

## Specific consumer issues when doing business in Québec

NOVEMBER 20, 2017 1 MIN READ

### Related Expertise

- [Class Action Defence](#)
- [Corporate and Commercial Disputes](#)
- [Product Liability](#)

Authors: [Éric Préfontaine](#), Sylvain Lussier Ad. E.

The Québec *Consumer Protection Act* (CPA) presents many unique issues for businesses with Québec consumers. Here are key tips and trends to consider when reviewing your litigation risk profile.

## Class actions in Québec



- Québec courts (both superior and appeal courts) take a very liberal approach and impose a very low threshold for obtaining authorization to institute a class action. The Québec Court of Appeal has even gone so far as to invite the legislator to reconsider the usefulness of the authorization stage in its current form. Statistics show that the authorization stage in Québec poses a very small hurdle for plaintiffs and often only serves as a speed bump in the life cycle of a class proceeding.
- Increasingly we are seeing plaintiffs' counsel shopping and instituting class proceedings in several different provinces. Québec is a desirable forum for plaintiffs' counsel because of the low threshold at the authorization stage.

## Recent trends in Québec consumer litigation



- **Drip pricing** – Under section 224 of the CPA, advertised prices must include the total amount the consumer must pay for the goods or services such that merchants can no longer advertise fragmented or headline prices and then add charges that were until then unknown.
- **Unilateral modifications** – Under section 11.2 of the CPA, any unilateral modification to a consumer contract (including loyalty programs) is prohibited unless: (1) the parts of the consumer contract that may be unilaterally amended are stipulated up front, (2) 30 days' written notice of the modification is provided for, and (3) the consumer may refuse the modification and rescind the contract without cost, penalty or cancellation indemnity.
- **Disproportionate obligations** – Under section 8 of the CPA, the consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer, or where the obligation of the consumer is excessive, harsh or unconscionable. As an example, this can become an issue when fees are charged to a consumer – at what point do fees become excessive, harsh or unconscionable?
- **Unrequested goods or services and introductory offers** – Under section 230 of the CPA, charging for any goods or services which a consumer has not ordered is prohibited. It is also prohibited that a merchant require that a consumer send notice that they do not wish to receive the goods or services at the regular price after receiving the goods or services at a discounted price (i.e., this is a restriction on discounted introductory offers that automatically renew at full price).
- **Prepaid credit or gift cards** – Under section 187.3 of the CPA, providing for an expiry date on a prepaid card is prohibited.

## Key tips



### to consider

- **Excluding the Québec consumer** – Under section 19.1 of the CPA, any clause in a consumer contract that is not applicable in the province of Québec must be immediately preceded by a prominently presented statement to this effect.
- **Punitive damages** – A standalone application for punitive damages is available for violations of the CPA under section 272.
- **Absolute presumption of prejudice** – A recent Québec Court of Appeal decision suggests that the presumption of prejudice only applies to the contractual remedies contemplated in the CPA under section 272 (i.e., performance of the obligation or cancellation of the contract) and does not apply to claims for compensatory damages, which remain subject to the general rules of Québec civil law, which require proof of prejudice and causation.

## Impact – of the – Charter of the French Language

- **Company name in French** – A company's name should not be confused with a company's trademark; the latter is not required to have a French version.
- **Product labelling** – The English text must not be more prominent than the French text.
- **Employment forms, order forms, invoices, etc.** – All consumer-facing documents must be produced in French alone or in both French and English.
- **Public signs and commercial advertising** – Advertisements may be bilingual, provided that the French translation is "markedly predominant."
- **Websites** – The French version must be displayed at least as prominently as the English version.
- **Trademarks** – A non-French trademark can be displayed alone, without the addition of a name displayed in French.

## Class actions in Québec

- Québec courts (both superior and appeal courts) take a very liberal approach and impose a very low threshold for obtaining authorization to institute a class action. The Québec Court of Appeal has even gone so far as to invite the legislator to reconsider the usefulness of the authorization stage in its current form. Statistics show that the authorization stage in Québec poses a very small hurdle for plaintiffs and often only serves as a speed bump in the life cycle of a class proceeding.
- Increasingly we are seeing plaintiffs' counsel forum shopping and instituting class proceedings in several different provinces. Québec is a desirable forum for plaintiffs' counsel because of the low threshold at the authorization stage.

## Recent trends in Québec consumer litigation

- **Drip pricing** – Under section 224 of the CPA, advertised prices must include the total amount the consumer must pay for the goods or services such that merchants can no longer advertise fragmented or headline prices and then add charges that were until then unknown.
- **Unilateral modifications** – Under section 11.2 of the CPA, any unilateral modification to a consumer contract (including loyalty programs) is prohibited unless: (1) the parts of the consumer contract that may be unilaterally amended are stipulated up front, (2) 30 days' written notice of the modification is provided for, and (3) the consumer may refuse the modification and rescind the contract without cost, penalty or cancellation indemnity.
- **Disproportionate obligations** – Under section 8 of the CPA, the consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer, or where the obligation of the consumer is excessive, harsh or unconscionable. As an example, this can become an issue when fees are charged to a consumer – at what point do fees become excessive, harsh or unconscionable?
- **Unrequested goods or services and introductory offers** – Under section 230 of the CPA, charging for any goods or services which a consumer has not ordered is prohibited. It is also prohibited that a merchant require that a consumer send notice that they do not wish to receive the goods or services at the regular price after receiving the goods or services at a discounted price (i.e., this is a restriction on discounted introductory offers that automatically renew at full price).
- **Prepaid credit or gift cards** – Under section 187.3 of the CPA, providing for an expiry date on a prepaid card is prohibited.

## Key tips to consider

- **Excluding the Québec consumer** – Under section 19.1 of the CPA, any clause in a consumer contract that is not applicable in the province of Québec must be immediately preceded by a prominently presented statement to this effect.
- **Punitive damages** – A standalone application for punitive damages is available for violations of the CPA under section 272.
- **Absolute presumption of prejudice** – A recent Québec Court of Appeal decision suggests that the presumption of prejudice only applies to the contractual remedies contemplated in the CPA under section 272 (i.e., performance of the obligation or cancellation of the contract) and does not apply to claims for compensatory damages, which remain subject to the general rules of Québec civil law, which require proof of prejudice and causation.

## Impact of the Charter of the French Language

- **Company name in French** – A company's name should not be confused with a company's trademark; the latter is not required to have a French version.
- **Product labelling** – The English text must not be more prominent than the French text.
- **Employment forms, order forms, invoices, etc.** – All consumer-facing documents must be produced in French alone or in both French and English.
- **Public signs and commercial advertising** – Advertisements may be bilingual, provided that the French translation is "markedly predominant."
- **Websites** – The French version must be displayed at least as prominently as the English version.
- **Trademarks** – A non-French trademark can be displayed alone, without the addition of a name displayed in French.