

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Nº: 500-06-001252-234

SUPERIOR COURT
(Class Actions)

ALEX LAFRANCE

Applicant

v.

LENOVO (CANADA) INC.

and

WAL-MART CANADA CORP.

and

BEST BUY CANADA LTD.

Defendants

**APPLICATION BY DEFENDANT LENOVO (CANADA) INC.
FOR DECLINATORY EXCEPTION AND PARTIAL
DISMISSAL OF THE APPLICATION FOR AUTHORIZATION**
(Articles 1, 49, 167, 491 and 622 C.C.P.; and 3148 C.C.Q.)

**TO THE HONOURABLE JUSTICE MARIE-CHRISTINE HIVON OF THE SUPERIOR COURT
OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE DEFENDANT,
LENOVO (CANADA) INC., SUBMITS THE FOLLOWING:**

I. INTRODUCTION

1. Defendant Lenovo (Canada) Inc. ("**Lenovo Canada**") asks this Honourable Court to dismiss the Applicant's *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* (the "**Amended Application**") with respect to the claims brought by non-consumers who purchased one or more laptops on Lenovo's Canadian website www.lenovo.com/ca/ (the "**Website**");
2. More precisely, claims based upon purchases made prior to January 31, 2023, must be brought exclusively before the courts located in the city of Toronto, in the province of Ontario (Canada) and any purchase made on or after January 31, 2023, is subject to an arbitration agreement and therefore, fall outside of this Court's jurisdiction;

II. PROCEDURAL BACKGROUND

3. On or about July 21, 2023, the Applicant filed the *Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* against Lenovo Canada,

Wal-Mart Canada Corp. ("**Wal-Mart**") and Best Buy Canada Ltd.'s ("**Best Buy**") on behalf of the following purported class:

All individual and legal persons in the province of Quebec who purchased one or more Lenovo Laptops from Lenovo, Walmart and/or Best Buy at a price lower than the represented Regular Price, including a subclass of consumers who purchased one or more Lenovo Laptops for their own personal use (the "Consumer Subclass") from the date Lenovo Laptops were first offered for sale in Quebec until the date that this action is authorized as a class action.

4. Around the same time, a similar class action was instituted in British Columbia on behalf of all individuals and legal persons in Canada, with the exception of those in Québec;
5. On or about September 10, 2024, the Applicant was authorized by this Honorable Court to file its *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* ("**Amended Application**") against the three Defendants;
6. As indicated in paragraph 2 of the Amended Application, the Applicant now seeks to authorize a class action on behalf of the following class:

All individual and legal persons in the province of Quebec who purchased one or more Lenovo Laptops manufactured and sold online by Lenovo through www.lenovo.com/ca/, www.walmart.ca/, and/or www.bestbuy.ca/ from Lenovo, Walmart and/or Best Buy at a price lower than the represented Regular Price, including a subclass of consumers who purchased one or more Lenovo Laptops for their own personal use (the "Consumer Subclass") from the date Lenovo Laptops were first offered for sale in Quebec until the date that this action is authorized as a class action.

7. On March 4, 2025, this Honorable Court ordered a partial temporary stay of these proceedings as they relate to Wal-Mart and Best Buy, in accordance with the terms of the Standstill Agreement concluded between Walmart, Best Buy and the purported class representatives of the Quebec and British Columbia proposed class actions;
8. In essence, the Applicant claims that the Defendants participated in alleged prohibited business practices in violation of Section 225, or alternatively Sections 219 and/or 228, of the Quebec *Consumer Protection Act* (the "**CPA**"), and that they also allegedly made misleading representations regarding the "Regular Price", "Discount Price" and "Discount Value" (as defined in the Amended Application) of the Lenovo Canada laptops in violation of Section 52(1) of the *Competition Act*;
9. The Applicant is therefore seeking (i) an amount for compensatory damages under the CPA and Section 36 of the *Competition Act*; (ii) a reduction of his and the purported class members' obligations equivalent to a portion of the amount gained by the Defendants as a result of their alleged faults; and (iii) an aggregate amount for punitive damages under Section 272 of the CPA;

