷
- 19.2. Given the summary nature of the authorization process, the court must strike a fair balance between rigidity and permissiveness, remaining cautious not to unduly restrict access to justice while preventing procedural abuse.⁸
- 19.3. Evidence may be authorized only to the extent that it assists the court in assessing the authorization criteria under article 575 *C.C.P.* It cannot be used to replace the court’s obligation to assume the allegations are true or to weigh competing factual versions.

⁶ See: *Corporation Transport Vitesse c. Microsoft Corporation*, 2026 QCCS 106; *Krief c. Apple Canada inc.*, 2025 QCCS 4246; *Ward c. Procureur général du Canada*, 2021 QCCS 109 (

⁷ *Allstate du Canada, compagnie d’assurances c. Agostino*, 2012 QCCA 678, par. 25

⁸ *Id.*, par. 35.

- 19.4. This evidence must indeed be essential, indispensable, and limited to what allows for a clear demonstration that the alleged facts are implausible or false.⁹
- 19.5. The proposed evidence must be strictly limited to what is essential and indispensable for the analysis of the authorization criteria. Evidence that is merely useful, interesting, or confirmatory is insufficient.
- 19.6. The filing of affidavits under article 574 of the *Code of Civil Procedure* must generally concern neutral and objective facts, as opposed to controversial or disputed issues that fall within the assessment of the evidence to be weighed on the merits of the case.¹⁰
- 19.7. The court must ensure that the authorization stage is not transformed into a preliminary inquiry on the merits or a “trial before the trial.”¹¹ Evidence that would require an adversarial debate on disputed factual issues is therefore inadmissible.
- 19.8. Any authorized evidence must respect the principles of proportionality and reasonable conduct of proceedings set out in articles 18 and 19 *C.C.P.*, including consideration of the costs and burden associated with an improperly authorized class action.
- 19.9. The burden of demonstrating relevance and usefulness rests on the party seeking authorization to adduce evidence. The evidence must have a direct and concrete connection to the authorization criteria.
- 19.10. The scope for allowing evidence remains quite narrow.¹²

[20] According to the jurisprudence, evidence may be considered appropriate for the purposes of article 574 par. 3 *C.C.P.* where, on its face, it demonstrates the implausible or false nature of certain allegations in the application for authorization, assists the Court in understanding the nature of the defendant's operations, fills a factual gap in the application, or completes, corrects, or contradicts the allegations in the application in a manner that enables the Court to better understand the factual context, for example, when it consists in filing contracts relevant to the members' claim¹³.

⁹ *Durand v. Subway Franchise Systems of Canada*, 2020 QCCA 1647, par. 51 (“limitée à ce qui permet de démontrer sans conteste que les faits allégués sont invraisemblables ou faux”).

¹⁰ *Association pour la protection automobile (APA) v. Banque de Montréal*, 2021 QCCA 676, par. 62 (“...cette preuve ne doit pas être susceptible d’être contestée quant à sa véracité, sa portée ou sa force probante.”); *Lambert (Gestion Peggy) v. Écolait ltée*, 2016 QCCA 659, par. 37.

¹¹ *Association pour la protection automobile (APA) v. Banque de Montréal*, 2021 QCCA 676, par. 62.

¹² Le couloir demeure donc, on en conviendra, assez étroit *Allstate du Canada, compagnie d'assurances v. Agostino*, 2012 QCCA 678, par. 36.

¹³ *Krief v. Apple Canada inc.*, 2025 QCCS 4246, par. 8; *Ward v. Procureur général du Canada*, 2021 QCCS 109, par. 20.

[21] While applying these criteria, the Court must keep in mind that at the authorization stage, it plays a screening role and must simply ensure that the applicant meets the four conditions of article 575 C.C.P. If the conditions are met, the class action must be authorized. The Court will consider the merits of the case later. The Supreme Court's jurisprudence has given a broad interpretation and application to the conditions of article 575 C.C.P.

[22] Article 575(2) C.C.P. provides that the facts alleged in the application must "appear to justify the conclusions sought". At the authorization stage, and as the Court of Appeal recently reiterated in *Haroch v. Banque Toronto-Dominion*, the role of the judge is to screen out only those applications which are frivolous, clearly unfounded or untenable¹⁴. The applicant's burden is to establish an arguable case in light of the facts and the applicable law. This is a low threshold. The legal threshold requirement is a simple burden of demonstration that the proposed legal syllogism is tenable.

