

No.:  
 500-06-000799-169

Scheduled room: 14.07  
 Date: January 11, 2019  
 JP1827

THE HONOURABLE ANDRÉ PRÉVOST, JSC

Plaintiff		Attorney(s)	
Nathalie Picotte	Absent	Me Erik Lowe Merchant Law Group	Present
Defendants		Attorney(s)	
FORD MOTOR COMPANY ET AL.	Absent	Me Robert Torralba Me Simon Seida Blake, Cassels & Graydon LLP	Present
Third Parties		Attorney(s)	
Rebecca Romeo et al.	Absent	Me Theodore Charney Charney Lawyers PC Me Michael Simkin Simkin Leqas inc.	Present

Type of case  
 Class action

Amount: \$

Rating(s)	Application(s)
999	Petitioners' (third parties') application to stay the application for authorization to institute a class action and to appoint a representative plaintiff

Court clerk  
Alexis Therrien-Chagnon g.a.c.s.

Interpreter  
 N/A

Stenographer  
 N/A

**DIGITAL RECORDING**

Morning hearing:	Start	End	Afternoon hearing:	Start	End
	09:16	10:45			

Cases referred to the master of the rolls

Outcome of hearing

**TIME**

09:16	<b><u>OPENING OF THE HEARING</u></b> Identification of attorneys
09:17	The Court addresses the parties
09:18	Representations by Me Charney
09:19	Me Charney refers to the amended application
09:22	Me Charney refers to his authorities
09:31	Question from the Court to Me Charney re: time frame

No.:  
500-06-000799-169

Scheduled room: 14.07  
Date: January 11, 2019  
JP1827

THE HONOURABLE ANDRÉ PRÉVOST, JSC

09:41 Comment by Me Seida re: The appeal was heard but still under advisement  
09:45 Me Charney refers to his additional volume  
09:49 Question from the Court to Me Charney re: essentially the same  
09:50 Representations by Me Torralba  
09:51 Representations by Me Lowe  
09:51 Comments by the Court re: lis pendens  
09:52 Me Lowe refers to his authorities  
09:55 Exchanges between the Court and Me Lowe  
10:08 Comments by the Court re: multiple jurisdictions and two types of law  
10:14 Question from the Court to Me Charney re: Deferral of action in Ontario for the purpose of negotiations  
10:18 Additional representations by Me Charney  
10:19 Additional representations by Me Torralba  
10:22

**JUDGMENT:**

**CONSIDERING** that the parties request that the proceedings instituted in this action be suspended until the Ontario Superior Court has ruled on the application for authorization of the settlement on a national level in file CV-15-539855-00-CP;

**CONSIDERING** that several applications for authorization to institute a class action were filed in Ontario, Saskatchewan, British Columbia, and Quebec with respect to the same automotive transmission problem that is being disputed in this action;

**CONSIDERING** that Merchant Law Group has filed applications for a national class action in Saskatchewan and British Columbia and also in Quebec for members specifically residing in that province;

**CONSIDERING** that Me Charney's practice also filed an application for a national class action in Ontario in 2015;

**CONSIDERING** that the application filed by Me Charney in Ontario was filed before the application filed by Merchant Law Group in Quebec;

**CONSIDERING** that, from the very outset, counsel for Ms Picotte acknowledged that the criteria for lis pendens set out in section 3137 C.C.Q. were met in this instance;

**CONSIDERING** that the Court is required to exercise its discretion under section 577 C.C.P. to determine whether or not to grant precedence to the action brought in Ontario;

**CONSIDERING** that section 577 C.C.P. grants priority to the interests of the members, namely that the members are properly represented in the action brought in another jurisdiction to protect their rights and interests;

No.:  
500-06-000799-169

Scheduled room: 14.07  
Date: January 11, 2019  
JP1827

THE HONOURABLE ANDRÉ PRÉVOST, JSC

**CONSIDERING** that section 577 C.C.P. was analyzed specifically in the recent cases of *Chasles v. Bell Canada* 2017 QCCS 5200 and *Li v. Equifax* 2018 QCCS 1892;