III. **SALES TERMS AND CONDITIONS**

10. All laptop purchases made through the Website have been governed by the Sales Terms and Conditions;
11. The Sales Terms and Conditions can be accessed at the bottom of each page of the Website via the "Sales Terms and Conditions" link, as it appears from a screenshot of the Website, **Exhibit R-3**, or directly at <https://www.lenovo.com/ca/en/terms-and-conditions/>, both of which lead to the most current version of Lenovo's Sales Terms and Conditions, **Exhibit R-4**, also referred to as Lenovo Sales Agreement;
12. The Exhibit P-7 submitted by the Applicant in support of his Amended Application purportedly outlines his purchasing process for a ThinkPad X1 Carbon Gen 10 (14" Intel) Laptop;
13. However, the purchasing process on the Website may vary from one transaction to another, depending on several factors, including but not limited to the type of laptop being purchased, the additional options, accessories, or services selected by the purchaser, the availability of eCoupons or third-party coupons that provide discounts, special offers, or promotional deals for the transaction, and the payment method chosen by the purchaser;
14. After completing the purchasing process on the Website and prior to officially placing an order, purchasers have, since at least February 2020, been presented with the following acknowledgment: "I have read and agree to the Privacy Policy, Lenovo Sales Agreement and verify that I am over the age of 18", as it appears from a screenshot of the purchasing process, **Exhibit R-5**;
15. The words "Lenovo Sales Agreement" are underlined, and hyperlinked to the current version of the Lenovo Sales Agreement;
16. Purchasers are thus notified about the Lenovo Sales Agreement, have the opportunity to review them, and agreed to them in the process of purchasing a laptop;
17. After the purchase, the Lenovo Sales Agreement is additionally accessible through a hyperlink included in the Purchase Confirmation Email sent to the purchaser following the transaction, as it appears from the Applicant's Purchase Confirmation Email dated May 7, 2023, filed as Exhibit P-14;

IV. **ARBITRATION AGREEMENT APPLICABLE TO PURCHASES MADE AS OF JANUARY 31, 2023**

18. Non-consumer Class Members that purchased Lenovo Canada laptops as of January 31, 2023, agreed and are subject to the arbitration provision contained in the Lenovo Sales Agreement and the Arbitration Agreement;
19. The Lenovo Sales Agreement contains a clear, unambiguous, final and binding arbitration provision between the purchaser and Lenovo Canada. It expressly states that disputes must be resolved by binding, individual arbitration, as more fully appears from Exhibit R-4:

Terms and Cond Page

PLEASE READ THE LENOVO SALES AGREEMENT BELOW CAREFULLY. THIS "AGREEMENT" IS WHAT LENOVO CALLS OUR "SALES TERMS & CONDITIONS" ON LENOVO.COM. BY PLACING AN ORDER ON [LENOVO.COM](https://lenovo.com) OR ACCEPTING PRODUCTS SUBJECT TO THIS AGREEMENT, YOU ("YOU" OR "CUSTOMER") ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT; UNDERSTAND IT; AND THAT YOU AGREE TO BE LEGALLY BOUND BY ITS TERMS AND CONDITIONS. **THIS AGREEMENT IS SUBJECT TO A REQUIREMENT THAT DISPUTES MUST BE RESOLVED IN BINDING, INDIVIDUAL ARBITRATION, NOT IN COURT. THERE IS NO JUDGE OR JURY IN ARBITRATION AND PRETRIAL DISCOVERY AND APPELLATE RIGHTS ARE MORE LIMITED THAN IN COURT. YOU HAVE A LIMITED-TIME RIGHT TO OPT OUT OF THIS REQUIREMENT. SEE THE [ARBITRATION AGREEMENT PAGE](#) FOR FULL DETAILS AND OPT-OUT INSTRUCTIONS.** IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THIS AGREEMENT.

