4 class action lawsuits won before the Québec Court of Appeal by BLG in 2021-2022

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BLG's Class Action team has recently proved successful in defending clients in four different class actions dismissed by the Québec Court of Appeal.

It should be remembered that the authorization of a class action by the Superior Court does not guarantee success on the merits. While the initial authorization is an important step for the plaintiff, it by no means indicates that the class action will be successful. At the merits stage, the defendant has free rein to use all the legal arsenal at their disposal and raise their grounds of defence. Moreover, the Court of Appeal will not hesitate to dismiss a class action at a preliminary stage if the plaintiff fails to demonstrate an arguable case at authorization.

What follows are some examples of class actions dismissed by the Québec Court of Appeal in recent months.

These are groundbreaking decisions that help develop the law on important issues, including consumer law, privacy and business disruption due to COVID-19.

In all of these cases, the defendants were represented by lawyers from BLG's Class Action team.

Lamoureux v. Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM)

The Court of Appeal dismissed the first privacy class action on the merits. In its decision, it sets a key precedent for privacy class actions in Québec and Canada. The case also provides a blueprint to organizations faced with data breaches as the Court of Appeal closely examined the procedures and steps that the Defendant followed after the loss of the laptop. This decision provides increased clarity on how the civil liability framework applies in matters involving a loss of personal information. It also serves as an example of appropriate corporate response following a loss of personal information.

Key takeaway

This judgment underlines the importance of establishing a rapid and diligent response as soon as the event occurs, in compliance with applicable standards. Canadian businesses and organizations that handle personal information could take inspiration from the measures taken by the defendant to rebut claim for punitive damages (*e.g.* taking the time to identify what information was breached, purchasing credit protection for affected individuals, engaging external experts, following incident response guidelines).

- Consult the decision (2022 QCCA 685)
- Consult BLG's case comment (May 2022)

Fortin v. Mazda Canada inc.

The Court of Appeal of Québec rendered an important class action decision in consumer law. In *Fortin vs. Mazda Canada Inc.*, the Court of Appeal of Québec dismissed at the merits a class action which had been authorized against Mazda in relation to certain models of Mazda 3.

Key takeaway

In this matter, the Court confirmed that the presumption of prejudice does not exempt the consumer from proving damages, that is, the existence of a real financial impact, when making a claim under the *Consumer Protection Act*. The decision clarifies the conditions for applying such article 272 of the CPA, the presumption of prejudice in consumer law, and the burden to be met for price reduction claims under this regime.

- Consult the decision (2022 QCCA 635)
- Consult BLG's case comment (May 2022)

Chandler v. Volkswagen Aktiengesellschaft

In *Chandler*, the Court of Appeal confirmed the dismissal of the class action instituted by the shareholders of Volkswagen relating to the emissions scandal.

Key takeaway

The Court concluded that Article 236.1 of the *Québec Securities Act* does not find application since the securities in question were traded outside of Québec and, moreover, that the Québec courts do not have jurisdiction to hear this matter in the absence of a substantial and real link for the whole group. This judgment will have major repercussions on the applicability of the *Québec Securities Act* for foreign issuers and it brings welcome clarifications to the international jurisdiction of Québec authorities in class action matters.

- Consult the decision (2022 QCCA 272)
- Consult BLG's case comment (June 2022)

Centre de santé dentaire Gendron Delisle inc. v. La Personnelle, assurances générales inc.

The Court of Appeal confirmed the dismissal of the demand to authorize a class action on the basis of a business interruption claim as a result of COVID-19.

Key takeaway

The decision of the Court of Appeal is significant as it confirms that the governmental orders forcing the temporary closing of business do not trigger the standard business interruption insurance policies in Québec. This is the first appeal ruling on COVID-19 and business interruption losses in Canada.

- Consult the decision (2021 QCCA 1758)
- Consult BLG's case comment (December 2021)

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