2.2 Discussion

[23] The Court will apply these criteria for each of the paragraphs of the Langlois Affidavit¹⁵.

2.2.1 Scope of the Proposed Class & TC Recall - Paragraphs 3, 4 & 5

[24] In paragraphs 3, 4 and 5 of her Affidavit, Ms. Langlois addresses the Transport Canada Recall 2025/453 issued on September 4, 2025 ("TC Recall"; exhibit P-28).

[25] FCA argues that the purpose of the allegations contained in these paragraphs is essential to the Court's assessment of whether the Plaintiff has demonstrated an arguable case and is an appropriate representative as required by articles 575(2) and 575(4) C.C.P. because it serves to correct the erroneously defined scope of the proposed class by confirming the specific vehicles affected by the Recall.

[26] Ms. Langlois states in paragraphs 3, 4, and 5 of her affidavit:

3. Transport Canada Recall 2025-453 (the "**Recall**") addresses "a *software problem in the hybrid control processor that could, in certain circumstances, cause a loss of power to the wheels*" in certain affected Jeep vehicles, as appears from Exhibit P-28 of the Application for Authorization.

4. The vehicles subject to the Recall consist exclusively of 2022-2025 Jeep Grand Cherokee 4xe Plug-In Hybrid Electric vehicles (the "**Subject Vehicles**").

¹⁴ 2026 QCCA 700, par. 52. See also: *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 58; *Royer v. Capital One Bank (Canada Branch)*, 2025 QCCA 217, par. 23-26.

¹⁵ The Court will not address paragraphs 1, 2 and 12 of the Langlois Affidavit. Paragraphs 1 and 2 are merely introductory (she states therein her job title and that she has read the Amended Application for Authorization) and in paragraph 12, she states that all the facts she alleges are true.

5. The 2026 Jeep Grand Cherokee 4xe Plug-In Hybrid Electric and the 2021-2026 Jeep Wrangler 4xe Plug-In Hybrid Electric vehicle models referenced in the Application for Authorization are not subject to the Recall. There are no 2026 Jeep Grand Cherokee 4xe Plug-In Hybrid Electric vehicles built for and sold in Canada.¹⁶

[27] All the parties agree that the TC Recall only deals with the alleged Loss of Power Defect. It does not address the second defect alleged in the Amended Application for Authorization, namely the FORM Related Defect

[28] FCA argues that the allegations contained in paras 3 to 5 are essential in that they serve to “correct the erroneously defined scope of the proposed class by confirming the specific vehicles affected by the Recall”.

[29] The Court disagrees.

[30] Paragraphs 3, 4 and the first sentence of paragraph 5 of the Langlois Affidavit does not constitute evidence that is essential and indispensable for the purposes of the analysis of the authorization criteria.

[31] Indeed, the facts underlying the arguments that FCA wishes to present at the authorization hearing, i.e. the scope of the TC Recall, are already in the record because of the filing of the TC Recall itself, exhibit P-28.

[32] According to the TC Recall, only the 2022, 2023, 2024 and 2025 model year Jeep Grand Cherokee 4xe Plug-In Hybrid Electric vehicles are subject to the recall¹⁷. Neither the 2026 Jeep Grand Cherokee 4xe Plug-In Hybrid Electric nor the 2021-2026 Jeep Wrangler 4xe Plug-In Hybrid Electric vehicles are subject to the TC Recall.

[33] Moreover, the Plaintiff admits that the 2021-2026 model years Jeep Wrangler 4xe PHEV do not come within the scope of the TC Recall¹⁸. However, even though this vehicle is not subject to the TC Recall, he alleges that it is nonetheless affected by the Defects.

[34] There is no need to burden and encumber the file with the evidence contained in paragraphs 3, 4 and 5 of the Langlois Affidavit since the same facts already clearly appear from the TC Recall notice itself (exhibit P-28).