20. This arbitration provision is evidenced at the top of the page, below the title "Terms and Cond Page", and just above the "Lenovo Sales Agreement" title, and is entirely written in capital letters to immediately catch the purchaser's attention;
21. This provision includes certain words or sentences highlighted in bold and blue text to further draw the purchaser's attention to specific parts of the arbitration provision;
22. Namely, the arbitration provision incorporates the Arbitration Agreement by reference, and this reference appears in all capital letters, bold, blue text, and contains a hyperlink to the current version of the Arbitration Agreement, provided herewith as **Exhibit R-6**;
23. This clear, unambiguous, final and binding arbitration provision is also present in the Arbitration Agreement, Exhibit R-5, which states:

THIS ARBITRATION AGREEMENT ("AGREEMENT") INCLUDES A REQUIREMENT THAT DISPUTES BETWEEN YOU AND LENOVO MUST BE RESOLVED IN BINDING, INDIVIDUAL ARBITRATION. THIS MEANS WE GIVE UP THE RIGHTS TO TAKE A DISPUTE TO COURT OR TO PURSUE A CLASS ACTION. THERE IS NO JUDGE OR JURY IN ARBITRATION AND PRETRIAL DISCOVERY AND APPELLATE RIGHTS ARE MORE LIMITED THAN THEY WOULD BE IN COURT. YOU HAVE A LIMITED-TIME RIGHT TO OPT OUT OF THIS REQUIREMENT. PLEASE READ THIS ENTIRE AGREEMENT CAREFULLY.

To the maximum extent allowed by applicable law, you and Lenovo agree that any dispute related to any aspect of the relationship between us, including but not limited to any Lenovo or third party product, software, or service you purchase from Lenovo, the

associated purchase agreement, Lenovo's Privacy Policy, your purchase experience, and your use of any Lenovo website, application, or tool, asserted under any legal theory (collectively "Disputes"), including claims that accrued before you entered into this Agreement and any "private attorney general" claims, will be exclusively resolved by binding arbitration. Disputes include those between you and Lenovo, its agents, employees, successors, assigns, direct and indirect subsidiaries, or any third party providing any products, software, or services you purchased through Lenovo. **"Disputes" that must be resolved by the arbitrator, and not a court, include disputes over enforceability of any provision of any agreement between you and Lenovo, except for interpretation of this Agreement's class action waiver, and disputes over whether a particular claim is arbitrable.** If you purchase third-party hardware, software, or services from Lenovo, and wish to bring a claim against the manufacturer, that manufacturer may rely on this Agreement to compel your claim into arbitration. Notwithstanding the foregoing or anything to the contrary elsewhere in this Agreement, if you are a commercial customer with a purchase agreement signed by Lenovo that contains a dispute resolution clause which conflicts with the terms of this arbitration Agreement, then your purchase agreement's dispute resolution clause shall govern the resolution of disputes.

24. Although the last paragraph of the Arbitration Agreement, Exhibit R-6, allows purchasers to opt-out of the Arbitration Agreement within 30 days of the purchase, to date Lenovo Canada has found no records of a Québec non-consumer doing so;
25. Furthermore, the Arbitration Agreement (Exhibit R-6) provides that the arbitration will be administered by JAMS pursuant to its applicable procedural rules and should be conducted as inexpensively as possible based on written submissions, unless the arbitrator determines that the complexity of the matter warrants telephonic, video, or (if strictly necessary) in-person hearing;
26. The arbitration provision is therefore designed to streamline and accelerate the resolution of claims, reducing the time and costs typically associated with traditional litigation, and in particular, with class action proceedings;

V. ONTARIO JURISDICTION APPLICABLE TO PURCHASES MADE BEFORE JANUARY 31, 2023

27. Prior to January 31, 2023, the Lenovo Sales Agreement did not contain an arbitration provision, but contained governing law and choice of venue provisions which were stated as follows:

This Agreement and all orders issued hereunder shall be governed by the laws of the province of Ontario, without regard to its conflict of law principles.

You agree that any legal action or proceeding between you and Lenovo arising out of this Agreement shall be brought exclusively in

the courts located in the city of Toronto, in the province of Ontario, Canada.

