

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

9134-9258 QUEBEC INC.

NO: 500-06-000510-103

Petitioner

-vs.-

HONDA CANADA INC., legal person duly constituted, having its principal place of business at 1750, rue Eiffel, City of Boucherville, Province of Quebec, J4B 7W1

and

HONDA MOTOR CO., LTD., legal person duly constituted, having its principal place of business at 1-1 Minami Aoyama, 2 Chome, Minato-Ku, Tokyo, Japan, 107-8556

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER
STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:
 - all residents in Canada who currently own or lease, or have previously owned or leased, a 2008, 2009, 2010 Honda Accord or 2009, 2010

Acura TSX (the “Vehicles”), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who currently own or lease, or have previously owned or leased, a 2008, 2009, 2010 Honda Accord or 2009, 2010 Acura TSX (the “Vehicles”), or any other group to be determined by the Court;

B) The Respondents

2. Respondent Honda Motor Co. Ltd. is a Japanese automotive company;
3. Respondent Honda Canada Inc. is an affiliate of Respondent Honda Motor Co. Ltd. and is involved in the importation, distribution, and manufacturing of automobiles throughout Canada, including the province of Quebec, the whole as appears more fully from a copy of the Quebec Inspector General of Financial Institutions report, produced herein as **Exhibit R-1**;
4. Both Respondents have either directly or indirectly designed, manufactured, marketed, distributed, imported and/or sold the Vehicles throughout Canada, including the Province of Quebec;
5. Given the close ties between the Respondents and considering the preceding, the Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, both Respondents will be referred to as “Honda” for the purposes hereof;

C) The Situation

6. Honda is responsible for placing into the stream of commerce the vehicle models Honda Accord and Acura TSX;
7. Starting in 2008, with respect to the Honda Accord and in 2009, with respect to the Acura TSX – these Vehicles became equipped with an newly designed braking system which consisted of:
 - braking components (rotor, callipers, parking brake, and brake pads)
 - an electronic brake distribution system
 - a vehicle stability assist system
 - a brake assist system
 - an anti-lock braking system
 [collectively referred to as the “Braking System”];

8. This new Braking System suffers from a defect that causes excessive force to be applied to the Vehicles' rear wheels. As a consequence of this defect, the Vehicles' rear brake pads wear out and require replacement about every 20,000 to 30,000 kilometres, far more frequently than in a properly functioning braking system. Normally, rear brake pads typically last for 100,000 kilometres or more;
9. The Braking System defect does not cause the same rapid deterioration of the front brake pads, which ordinarily – in proper functioning braking systems - wear out faster than the rear brake pads. In other words, the rear brake pads in these Vehicles require replacement three (3) to four (4) times more than they should;
10. These Vehicles come equipped with an on-board computer system called a "Maintenance Minder System", which informs drivers when to have their Vehicles inspected and serviced. The Braking System defect, however, causes the rear brake pads to wear out at such an accelerated rate that the on-board computer system does not have the opportunity to warn drivers that their rear brake pads are suffering from a dangerous level of brake pad wear. In addition, consumers do not expect to have to inspect or replace their brake pads after only 20,000 to 30,000 kilometres. Therefore, the defect in the Braking System poses an unreasonable safety risk to drivers because they do not realize the problem in a timely manner so as to address it pre-emptively;
11. Honda provides owners and lessees of the Vehicles with an express warranty to repair or replace free of charge any part that is defective in material or workmanship under normal use for three (3) years or 60,000 kilometres, whichever comes first, for the Honda Accord and four (4) years or 80,000 kilometres, whichever comes first, for the Acura TSX;
12. The defective Braking System requires repairs within the express warranty period. However, Honda refuses to repair consumers' Vehicles under the warranty, refuses to replace the parts free of charge, and refuses to publicly acknowledge that the Braking System is affected by a defect. By so doing, Honda has denied coverage under their basic and extended warranties claiming that the issue relates only to maintenance or regular wear and tear;
13. Honda has failed to recall, repair, and/or replace the Vehicles and has chosen not to disclose the defect to current owners and lessees of the Vehicles. Instead, Honda continues to profit from the concealment of the defect by charging for the repairs and replacement, whether by parts and/or labour, of the rear brake pads;
14. Honda has long known about the Vehicles' defective Braking System. Honda has exclusive access to information about the Braking System defect through



its dealerships, pre-release testing and data, warranty data, customer complaint data, and replacement part sales data;

15. At least two (2) class actions were instituted against Honda in the United States alleging all of the above, the whole as appears more fully from a copy of these Class Action Complaints, produced herein *en liasse* as **Exhibit R-2**;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