**CONSIDERING** that, in its analysis of defending the best interests of the Quebec members, the Court must assess the circumstances and particularities of the action brought in Ontario as well as the circumstances and particularities of this action;

**CONSIDERING** that the action brought in Ontario is known to counsel representing the applicant in this action, who even requested to intervene in the Ontario case, which was declined;

**CONSIDERING** that the hearing on certification of the action in Ontario was originally scheduled to take place in November 2017, a few days after Merchant Law Group's request for intervention, but was postponed with the Court's approval due to settlement negotiations between the plaintiffs and defendants in Ontario;

**CONSIDERING** that the hearing of the certification application was postponed a second time until spring 2018 due to the progress of the negotiation discussions;

**CONSIDERING** that a settlement agreement was reached between the plaintiffs and defendants in Ontario for all members residing throughout Canada on November 5, 2018;

**CONSIDERING** that one week later, the action was certified in Ontario for the sole purpose of the settlement between the parties;

**CONSIDERING** that, once the settlement was finalized, the plaintiffs in Ontario applied for a stay of proceedings in this action until the settlement is approved by the Ontario Court;

**CONSIDERING** that two of the plaintiffs in the Ontario action reside in Quebec;

**CONSIDERING** that the guidelines of the Canadian protocol for multijurisdictional class actions were applied in the Ontario regulatory authorization process;

**CONSIDERING** that the notices were published throughout Canada, and specifically in Quebec, in three French-language newspapers and one English-language newspaper whose circulation throughout Quebec is generally acknowledged;

**CONSIDERING** also that notices were mailed to the owners of the vehicles concerned;

**CONSIDERING** that the class action that is the subject of the Ontario regulation not only covers the defendants' hidden defects and negligence, but also includes an element relating to the warranty that the manufacturer must provide;

**CONSIDERING** that the threat of class action in Ontario appears more advantageous than the collective action in the current case;

**CONSIDERING** that the settlement in the Ontario class action must be authorized in a judgment scheduled for March 18, 2019, and the exclusion period runs until March 5, 2019;

**CONSIDERING** that, in the Court's opinion, protection of the rights and interests of the members in Quebec is best served by suspending this action until the final judgment approving the settlement in the Ontario file;

No.:  
500-06-000799-169

Scheduled room: 14.07  
Date: January 11, 2019  
JP1827

THE HONOURABLE ANDRÉ PRÉVOST, JSC

**FOR THESE REASONS, THE COURT:**

**ACCEPTS** the application;

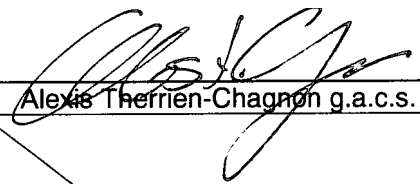
**SUSPENDS** the proceedings in this instance until the final judgment of authorization for settlement of the class action brought before the Superior Court of Ontario under reference CV-15-539855-00-CP;

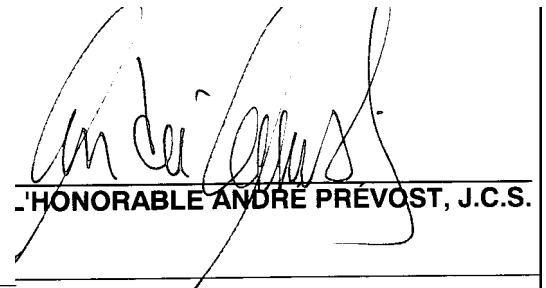
**ACKNOWLEDGES** the stakeholders' commitment to inform the Court promptly of any decision made in the Ontario action referred to above regarding authorization of the regulation;

**WITHOUT INCURRING LEGAL FEES.**

10:45

**End of hearing**

  
Alexis Therrien-Chagnon g.a.c.s.

  
HONORABLE ANDRÉ PRÉVOST, J.C.S.