

Product safety: The Québec Court of Appeal reaffirms the scope of manufacturers' duty of warn

September 12, 2024

In a [recent case](#), the Québec Court of Appeal reiterated manufacturers' important responsibility to provide product safety information, including about risks discovered only after their products have been launched on the market.

In particular, this decision points out that mere compliance with regulatory standards on consumer product safety may sometimes be insufficient for manufacturers to fully meet their legal duties to provide information on the dangers associated with their products.

This case involved the use of a cleaning product, which caused a faucet pipe to rupture from corrosion, resulting in several thousand dollars worth of damage to a residence.

Given the lack of sufficient indication on the product label about the risk of metal corrosion and how to prevent it, the manufacturer was held liable for the damages. The distributor of the faucet damaged by the product was also held partly liable for the damages, due to its own failure to proactively communicate a warning about the risk of corrosion to customers who had already purchased the faucets.

The extent of a manufacturer's duty of warn

In this case, the manufacturer was found liable for the product's lack of indications pursuant to articles 1468, 1469, and 1473 of the [Civil Code of Québec](#), as well as [section 53 of Québec's Consumer Protection Act](#).

In Québec, manufacturers have a general duty to provide information on their products. This obligation stems from various sources, including articles 1468 and 1469 of the [Civil Code of Québec](#), which deal specifically with safety defects in goods. In addition, under [section 53 of the Consumer Protection Act](#), manufacturers are also required to provide consumers with information on how to protect themselves against risks or dangers that cannot be detected by them.

Thus, manufacturers must not only inform users of the risks inherent to the use of their products, but also how to safely use them. Manufacturers' liability is presumed where a

user or consumer establishes by a preponderance of evidence that: (1) the product presents a danger; (2) the consumer has suffered damage; and (3) there is a causal link between the two. However, in such circumstances, manufacturers can avoid liability by demonstrating that they have complied with their duty of warn.

In its decision, the Court of Appeal notes that the manufacturer failed to provide adequate information about its cleaning product's potential to corrode metals. Furthermore, the manufacturer was aware of this risk, as one of its equivalent products, intended for the industrial sector bears an explicit statement that it could prove corrosive to metals.

The Court of Appeal also emphasizes that compliance with regulatory labelling standards does not exempt manufacturers from providing the necessary information to adequately warn users of the risks associated with the product. It also points out that the intensity of the manufacturer's duty to provide information varies according to the hazards and risks specific to a product. The greater the risks associated with the product, and the more severe the potential consequences of these risks, the more the manufacturer will need to ensure that the required information is adequately communicated to users.

In addition, the Court points out that when a new risk is discovered, end users who have already acquired the product may need to be notified. In short, amending product documentation following the discovery of a new safety defect may not be sufficient. Here, the distributor who had sold the faucet to consumers was also found partly liable for the damages caused by water leakage, following the corrosion of the faucet, because it failed to proactively warn previous purchasers of the corrosion risks to the faucet when certain cleaning products are used.

Conclusion

Before marketing a product, it remains imperative to ensure that consumers are provided with appropriate warnings about the risks associated with the product, as well as ways of safeguarding against these risks. Such warnings should therefore be accompanied with instructions on the appropriate means of protection that consumers should be taking. The greater the dangers and consequences associated with products, the more courts expect manufacturers and distributors to provide adequate information.

Contact us

BLG lawyers regularly assist manufacturers and distributors with ensuring that their products comply with all applicable regulations, including the [Consumer Protection Act](#). If you have any questions, don't hesitate to reach out to one of the key contacts below, or any member of BLG's [Consumer Goods & Hospitality Group](#).

By

[Guillaume Talbot-Lachance](#), [Élisabeth Lesage-Bigras](#), [Arpiné Danielyan](#)

Expertise

[Corporate Commercial](#), [Products Law](#), [Consumer Goods](#), [Retail & Hospitality](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.