

CLASS ACTIONS IN QUEBEC: A SURGE IN ENVIRONMENTAL LAW PRIVATE ACTIONS LAYS ADDITIONAL PRESSURE ON THE RETAIL SECTOR

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In a recent judgment,^[1] the Quebec Superior Court approved a national class action settlement involving Dollarama regarding the alleged misleading display of certain “Eco Fees” charged by the retailer.

This settlement came just a few months after another class action proceeding was authorized, also against Dollarama (among other parties), regarding allegations of greenwashing related to the retailer’s plastic shopping bags.^[2]

This bulletin discusses the rationale as well as the implications of these judgments for Quebec businesses and consumers.

Settlement Reached in the Eco Fees Class Action

The What and the Why Behind “Eco Fees”

In Quebec, the *Regulation respecting the recovery and reclamation of products by enterprises* (the “**Regulation**”) has been in force since 2011 and applies to certain products sold, such as electronic products, pharmaceutical products, batteries and paint.^[3]

Pursuant to the Regulation, businesses that market such products are responsible for their end-of-life management. The intended goal is to reduce the quantities of residual materials to be disposed of once the products reach the end of their life cycle.^[4]

As a result of the Regulation, many businesses chose to impose a so-called “Eco Fee” to consumers on the sale of these products to cover the costs of complying with the Regulation.

How this Eco Fee is displayed in relation to the sales price of the products is the question at the heart of this class action.

Procedural Background

On May 23rd, 2023, the Class Plaintiff applied for authorization to institute a class action against defendants Dollarama, Loblaw and Shoppers Drug Mart (the latter operating in Quebec under the name *Pharmaprix*).^[5]

The Class Plaintiff claims that, during the class period, Dollarama did not properly display the entirety of the sale price for the products on which Eco Fees were charged. The Eco Fees ranged from \$0.08 to \$0.60.

According to the Class Plaintiff, Dollarama purportedly fragmented the price displayed by advertising only the basic sales price on its price tag. More specifically, the Class Plaintiff alleged that Dollarama had been:

- a. Displaying the applicable Eco Fees separately on the shelf label and in a much smaller font size;
- b. Adding the applicable Eco Fees to the price of the product only once the customer arrived at the checkout to pay.

The Class Plaintiff alleged that this was a misleading practice, which was in breach of Sections 223, 223.1 and 224(c) of the *Consumer Protection Act*, section 1(1)(b) of the *Order in Council respecting the Policy on accurate pricing for merchants who use optical scanner technology* (the “**Policy on Accurate Pricing**”), Articles 6, 7, 1375 or 1458 of the *Civil Code of Quebec* and Section 54 of the *Competition Act*.

The damages allegedly suffered by the Class were premised on Section 1(1)(b) of the *Policy on Accurate Pricing* which provides that:

- a. If the product’s exact price is \$10 or less, the product must be given to the consumer free of charge;
- b. If the price is over \$10, a \$10 discount must be applied to the purchase of the product.

The Dollarama Settlement

On December 10th, 2024, the court approved a settlement against Dollarama, for a total amount of \$2,643,718.75. Defendants Loblaw and Shoppers Drug Mart did not participate in the settlement and are still contesting the application for authorization.^[6]

Under the Dollarama settlement, payments to the class members will be done by Interac e-transfers, up to a maximum amount of \$10 per class member, depending on the final number of total approved class members. If a high number of approved class members results in e-transfers of less than \$3 each, none shall be made, and the funds will be distributed to charities (subject to further approval by the court).

Most significantly, the Dollarama settlement agreement also includes business practice changes that Dollarama has permanently implemented since July 2023, including:

- a. Modifying shelf labels for products subject to an Eco Fee, such that the total price displayed includes said

- fee and further emphasizes said price; and
- b. Removing pre-printed Dollarama price tags from these products.

Although the Dollarama settlement in this case obviously does not have any precedential value legally, there is no doubt that it sets a precedent in practice on how Eco Fees can be properly dealt with by retailers in Quebec. It also marks a pivotal point, where private enforcement of environmental claims through class actions should be expected to become increasingly common. Class plaintiffs and other environmental activist groups undoubtedly took note.

The Next Target: Greenwashing Claims

As previously mentioned, the Dollarama settlement of the Eco Fee class action came only a few months after another environmental related class action was authorized against Dollarama and several other large retailers in relation with alleged greenwashing practices.^[7]

The Class Plaintiff in this second case alleges that the various retailers sued mistakenly advertised their plastic shopping bags as “recyclable,” whereas in fact they were not, thereby contravening the same provisions of the *Consumer Protection Act*, the *Civil Code of Quebec* and the *Competition Act* dealing with misleading advertising.

In authorizing the class action, the court found that the Class Plaintiff had established on a *prima facie* basis that the plastic bags are not, in practice, recyclable in Quebec. In doing so, the court explored the question of whether some recyclable materials are largely accepted by recycling facilities, an issue that was also dealt with in the Keurig capsule case,^[8] where the Competition Bureau imposed a fine of 3M\$ on the basis of a similar reasoning. The court also rejected some of the other defendants’ argument that the bags were folded in such a way before being handed over to the clients that none of them were actually misled by the word “recyclable”, since they could not see it.

This case comes in the wake of significant amendments to the *Competition Act*, which introduced specific offences for greenwashing practices, and which have opened the door even more to private enforcement by motivated litigants, including, potentially, environmental activist groups.

For a deeper understanding of these new amendments, our previous bulletins on the topic provide key insights on the topic: [Greenwashing and Canada’s Increased Regulation of Environmental Claims: The Latest Amendments to the Competition Act](#), [Net Zero Plans Deserve Closer Attention Than They Are Getting](#) and [Bill C-59’s Expansion of the Competition Act’s Deceptive Marketing Practices: “Greenwashing” and Steering Clear of Environmental Misrepresentation](#). More recently, the Competition Bureau released draft guidelines on greenwashing enforcement. Please refer to our [bulletin](#) discussing those.

While lawyers have assisted clients for decades in evaluating and developing technologies, methodologies, products and know-how in support of sustainability and in ensuring compliance with regulatory regimes, what is new is the importance and attention that such claims are now attracting from nearly everyone, but particularly the average consumer.

In this context, it will be interesting to see how Canadian courts will react to these developments, and whether boundaries will be set that may try to strike an appropriate balance for consumers, between protection of the environment and the cost of doing business for Canadian retailers, which can all too often result in unwelcomed inflation.

[1] *Ohayon c. Dollarama*, 2024 QCCS 1363

[2] *Cohen c. Dollarama*, 2024 QCCS 2087. More recently, an application to authorize the bringing of a class action was filed against 9199-4467 QUEBEC INC. (doing business under the trade-name EARTH RATED) in connection with compostability claims of poop bags.

[3] *Regulation respecting the recovery and reclamation of products by enterprises*, q-2, r. 40.1; « [Responsabilité élargie des producteurs](#) », online : *Recyc-Québec*.

[4] “[Regulation respecting the recovery and reclamation of products by enterprises](#)”, online : *Ministère de l'Environnement, de la Lutte contre les changements climatiques, de la Faune et des Parcs*.

[5] *Ohayon c. Dollarama*, 2024 QCCS 1876 at para 4.

[6] *Ibid.*

[7] *Cohen c. Dollarama*, 2024 QCCS 2087.

[8] *Keurig Canada Inc.*, CT-2022-001.

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A Cautionary Note

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