

Did the plaintiff fabricate a class action proceeding in Charland v. Hydro-Québec?

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It is not every day in a class action that the Superior Court renders a decision on the merits of the case. Yet, not only is this the situation in *Charland v. Hydro-Québec*, the Superior Court also includes scathing criticisms against the plaintiff.

On May 29, 2018, Justice Steve J. Reimnitz dismissed the class action in which the plaintiff was claiming from the defendant, Hydro-Québec, the refund of “administration fees,” which she had qualified as “interest” to be paid in addition to the 5% rate provided in the *Interest Act* (the IA). In support of her claims, the plaintiff unsuccessfully submitted to the Court numerous arguments.

In regard to the nature of the “administration fees,” the Court decided in favour of the defendant by stating that these fees could not be considered as interest. In particular, the legislator adopted this consumer protection law in order to force the lender to reveal the annual rate contracted by the borrower. This case cannot be classified as a borrower/lender situation, and the plaintiff cannot further find herself in such a situation since her relationship with Hydro-Québec is regulated. The judge was careful in specifying that the interpretation suggested by the plaintiff has nothing to do with the intent of the legislator at the time that the IA was adopted. In fact, this interpretation does not account in any way for the particular context imposed by a regulated contract of a mandatory nature applicable to the defendant. For this sole reason, the Court dismissed the class action.

The judge, *in obiter*, also rendered a decision on all other arguments raised by the plaintiff and formulated several criticisms against her. For example, while the plaintiff was raising the issue of Hydro-Québec’s failure to inform, given the difficulty in obtaining the true information on the rate of paid “administration fees,” the judge noted the absence of prejudice and the failure to respect the obligation to inform oneself. In particular, administration fees billed by Hydro-Québec were lower than the rate authorized by the Régie de l’énergie. The judge also criticized the plaintiff for being the author of her own misfortune. In fact, the plaintiff willfully omitted to pay her bills so that she would be billed for administration fees, “[translation] so as to artificially create a prejudice that she alleges having suffered, and thus, with the goal of fabricating the class action submitted before the Court.”

The last remark should incite our courts to scrutinize more carefully certain class actions that demonstrate, from the authorization stage, an aspect that is artificial and concocted.