

Watchdog attacks recycling fees

Consumers' group applies to file suit over levies on beverage containers

By ROBERT MATAS

The Globe and Mail

Thursday, July 14, 2005

VANCOUVER – Consumers in British Columbia have paid \$60-million in fees for recycling beverage containers although companies have no legal authority to impose the levy, says the president of the Consumers' Association of Canada.

“There was never supposed to be a recycling fee,” Bruce Cran said yesterday.

Those costs were expected to be included in the price of the drinks, not included as an extra charge at the cash register, he said. “It was supposed to be a polluter-pay program and they [beverage manufacturers and distributors] were to accept responsibility for their own pollution,” Mr. Cran said.

In 1998, the province required the beverage industry to charge a deposit to encourage consumers to return the containers. Two years later, the industry began to impose an extra recycling fee at the cash register.

In an effort to put the onus for recycling back on the beverage industry, the consumers group has applied to file a class-action lawsuit against Encorp Pacific (Canada), the agency that collects and recycles beverage containers, and 40 companies that manufacture and sell beverages in the province.

The consumer watchdog group says consumers should receive restitution for the recycling fees that allegedly were imposed without any authority. The group also alleges the companies unjustly kept \$70-million from deposit fees on containers that were not returned.

The association set out the basis for its lawsuit in documents filed in B.C. Supreme Court that were made available yesterday. The companies have not yet responded in court to Mr. Cran's affidavit. The application for a class-action suit likely will be heard early next year.

B.C. consumers purchase about one billion beverage containers each year. About 75 per cent of the containers are recycled through the system administered by Encorp.

As the representative of the consumers group, Mr. Cran was involved in consultations with the B.C. government on the recycling program.

“Ministry staff assured all stakeholders present that there would be no charge to consumers for the costs of the proposed recycling scheme,” he stated in the affidavit. “The costs were to be paid by the manufacturers of beverages in containers.”

When the program was announced in 1997, the government confirmed that the cost would be borne by those who manufacture and sell the product, Mr. Cran said, quoting from a ministerial statement made in the legislature.

Former premier Glen Clark and former environment minister Cathy McGregor reaffirmed on two separate occasions that all recycling costs would be paid by the manufacturers, he said.

The Liberal government maintained the same position, saying in 2002 that the industry was responsible for financing the system.

However, in 2000, the recycling fee started showing up as a separate levy added on at the cash register, similar to GST.

The recycling fee is not included in the price on the shelf, Mr. Cran said. When he asked cashiers about the fee, “the great majority of the responses that I received were that the fee or levy was a government charge,” he said. No one told him that the recycling fee was really part of the price of the product and not a government-ordered levy, he said.

Encorp and the beverage manufacturers, not consumers, have a responsibility to recycle the containers, Mr. Cran added.

“Encorp and the other defendants, without any authority, transferred to the consumer all costs incurred [under government regulations requiring recycling]. There was no authority for the defendants to avoid financial obligations . . . by downloading all costs and more to the consumer in the form of a recycling fee.”

Murray Smith, lawyer for the consumers association, said the beverage companies excluded the cost of recycling from the price of their products on the shelf for competitive reasons. However, recycling was to be part of the cost of doing business, similar to rent, raw materials and labour costs.

“What they have done is taken a can of Coke and said, ‘It’s only a buck.’ But when I get into the car or get home and look into the bag, I see it is actually \$1.01 because they added a recycling fee on the bill,” he said. “The average consumer has no idea they are paying for that.”

The levy shows up on the receipt like a government charge, Mr. Smith added.

The consumer group also alleges that Encorp and the beverage industry “confiscated” deposits on beverage containers that were not returned.

The government required a deposit to be paid as an incentive to consumers to bring containers back. The government did not provide for the seller to retain any funds from the deposits for its own use, Mr. Cran stated in his affidavit.

On many occasions, he said, he did not return a container for a refund. In some cases, he broke the bottle or used it for other purposes, such as gardening.

“In no instance did I agree that Encorp or any [beverage companies] could keep the deposit for their own use,” he stated. The companies were not authorized by the government to use the deposits, he added.

However, funds from deposits on containers that were not returned were used to cover unrelated company expenses, Mr. Cran said. Some funds were used to cover expenses of Encorp officers on unrelated business or used to pay off damages awarded against Encorp for improper conduct in the operation of its recycling plan and for recycling costs before the fee was levied, he said.