

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Actions)
SUPERIOR COURT

No.: 500-06-001243-233

DAPHNA OHAYON

Applicant

v.

DOLLARAMA S.E.C.

-and-

DOLLARAMA INC.

-and-

DOLLARAMA GP INC.

-and-

SHOPPERS DRUG MART INC.

-and-

LOBLAW COMPANIES LIMITED

-and-

AMAZON.COM.CA, INC.

Respondents

**APPLICATION BY AMAZON.COM.CA, INC. FOR LEAVE TO ADDUCE
RELEVANT EVIDENCE
(Art. 574 al 3 C.C.P.)**

**TO THE HONORABLE PIERRE NOLLET S.C.J., RESPONDENT AMAZON.COM.CA,
INC. RESPECTFULLY SUBMITS AS FOLLOWS:**

1. On May 29, 2023, the Applicant filed her *Application to Authorize the Bringing of a Class Action* (“**Application**”). The Applicant alleged that the Dollarama and Shoppers/Loblaw entities were not disclosing environmental handling fees (“**EHF**” or “**eco fees**”) appropriately, in breach of Quebec’s *Consumer Protection Act* and associated regulations.
2. On July 3, 2023, the Applicant amended her action and added various Amazon entities as respondents. On November 21, 2023, the Applicant amended her action again (“**Application for Authorization**”) and discontinued her claim against the Amazon entities, except against Amazon.com.ca, Inc. (“**Amazon**”).
3. Amazon hereby seeks leave to adduce relevant evidence on the grounds that the Application for Authorization contains factual voids, that the proposed evidence would assist the Court and the parties in acquiring a better understanding of the factual situation, and that the proposed evidence is essential and indispensable to the assessment of the authorization criteria under article 575 CCP.

4. The Applicant is seeking authorization to institute a class action on behalf of the following class (the “**Class**”), as appears from the Application for Authorization, par.1:

All natural and legal persons in Canada who purchased a product subject to the Environmental Handling Fee (“EHF”) from Dollarama, Pharmaprix or Amazon and who paid a price higher than the price advertised (excluding sales tax) because the EHF was not included in the price prominently advertised.

5. In relation to her alleged cause of action against Amazon for the purpose of the proposed class action, the Applicant suggests the following issues of fact and law be dealt with, as appears from pages 23-24 of the Application for Authorization:

- a) Do the Defendants violate ss. 223 or 224c) of the CPA, or its *Regulations*? [...]
- e) Are Class members entitled to punitive damages and in what amount? [...]
- g) Does Amazon mislead and/or fail to adequately inform Class members concerning the écofrais and, if so, are Class members entitled to compensatory and punitive damages?
- h) Do the Defendants violate articles 6, 7, 1375 or 1458 CCQ?

6. In light of paragraphs 87.2 to 87.8 of the Application, the proposed evidence will enable this Court to make determinations as to whether the Applicant has an arguable cause of action pursuant to 575(2) and (4) CCP. More specifically, the proposed evidence should be authorized because it:

- (a) Will help the Court understand the purchasing path followed by customers on Amazon.ca and provide clarification on EHF's disclosure practices;
- (b) Clarify the contractual relationships at play between Amazon and authorized third party providers for the implementation of recycling programs pursuant to the *Regulation respecting the recovery and reclamation of products by enterprises*, Q-2, r. 40.1 (the “**Regulation**”); and
- (c) Stress that EHF's vary across provinces, a fact omitted from the Application for Authorization.

