

# Court of Appeal confirms that proof of real financial impact is required, notwithstanding presumption of prejudice

May 24, 2022

In *Fortin c. Mazda Canada inc.*,<sup>1</sup> the Court of Appeal 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 section 272 (c) of the CPA.

## Procedural history

This class action was authorized against Mazda Canada Inc. (Mazda) in connection with certain Mazda 3 models that had a weakness in their door locking mechanism.<sup>2</sup> Mazda quickly took corrective action and offered to fix the mechanisms free of charge.

On the merits, the issue of liability was split from the damages. The Superior Court **dismissed Mazda's liability in its entirety**.<sup>3</sup> The Court of Appeal in 2016 reversed this judgment in part<sup>4</sup> and found that Mazda had breached its duty to inform (228 CPA) that was owed to a limited number of members.<sup>5</sup> However, the Court of Appeal refused to **grant the class members' claim for trouble and inconvenience as a result of having to travel to the dealership to take advantage of a free repair, and also denied punitive damages as well as moral damages for the stress caused by the locking mechanism weakness.**

Justice Denis Jacques of the Superior Court concluded, again on the merits, that Ms. Fortin had not proven any real financial impact, such as a price reduction of the vehicle, that would justify a reduction of her obligations under section 272 (c) CPA.<sup>6</sup> Although **Mazda's repair of the vehicles did not in itself constitute compensation for breaching its duty to inform**, Justice Jacques concluded that to grant compensation in the absence of valid proof,<sup>7</sup> such as a loss of resale value, would have the effect of unjustifiably enriching the class members.

## Court of Appeal judgment in 2022 and the need to prove damages in consumer law

Already in 2016, the Court of Appeal had established that the manufacturer has the right to make repairs at its own expense and that the mere trip to the dealership is a normal everyday inconvenience and therefore not compensable.<sup>8</sup>

**The Court of Appeal has now clarified the application of the “absolute presumption of prejudice” established by Time<sup>9</sup> and reiterated in Imperial<sup>10</sup>.**

This presumption of prejudice entitles the claimant to relief under s. 272 CPA, but pursuant to Masson,<sup>11</sup> there is no obligation on the part of the courts to grant it. Consequently, a consumer who presents a claim under section 272 (c) CPA is not exempted from proving damages in order to obtain compensation or, more specifically, a reduction of obligation.

In particular, where a reduction of the obligation is claimed, the plaintiff must prove the quantum of the prejudice. The plaintiff therefore has to prove the existence of a real financial impact, such as a decrease in the value of the property in question.

This decision clarifies the conditions for applying section 272 of the CPA, the presumption of prejudice in consumer law, and the burden to be met for price reduction claims under this regime. The Court of Appeal thus confirmed that despite the absolute presumption of prejudice established in Time, real financial impact must be proven in order to determine the appropriate price reduction. In this case, the decision to award a reduction of obligation of \$0 was consistent with the evidence.

<sup>1</sup> [Fortin c. Mazda Canada inc., 2022 QCCA 635](#).

<sup>2</sup> Robitaille c. Mazda Canada inc., 2010 QCCS 2630.

<sup>3</sup> Fortin c. Mazda Canada inc., 2014 QCCS 2617.

<sup>4</sup> Fortin c. Mazda Canada inc., 2016 QCCA 31 (application for leave to appeal to the Supreme Court dismissed, 2016 CanLII 51055 [SCC]).

<sup>5</sup> Group 1 (compensatory damages for victims of theft) and Group 2 (members who had acquired the vehicle between October 3, 2006 and January 28, 2008).

<sup>6</sup> [Fortin c. Mazda, 2020 QCCS 4270](#), see [also an article](#) by the same authors summarizing this case.

<sup>7</sup> The survey evidence was therefore completely rejected, as was the forensic accounting report based on the survey data.

<sup>8</sup> Fortin c. Mazda Canada inc., 2016 QCCA 31, paras 165-170.

<sup>9</sup> Richard v. Time Inc., 2012 SCC 8.

<sup>10</sup> Imperial Tobacco Canada Ltée c. Conseil québécois sur le tabac et la santé, 2019 QCCA 358.

<sup>11</sup> Masson c. Telus Mobilité, 2019 QCCA 1106.

By

[Stéphane Pitre](#), [Alexis Leray](#)

Expertise

[Disputes](#), [Class Actions](#), [Products Law](#), [Transportation](#), [Consumer Goods](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.