¹⁶ On May 1, 2026, while the matter was under advisement and following discussions between counsel, counsel for the Plaintiff informed the Court that the Plaintiff has agreed to amend the proposed Class definition to remove the 2026 model year Jeep Wrangler 4xe PHEV from the proposed class. As a result of this amendment, the Court is of the view that the second sentence of paragraph 5 of Ms. Langlois's affidavit (“There are no 2026 Jeep Grand Cherokee 4xe Plug-In Hybrid Electric vehicles built for and sold in Canada.”) is no longer relevant for the purposes of the Defendants' Application for Authorization to Adduce Relevant Evidence. Accordingly, the Court will not address that sentence in the present judgement.

¹⁷ P-28: TC Recall.

¹⁸ See paragraph 29.14 of the Amended Application for Authorization.

[35] FCA will not be authorized to file paragraphs 3, 4 and 5 of the Langlois Affidavit.

2.2.2 Existence of a Remedy for the Loss of Power - Paragraphs 6 to 10

[36] FCA argues that the paragraphs 6 to 10 of the Langlois Affidavit constitute relevant evidence because they allege critical information regarding the availability, nature and scope of the remedy that FCA developed and deployed to address the issue identified in the TC Recall. Together, these confirmations and clarifications demonstrate that the Plaintiff's allegations regarding the absence and/or inadequacy of any remedy for the Recall and Alleged Defect are incorrect and are therefore both useful and necessary for Court's assessment of the authorization criteria.

[37] The existence of a remedy for the Loss of Power Defect addressed in the TC Recall, and whether any remedy proposed by FCA corrects this alleged defect and complies with the obligations of a vendor, merchant and manufacturer under the *Civil Code* of the *Consumer Protection Act*, are hotly contested issues.

[38] The Amended Application for Authorization alleges in numerous paragraphs that FCA has no remedy for the Defects, including the Loss of Power Defect, or that the remedy is not adequate.¹⁹

[39] Ms. Langlois alleges in paragraph 6 that:

6. The remedy for the Recall is an update of the hybrid control processor software ("HCP Update"), which is a complete fix to the issue raised in the Recall".

(Underlining added)

[40] Of course, the Amended Application for Authorization is dated December 5, 2025, whereas the Langlois Affidavit is dated February 13, 2026.

[41] That said, the allegation that the "remedy" is a "complete fix" is not a neutral and objective fact²⁰. Moreover, it constitutes opinion evidence.

[42] Likewise, whether the HCP Update is a "remedy"²¹ for the Loss of Power Defect is also a matter of opinion.

¹⁹ Amended Application for Authorization, paras. 20, 29.2, 29.6, 28.8, 56, 74, 95 (c), 103, 114.5, 114.6, 114.11, 114.14, 115, 127, 129 ("properly remedy the Defects").

²⁰ *Lambert (Gestion Peggy) v. Écolait ltée*, 2016 QCCA 659, par 37.

²¹ The term "remedy" means, according to the Cambridge Dictionary, "a successful way of curing an illness or dealing with a problem or difficulty"

[43] This evidence is vehemently contested by Plaintiff as to its truthfulness, scope, or probative value. In fact, Plaintiff has filed evidence which purports to claim that post January 6, 2026, his vehicle continues to suffer problems related to the Defects²². and thus, should not be authorized, since it must not be considered at the authorization stage.

[44] If the Court authorizes that portion of paragraph 6 where the affiant states “which is a complete fix to the issue raised in the Recall”, and if the term “remedy” were allowed to remain in paragraph 6 of the Langlois Affidavit, the authorization stage will be transformed into a preliminary inquiry on the merits.

[45] The Court cannot allow a party to bring evidence that would force an adversarial debate on a substantive issue, as this would lead to a trial before the trial

[46] Whether the HCP update remedied the issue raised by the TC Recall is a matter should be addressed at the merits, if the Amended Application for Authorization is authorized.

[47] The Court concludes that the term “remedy” as well as the words “which is a complete fix to the issue raised in the Recall” contained in paragraph 6 of the Langlois Affidavit do not constitute relevant evidence for the purposes of the authorization stage.

[48] FCA will be allowed to refile a new affidavit signed by Ms. Langlois, where paragraph 6 will be re-written to exclude these terms.

[49] As for the facts alleged in paragraphs 7 to 10 of the Langlois Affidavit, the Court considers that this evidence is appropriate for the purposes of article 574 C.C.P.

[50] In these paragraphs, Ms. Langlois states:

7. The HCP Update is free of charge to the customer, and can be completed in approximately 30 minutes during a routine service visit to any FCA Canada dealer.