The whole as it appears from snapshots from the Wayback Machine website prior to January 31, 2023, **Exhibit R-7 in a bundle**;

28. Accordingly, any dispute arising from the purchase of a Lenovo Canada laptop prior to January 31, 2023, must be resolved in Toronto, Ontario, and will be governed by the laws of Ontario;

VI. LACK OF JURISDICTION OF QUEBEC COURTS FOR NON-CONSUMER PURCHASERS

29. Pursuant to the Lenovo Sales Agreement in effect prior to January 31, 2023 (Exhibit R-7) and pursuant to the Lenovo Sales Agreement in effect as of January 31, 2023 (Exhibit R-4) and the Arbitration Agreement in effect as of January 31, 2023 (Exhibit R-6), any Québec non-consumer who purchased one or more laptops on the Website cannot resolve the dispute described in the Amended Application before the Superior Court of Québec;
30. The arbitration provision is valid and binding, and the claims brought by Québec non-consumers who purchased one or more laptops on the Website or after January 31, 2023, fall squarely within the scope of the disputes described in the Arbitration Agreement (Exhibit R-6);
31. The Arbitration Agreement (Exhibit R-6) specifically allows purchasers to opt-out of the Arbitration Agreement within 30 days of their purchase on the Website, which Lenovo Canada has, to date, not located any records of this right being exercised by any Québec non-consumers;
32. Moreover, Lenovo Canada has not agreed in writing with any Québec non-consumer to waive its rights under the Arbitration Agreement (Exhibit R-6) incorporated into the Lenovo Sales Agreement (Exhibit R-4);
33. According to section 3148 of the *Civil Code of Québec* and for the reasons more fully described above, Lenovo Canada respectfully submits that this Court lacks jurisdiction in the present matter over the claims brought by non-consumer who purchased one or more laptops on the Website;
34. The present Application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO :

GRANT the present *Application of Lenovo (Canada) inc. for Declinatory Exception and for Partial Dismissal of the Application for Authorization*;

DECLARE that the dispute between Québec non-consumers and Lenovo (Canada) Inc. who purchased one or more laptops on www.lenovo.com/ca/ prior to January 31, 2023, put forward in the *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* falls within the exclusive jurisdiction of the Toronto courts, in the province of Ontario.

DECLINE jurisdiction to rule on the dispute between Québec non-consumers and Lenovo (Canada) Inc. who purchased one or more laptops on www.lenovo.com/ca/ prior to January 31, 2023, put forward in the *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative*.

DECLARE that the dispute between Québec non-consumers and Lenovo (Canada) Inc. who purchased one or more laptops on www.lenovo.com/ca/ on or after January 31, 2023, put forward in the *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* falls within the exclusive jurisdiction of JAMS.

SUBSIDIARILY, DECLARE that the dispute between Québec non-consumers and Lenovo (Canada) Inc. who purchased one or more laptops on www.lenovo.com/ca/ on or after January 31, 2023, put forward in the *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* falls within the exclusive jurisdiction of the Toronto courts, in the province of Ontario.

DECLINE jurisdiction to rule on the dispute between Québec non-consumers and Lenovo (Canada) inc. who purchased one or more laptops on www.lenovo.com/ca/ on or after January 31, 2023, put forward in the *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative*.

DISMISS the *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* against the Defendant Lenovo (Canada) Inc. with respect to the claims brought by Québec non-consumers who purchased one or more laptops on www.lenovo.com/ca/;

THE WHOLE, with legal cost.

MONTREAL, September 2, 2025

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DLA PIPER (CANADA) LLP

Attorneys for the Defendants Lenovo (Canada) Inc. and Best Buy Canada Ltd.

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DISTRICT OF MONTREAL

Nº: 500-06-001252-234

SUPERIOR COURT
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ALEX LAFRANCE

Applicant

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Defendants

NOTICE OF PRESENTATION

*(In regard to the Application by Defendant Lenovo (Canada) Inc. for
Declinatory Exception and for Partial Dismissal of the Application for Authorization)*

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TAKE NOTICE that *Application by Defendant Lenovo (Canada) Inc. for Declinatory Exception and for Partial Dismissal of the Application for Authorization* shall be presented for adjudication at the same time as the Authorization Hearing in the current proceedings, before the Superior Court of Montreal at 1, rue Notre-Dame, E., Montreal (Quebec), H2Y 1B6, at a date and time to be confirmed by the Honourable Marie-Christine Hivon.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, September 2, 2025

DLA Piper (Canada) LLP

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Our reference : 114338-00001

No: 500-06-001252-234	
SUPERIOR COURT DISTRICT OF MONTREAL PROVINCE OF QUEBEC (Class Action)	
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ORIGINAL	
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