16. Petitioner is a company doing business under the name “NDG Auto Parts” and at all relevant times had only four (4) employees;
17. On or about July 2008, Petitioner leased a Honda Accord 2008 from Excel Honda at 5400 Paré, in Montreal, Quebec;
18. On or about April / May 2009, after approximately 20,000 kilometres, Petitioner was forced to replace both back brake pads because they were worn out, for a price of around \$175;
19. On or about May 2010, after another approximate 20,000 kilometres, Petitioner was again forced to replace both back brake pads because they were worn out;
20. When Petitioner leased his car, he was under the distinct impression that the lifespan of the brake pads would be significantly longer, in fact, he has not yet had to replace the front brake pads in his car;
21. Had Petitioner known that the back brake pads wore out so quickly, he would not have leased the car;
22. Petitioner’s damages are a direct and proximate result of the Respondents’ conduct and the defect associated with the Vehicles;
23. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

28. Every member of the class currently or has previously owned or leased one of the Vehicles which suffers from a defect;
29. Each member of the class is justified in claiming at least one or more of the following as damages:

- a. Costs of the repair and replacement to the Braking System;
 - b. Loss of use of the Vehicles and expenditures for rental vehicles while their Vehicles were being serviced;
 - c. Diminished value of the Vehicles, which will require future repair and replacement to the Braking System;
 - d. Trouble and inconvenience, due to the problems associated with their Vehicles;
 - e. Punitive and/or exemplary damages;
30. All of these damages to the class members are a direct and proximate result of the Respondents' conduct and the defect associated with the Vehicles;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
31. Petitioner is unaware of the specific number of persons who purchased and/or leased the Vehicles, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands). The Respondents, on the other hand, should have this information readily available to them;
32. Class members are numerous and are scattered across the entire province and country;
33. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;
34. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
35. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;

36. 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;

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action

37. Individual questions, if any, pale by comparison to the numerous common questions that predominate;

38. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;

39. The recourses of the members raise identical, similar or related questions of fact or law, namely:

- a. Do the Vehicles suffer from a defective Braking System or defective component parts?
- b. Did Honda know or should they have known that Vehicles suffer from a defect?
- c. Did Honda fail to adequately disclose to consumers that the Vehicles suffer from a defect?
- d. Did Honda breach its express warranty by refusing to provide coverage for the Braking System or any of its components during the warranty period?
- e. Did Honda violate its implied warranty of merchantability with respect to the Vehicles?
- f. Did Honda unjustly enrich itself through the sale of parts and labour needed for the repair and replacement of the Vehicles due to the defect?
- g. Is Honda responsible for all related costs (including, but not limited to, the costs of the repair and replacement to the Braking System, the loss of use of the Vehicles and expenditures for rental vehicles, the diminished value of the Vehicles, trouble and inconvenience) to class members as a result of the problems associated with the Vehicles?

- h. Does the defect subject class members to an unreasonable risk to their safety?
 - i. Should an injunctive remedy be ordered to force Honda to notify, recall, repair and/or replace class members' Vehicles' Braking System free of charge?
 - j. Is Honda responsible to pay compensatory, moral, punitive and/or exemplary damages to class members and in what amount?
40. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

41. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages;
42. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to notify, recall, repair, and/or replace the Vehicles free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

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;



ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that he be attributed the status of representative of the Class

43. Petitioner is a member of the class;

44. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;

45. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

46. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

47. Petitioner, with the assistance of his attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

48. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protecting so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

49. Petitioner understands the nature of the action;

50. Petitioner's interests are not antagonistic to those of other members of the class;

B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

51. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

52. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

53. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada who currently own or lease, or have previously owned or leased, a 2008, 2009, 2010 Honda Accord or 2009, 2010 Acura TSX (the "Vehicles"), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who currently own or lease, or have previously owned or leased, a 2008, 2009, 2010 Honda Accord or 2009, 2010 Acura TSX (the "Vehicles"), or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a. Do the Vehicles suffer from a defective Braking System or defective component parts?
- b. Did Honda know or should they have known that Vehicles suffer from a defect?
- c. Did Honda fail to adequately disclose to consumers that the Vehicles suffer from a defect?

- d. Did Honda breach its express warranty by refusing to provide coverage for the Braking System or any of its components during the warranty period?
- e. Did Honda violate its implied warranty of merchantability with respect to the Vehicles?
- f. Did Honda unjustly enrich itself through the sale of parts and labour needed for the repair and replacement of the Vehicles due to the defect?
- g. Is Honda responsible for all related costs (including, but not limited to, the costs of the repair and replacement to the Braking System, the loss of use of the Vehicles and expenditures for rental vehicles, the diminished value of the Vehicles, trouble and inconvenience) to class members as a result of the problems associated with the Vehicles?
- h. Does the defect subject class members to an unreasonable risk to their safety?
- i. Should an injunctive remedy be ordered to force Honda to notify, recall, repair and/or replace class members' Vehicles' Braking System free of charge?
- j. Is Honda responsible to pay compensatory, moral, punitive and/or exemplary damages to class members and in what amount?

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

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to notify, recall, repair, and/or replace the Vehicles free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;



CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

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;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

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 judgement to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the Respondents' website with a link stating "Notice to owners and lessees of the 2008, 2009, 2010 Honda Accord and 2009, 2010 Acura TSX";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs including publications fees.

Montreal, June 22, 2010

Me Jeff Orenstein
CONSUMER LAW GROUP INC.
Attorneys for the Petitioner