8. As of February 4, 2026, an estimated 572 Subject Vehicles in Quebec (out of 795 Subject Vehicles in Quebec) have received the HCP Update, representing approximately 72% of the Subject Vehicles²³ sold in Quebec.

9. With respect to the Subject Vehicles in Canada more broadly, as of February 4, 2026, an estimated 2,538 Subject Vehicles (out of 3,476 Subject Vehicles in Canada) have received the HCP Update, representing approximately 73% of the Subject Vehicles.

²² P-41.

²³ The expression “Subject Vehicles” in the Langlois Affidavit does not have the same meaning as this same expression is defined in the Amended Application for Authorization.

10. The HCP Update process is ongoing.

[51] The facts relating to the repairs arose during a period subsequent to that covered by the Amended Application for Authorization, which, it bears recalling, is dated December 15, 2025. These subsequent facts supplement the allegations contained in the application for authorization and, once the terms ‘remedy’ and ‘complete fix’ are removed from paragraph 6, are neutral and objective in nature.

[52] Moreover, the facts alleged in paragraphs 7 to 10 are neutral and objective. They also update and complement the allegations made in the Amended Application for Authorization concerning the fact that the remedy for the issue raised in the TC Recall is “under development”.²⁴

[53] Finally, they update information which was not yet available at the time the Amended Application for Authorization was filed by updating some of the facts alleged therein with more up to date information.

[54] In circumstances similar as the present one, the Superior Court has authorized affidavit evidence which is very similar to that found in paragraphs 7 to 10 of the Langlois Affidavit.²⁵

[55] The facts contained in paragraphs 7 to 10 will not and should not give rise to a pre-inquiry on the merits of the case, notably given that the words “remedy” or “complete fix” are absent from these paragraphs and will be removed from paragraph 6.

[56] For these reasons, FCA is authorized to adduce paragraph 6 in a re-written form as well as paragraphs 7 to 10 of the Langlois Affidavit.

2.2.3 Status of Plaintiff’s Vehicle - Paragraph 11

[57] In this paragraph, Ms. Langlois alleges that the Plaintiff’s 2025 Jeep Grand Cherokee Altitude 4xe plug-in hybrid vehicle, VIN has received the HCP Update, and his vehicle was returned to him by the dealer on or around January 5, 2026.

[58] This is a statement of fact that is neutral and objective. It postdates the Amended Application for Authorization and complements a factual assertion as to the status of the vehicle. Moreover, it is a fact that is not open for debate, as it is corroborated by exhibit P-41.

[59] FCA is authorized to adduce paragraph 11 of the Langlois Affidavit.

²⁴ Amended Application for Authorization, par. 29.6.

²⁵ *Gartner v. Ford Motor Company of Canada Limited*, 2019 QCCS 5459, par. 8-12; *Salazare Pasaje v. BMW Canada Inc.*, 2018 QCCS 5635, par. 15-18.

2.2.4 Conclusion

[60] The Court will authorize FCA to file at the authorization stage a revised affidavit from Ms. Langlois consistent with the reasons stated above, namely:

- 60.1. Paragraphs 1 and 2 can remain as is;
- 60.2. Paragraph 6 must be re-written so as to remove the term “remedy” as well as the words “which is a complete fix to the issue raised in the Recall”;
- 60.3. Paragraphs 7 to 12 can remain as is.

3. **SHOULD THE COURT ALLOW PLAINTIFF TO CROSS-EXAMINE MS LANGLOIS ON THOSE ALLEGATIONS OF HER AFFIDAVIT WHICH ARE AUTHORIZED?**

[61] Since the Court will authorize FCA to file portions of the Langlois Affidavit, the issue becomes whether the Plaintiff should also be permitted to examine Ms. Langlois on her affidavit and, if so, the appropriate scope of that examination, including the issues to be addressed, the form of the examination (oral or written), and, if oral, its duration.

