

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

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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.

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