7. Exhibit A-1 is an affidavit from Mukund Chavan providing a more complete account of a customer's journey on Amazon.ca. This evidence appropriately fills a factual void left by the Application for Authorization and will enable the Court to have a

better understanding of EHF's disclosure for the authorization hearing. Exhibit A-1 notably stresses that:

- (a) Amazon displays estimates of EHF's because it cannot be certain of the shipping destination of the products until the customer confirms the shipping address at checkout (Exhibit A-1, par. 6-15);
 - (b) The amount of EHF's varies from one province to another. Certain products may be subject to an EHF in one province but not in another (Exhibit A-1, par. 8, 12, 23);
 - (c) The applicable EHF's and the overall price are prominently displayed at checkout (Exhibit A-1, par. 16-22).
8. As mentioned in Exhibit A-1 and pursuant to the Regulation, Amazon is a member of "*organismes de gestions reconnus*" (or "**OGR**"). In Québec, Amazon notably relies on Call2Recycle and the Electronic Products Recycling Association ("**EPRA**"). To become a member, Amazon had to enter into stewardship agreements with these OGR, which are disclosed as follows:
- (a) Exhibit **A-2**, Call2Recycle Membership Agreement, Amazon.com.ca, Inc.;
 - (b) Exhibit **A-4**, EPRA National Stewardship Agreement
9. These agreements are an extension of the obligations contained in the Regulation and this proposed evidence is therefore not only useful but necessary for the purpose of assessing the criteria of article 575 CCP.
10. As mentioned in Exhibit A-1, EHF's and their respective amounts are determined on a provincial basis. Call2Recycle and the EPRA provide to their members with fees schedules detailing EHF's per province:
- (a) Exhibit **A-3**, Call2Recycle 2022 Environmental Handling Fees Schedule;
 - (b) Exhibit **A-5**, EPRA December 1, 2023 Provincial Program Product Definitions and Fees.
11. Amazon submits that the proposed evidence is limited to what is essential and necessary for the purpose of authorization proceedings.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

- A.** **GRANT** the present *Application by Respondent Amazon.com.ca, Inc. for leave to adduce relevant evidence*;

- B. ALLOW** Respondent Amazon.com.ca, Inc. to file the following Exhibits into the Court record:
- a. **A-1:** Affidavit of Mukund Chavan (signed and sworn);
 - b. **A-2:** Call2Recycle Membership Agreement, Amazon.com.ca, Inc.;
 - c. **A-3:** Call2Recycle 2022 Environmental Handling Fees Schedule;
 - d. **A-4:** EPRA National Stewardship Agreement, dated May 25, 2012;
 - e. **A-5:** EPRA December 1, 2023 Provincial Program Product Definitions and Fees.
- C. THE WHOLE** without legal costs.

Montréal, December 15, 2023

Borden Ladner Gervais

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NOTICE OF PRESENTATION

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INC. AND DOLLARAMA GP INC.

TAKE NOTICE that the present Application by Amazon.com.ca, inc. for Leave to Adduce Relevant Evidence (art. 574 al 3 C.C.P.) will be presented for hearing and allowance before the Honourable Pierre Nollet of the Superior Court of Québec of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec, on a date, time and in a room to be determined.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Montréal, December 15, 2023

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**LIST OF THE EXHIBITS COMMUNICATED WITH THE APPLICATION BY
AMAZON.COM.CA, INC. FOR LEAVE TO ADDUCE RELEVANT EVIDENCE**

- | | |
|-------------|--|
| Exhibit A-1 | Affidavit of Mukund Chavan (signed and sworn). |
| Exhibit A-2 | Call2Recycle Membership Agreement, Amazon.com.ca, Inc. |
| Exhibit A-3 | Call2Recycle 2022 Environmental Handling Fees Schedule. |
| Exhibit A-4 | EPRA National Stewardship Agreement, dated May 25, 2012. |
| Exhibit A-5 | EPRA December 1, 2023 Provincial Program Product Definitions and Fees. |

A copy of these exhibits is notified herewith.

Montréal, December 15, 2023

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**APPLICATION BY AMAZON.COM.CA,
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RELEVANT EVIDENCE AND LIST OF THE
EXHIBITS COMMUNICATED WITH THE
APPLICATION BY AMAZON.COM.CA,
INC. FOR LEAVE TO ADDUCE
RELEVANT EVIDENCE**

ORIGINAL

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