[62] The Plaintiff argues that he has a strict right under article 105 *C.C.P.* to cross-examine Ms. Langlois on her affidavit. He further submits that the examination should not be limited to the specific facts alleged in the affidavit, or more particularly to the portions of the affidavit that the Court authorizes FCA to adduce pursuant to this judgment. Rather, he contends that he should also be permitted to examine Ms. Langlois on matters not specifically addressed in her affidavit but otherwise alleged in the Amended Application for Authorization

[63] Specifically, the Plaintiff seeks to cross-examine Ms. Langlois not only on the contents of her affidavit as authorized by the present judgment but also on the following subjects matters:

1. The nature of the FORM related defect, notably or including the relationship between this defect and the Loss of Power Defect;
2. The issues surrounding the return of the vehicle to the Plaintiff “on or around January 5, 2026” as alleged in paragraph 11 of the Langlois Affidavit, including what repairs other than the HCP Update were carried out on the Plaintiff’s vehicle.

[64] The Plaintiff further submits that this examination must be conducted orally and should last one and a half hours.

[65] FCA does not concede that the Plaintiff has a strict right to cross-examine the affiant under article 105 *C.C.P.* and notes that the jurisprudence of the Superior Court on this issue is divided.

[66] However, for the purposes of the present application, FCA leaves it to the Court's discretion whether to permit the Plaintiff to cross-examine Ms. Langlois. FCA submits, however, that if such an examination is authorized, it must be narrowly circumscribed and subject to strict parameters. In particular, FCA argues that the examination should be limited to the specific facts alleged in the affidavit authorized by this judgment.

[67] To the extent that inconsistencies may exist in the jurisprudence of the Superior Court regarding whether a strict right to examine an affiant exists under article 105 C.C.P., the Court may ultimately be required to rule on and clarify the issue. However, the Court is not persuaded that it is necessary or appropriate to do so in the present case.²⁶

[68] Rather, the Court will authorize the Plaintiff to cross-examine Ms. Langlois, while imposing limits and determining the permissible scope and duration of that examination, all in accordance with the guiding principles of procedure and the fact that the examination will take place in the context of the authorization stage of a class action proceeding.

[69] Even assuming that the Plaintiff has a strict right to cross-examine the affiant, which the Court does not decide in the present case, such a right does not extend to examining the affiant "not only to evidence attested to in the affidavit but also to any other relevant fact." (art. 222 C.C.P.).²⁷

[70] Indeed, such an interpretation was clearly set aside by Justice Mainville of the Court of Appeal in *Lussier v. Luft*:²⁸

[8] Je rejette aussi la prétention du requérant voulant qu'il ait le droit strict d'interroger immédiatement l'intimée sur tous les faits pertinents. Si l'article 222 C.p.c. élargit la portée de l'interrogatoire au préalable, il ne prévoit pas un droit strict. En effet, le 3^e paragraphe de l'article 158 C.p.c. permet au tribunal, à titre de mesure de gestion, de déterminer si des interrogatoires préalables à l'instruction sont requis et les conditions de ceux-ci. Cela comprend le pouvoir de limiter la portée de tels interrogatoires. C'est d'ailleurs dans ce sens que s'est prononcé le juge Granosik de la Cour supérieure dans *Rainville c. Rainville* :

²⁶ The case law that follows is not an exhaustive list of cases that deals with the issue of whether one has a strict right to examine an affiant under article 105 C.C.P. : *A.B. v. Miller*, 2025 QCCS 3208, par. 17 as well as the jurisprudence cited in footnote # 7; *Immeubles André Gagné inc. v. Beauchamp*, 2025 QCCS 4363, par. 31 as well as the jurisprudence cited in footnote #11; Cases where the Court has raised the issue of the existence or not of a strict right to examine under article 105 C.C.P. but has not decided the issue : *Mire v. Apple Canada inc.*, 2025 QCCS 4218, par. 13-18; *Corporation Transport Vitesse v. Microsoft Corporation*, 2026 QCCS 106, par. 29-30.

²⁷ It is questionable or debatable whether this article applies to an examination authorized by the Superior Court in the context of a decision authorizing a defendant to file affidavit evidence under art. 574 C.C.P. In this regard, the Court agrees with the comments of Justice Bundaru in *Rozon v. Creative Artist Agency*, 2025 QCCS 1949, par. 24 and footnote # 8.

²⁸ 2017 QCCA 1392.

