

Proliferation of Redress Procedures

Executive summary
June 2013

Consumer access to justice remains a hotly debated issue; despite various measures taken to improve that access, it is still deficient. The very approach to access to justice may be wrong. Indeed, the narrow objective of improving individual access to dispute resolution mechanisms does not appear suitable for the peculiarities of consumer law, and the barriers to this type of access seem insurmountable.

This research identifies the different types of barriers to adequate consumer access to justice: material, objective, subjective, sociocultural, physical and mental health barriers.

Consumer access to justice requires that all means be taken to protect consumers adequately, both individually and collectively, through effective laws followed by stakeholders and through redress procedures with a substantial deterrent effect. Our research indicates that this depends on the adoption of a set of measures tailored to protect and promote consumers' collective interest, thus improving access to justice for each consumer.

Our study focuses on the following measures adopted in Quebec, particularly on their objectives, pros and cons, and actual effect on access to justice: (i) the Small Claims Division, (ii) class actions and (iii) the power of injunction conferred to consumer rights organizations by the CPA.

Our research analyses measures that have been adopted abroad to improve consumer access to justice and that, in consumers' collective interest, infringe on certain recognized legal principles, by broadening the effect of some judgments or by recognizing that certain entities have the necessary interest to launch class actions. We examine the approaches that led to the adoption of those measures, as well as the latter's actual and potential effectiveness. We focus on how those measures make it possible to avoid or limit the necessity of proliferating consumer redress procedures.

Our research concludes that the measures analysed have substantially improved consumer access to justice, by removing many barriers, by granting consumer associations the right to launch class actions in consumers' collective interest, and by broadening the effect of certain judgments to include both merchants who adopt identical practices, and consumers not involved in the litigation but victimized by those practices. Such measures allow consumers to obtain justice without the necessity of initiating legal action themselves, and to benefit in all fairness from the rights and protections granted them by consumer protection laws.

Our research convinces us that the collective approach to consumer law and access to justice – the approach underpinning the most promising measures we studied – is not the prevailing one in Canada. Given the benefits of that approach, we submit that our approach to consumer protection should be reassessed, and that consumers' persistent difficulties in gaining access to

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justice justifies tolerating certain infringements of traditional principles, in the best interest of consumers as a whole.

Our study reveals deficiencies in the design or implementation of some of the foreign measures examined. Our recommendations – to adopt measures resembling those studied abroad and to improve our existing measures – include proposals for ways to avoid certain pitfalls.

French version available.

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