[12] Tous ces éléments permettent de conclure que l'article 222 C.p.c. envisage dorénavant la possibilité d'interroger une partie, non seulement sur les faits attestés dans la déclaration sous serment, mais sur tous les faits pertinents au litige du fond. Il appartiendra à la partie ayant confectionné la déclaration sous serment de démontrer que, dans une situation précise, l'interrogatoire devrait être éventuellement limité car les principes directeurs de la procédure ou « le cheminement diligent » de l'affaire ne seraient pas respectés.

[Soulignement ajouté]

[Footnote omitted]

[71] Given the Court's filtering role, the authorization process for a class action should, in principle, proceed in a summary manner, with efficiency and diligence.²⁹ Allowing the Plaintiff to examine the affiant on facts not specifically alleged in her affidavit would not further that objective.

[72] The guiding principles of procedure, the summary nature of the authorization stage of a class action, as well as the precedent of the Court of Appeal's decision in *Lussier v. Luft*, militate against allowing the Plaintiff to examine the affiant on the subject matters he seeks to address.

[73] Permitting the Plaintiff to examine Ms. Langlois on the FORM Related Defect as well as the relationship between that defect and the Loss of Power Defect, would effectively transform the examination under 105 C.C.P. into a pre-trial examination.

[74] In addition, a cross-examination of the breadth proposed by the Plaintiff would be contrary to the purpose of an examination under article 105 C.C.P. Such an examination does not serve the same purpose as an examination on discovery. Rather, an examination under article 105 C.C.P. has a specific and limited purpose, namely, to verify the seriousness of the allegations made in the affidavit.³⁰

[75] Finally, the fact that the affiant alleges in paragraph 2 of her affidavit that she has read and reviewed the Amended Application for Authorization, does not open the door to a examination on all the facts alleged in this proceeding, for the reasons stated above.

[76] Therefore, while the Court will permit the Plaintiff to cross-examine Ms. Langlois, that examination shall be specifically limited to the facts alleged in the new affidavit that the Court authorizes FCA to file pursuant to the present judgment.

²⁹ *FCA Canada inc. c. Garage Poirier & Poirier inc.*, 2019 QCCA 2213

³⁰ *Sary v. Lakatos*, 1990 CanLII 3664, par. 6.

[77] For greater clarity, the Plaintiff is not entitled to cross-examine the affiant on the following issues or subject matters:

1. The FORM Related Defect and whether or not this defect is in any way related or interrelated to the Loss of Power Defect or the Transport Canada Recall;
2. Any repairs that have been carried out on the Plaintiff's vehicle other than the HCP Update performed on the vehicle.

[78] Given the nature of the proceeding and the subject matters on which Ms. Langlois will be examined, the Court concludes that an oral examination is more consistent with the guiding principles of procedures. Indeed, a written examination may raise more problems than solutions.

[79] That said, given the brevity of the affidavit authorized by the present judgment, the Plaintiff will be entitled to examine Ms. Langlois for a maximum period of 40 minutes.

FOR THESE REASONS, THE COURT:

[80] **GRANTS** in part the Defendants' Application for Authorization to Adduce Relevant Evidence;

[81] **AUTHORIZES** the Defendants to file within ten days from this judgment a new affidavit sworn by Anna Langlois subject to the following:

- 81.1. Paragraphs 1 and 2 of the Langlois Affidavit can remain as is;
- 81.2. Paragraphs 3, 4, and 5 of the Affidavit must be withdrawn;
- 81.3. Paragraph 6 of the Affidavit must be re-written so as to remove the term "remedy" as well as the words "which is a complete fix to the issue raised in the Recall";
- 81.4. Paragraphs 7 to 12 of the Langlois Affidavit can remain as is;

[82] **AUTHORIZES** the Plaintiff to examine Anna Langlois on the affidavit which the Defendants are authorized to file pursuant to the present judgment, but for a maximum period of 40 minutes;

[83] **DECLARES** that the scope of this examination is limited to the facts alleged in the affidavit which the Defendants are authorized to file pursuant to the present judgment;

[84] **DECLARES** that the examination of Anna Langlois must take place within 31 days from this judgment;

[85] **WITHOUT COSTS.**

ENRICO FORLINI, J.S.C.

Me David Assor
Lex Group Inc.
Plaintiff's lawyer

Me Noah Boudreau
Me Mirna Kaddis
Fasken Martineau DuMoulin
Defendants' lawyers

Date of hearing: April 29, 2026