

PROVINCE OF NEW BRUNSWICK  
FINANCIAL AND CONSUMER SERVICES TRIBUNAL

IN THE MATTER OF THE *DIRECT SELLERS ACT*, S.N.B. 2011, c. 141 AND THE *COST OF CREDIT  
DISCLOSURE AND PAYDAY LOANS ACT*, R.S.N.B. 1973, c. C-28.3

Docket: MS-003-2021

BETWEEN:

**Financial and Consumer Services Commission,**

Applicant,

-and-

**9206-4880 Québec Inc. doing business as RH Entreprises/Les Entreprises RH Isolation  
et Décontamination, and Raynald Huet,**

Respondents.

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## DECISION AND ORDER

**PANEL:** **Mélanie McGrath**, Chair of the Tribunal

**DATE OF HEARING:** **June 28, 2023**

**WRITTEN REASONS:** **March 30, 2024**

**APPEARANCES:** **Marc Wagg**, for the Financial and Consumer Services  
Commission

**Suzy Guylaine Gagnon**, for the Respondents

## I. DECISION

1. I approve the *Settlement Agreement* signed by the parties.

## II. OVERVIEW

2. 9206-4880 Québec Inc. which operates under the business name of RH Entreprises/Les Entreprises RH Isolation et Décontamination is an extra-provincial corporation duly incorporated under the laws of Quebec and registered in New Brunswick under the *Business Corporations Act*, R.S.N.B. 1973, c. B-9.1. In these reasons, I will use the name “RH Entreprises” in reference to 9206-4880 Québec Inc. doing business under the business name of RH Entreprises/Les Entreprises RH Isolation et Décontamination.
3. Raynald Huet is the president of RH Entreprises.
4. RH Entreprises has a registered address in New Brunswick at 101-133 Prince William Street in Saint John; however, this location is the premises of the “Harbour Centre”, a company offering a wide range of support services for private companies. The Respondents have no staff on the premises, but mail may be delivered there, and the Respondent can be reached there by telephone. The registered address for RH Entreprises in Quebec is 1761 Des Érables Street, Saint-Lambert-de-Lauzon, Quebec G0S 2W0.
5. In New Brunswick, RH Entreprises operated in the area of home renovations with a focus on the installation of insulation and mini-split heat pumps and the remediation of mould and mildew.
6. Beginning in the summer of 2019 and continuing until March 2020, RH Entreprises conducted regulated activities under the *Direct Sellers Act*, S.N.B. 2011, c. 141. These activities resulted in direct sales contracts with 203 members of the public. The Respondents were never licensed under the *Direct Sellers Act*.
7. Members of the public saw advertisements online that offered either program subsidies towards the purchase of insulation products or energy-efficient solutions for their home, a chance to win insulation products or a heat pump, or a chance to win a home heating system for free or at a low cost.
8. The name RH Entreprises did not appear in the advertisements. Some advertisements featured an image of an NB Power bill containing the logo but not the name. Many members of the public believed it was an advertisement from the

government or NB Power due to the use of the word “subsidy” [*subvention*] or inclusion of NB Power’s brand imagery, colours or logo.

9. On January 31, 2020, the Financial and Consumer Services Commission [the “Commission”] filed a notice of application with the Tribunal, asking it to restrict, on an interim basis, the regulated activities conducted by RH Entreprises in New Brunswick.
10. The Application resulted in the acceptance of an undertaking given to the Tribunal and dated October 19, 2020, whereby RH Entreprises undertook

to refrain from conducting, in New Brunswick, any or all activities regulated by the *Direct Sellers Act*, S.N.B. 2011, c. 141, and by the *Cost of Credit Disclosure and Payday Loans Act*, S.N.B. 2002, c. 28.3, until the first of the following events to occur:

- 1) The Tribunal has made a final decision with respect to a Statement of Allegations filed by the Commission against 9206-4880 Québec Inc.;
- 2) Following its investigation, the Commission notifies 9206-4880 Québec Inc. that it does not intend to file a Statement of Allegations against 9206-4880 Québec Inc.; or
- 3) 9206-4880 Québec Inc. gives the Commission four (4) months’ prior notice before resuming “business” in New Brunswick.

Nothing in this undertaking shall prevent 9206-4880 Québec Inc. from answering questions from its clients with respect to products and services already provided and from honouring all guarantees on such products and services.

11. Since the notice of application was served, RH Entreprises has ceased operations in New Brunswick.
12. On November 2, 2022, the Commission also filed a Notice of Application for Approval of a Settlement along with a *Settlement Agreement* signed by the parties and a draft order.
13. In the *Settlement Agreement*, the Respondents acknowledged that they had entered into direct sales contracts with 203 members of the public without being licensed under the *Direct Sellers Act*, contrary to the requirements of the Act.
14. The parties ask the Tribunal to approve the following sanctions:
  - a) Raynald Huet pay the Commission an administrative penalty of \$7,000.

- b) RH Entreprises pay the Commission an administrative penalty of \$35,000.
- c) The Respondents will cease to conduct all or any regulated activities for one (1) year following the date on which the settlement order is signed.
- d) The Respondents jointly and severally pay the Commission \$3,000 in investigation costs.
- e) The Respondents and all administrators and employees of RH Entreprises will cease to breach the Act.
- f) All requests to cancel direct sales contracts entered into by RH Entreprises that met the requirements of section 22 of the *Direct Sellers Act* are hereby honoured, and failure to do so will result in further violation under subsection 24.6(1) of the Act.

### III. ISSUES

- 15. To determine whether I should approve the *Settlement Agreement*, I must answer the following questions:
  - a) Are the sanctions proposed by the settlement within the parameters of what is reasonable?
  - b) Is the proposed settlement in the public interest?

### IV. ANALYSIS

#### A. TEST

- 16. Subsection 24.81(1) of the *Direct Sellers Act* provides that the Tribunal may dispose of any administrative proceeding conducted by the Commission through a settlement agreement that is approved by the Tribunal.
- 17. The test for the endorsement of a settlement under the Act was established by the Tribunal in ***New Brunswick (Financial and Consumer Services Commission) v. Rhino Ventures Inc. et al.***, 2021 NBFCST 7 (“***Rhino Ventures***”). In that decision, the Tribunal stated the following:
  - 12. This is the first time the Tribunal has been asked to approve a *Settlement Agreement* under the *Mortgage Brokers Act*, the *Cost of Credit Disclosure and Payday Loans Act* and the *Real Estate Agents Act*.

13. Paragraph 79(1)(a) of the *Mortgage Brokers Act* provides that the Tribunal may terminate an enforcement proceeding (or administrative proceeding) by approving a *Settlement Agreement*:

[...]

14. The *Real Estate Agents Act* and the *Cost of Credit Disclosure and Payday Loans Act* have identical provisions: sections 43.81 and 51.81 respectively. All three statutes are silent as to the test to be applied by the Tribunal in deciding whether to approve a *Settlement Agreement*.

15. In *New Brunswick (Financial and Consumer Services Commission) v. Howse*, 2018 NBFCST 2 [Howse] and *New Brunswick (Financial and Consumer Services Commission) v J.B. Côté et Fils Ltée et al.*, 2021 NBFCST 6 [J.B. Côté], this Tribunal considered the approval of settlements under equivalent provisions of the *Securities Act* and the *Pre-arranged Funeral Services Act*. The Tribunal formulated the test to be met for approval of a settlement agreement as follows:

(a) Are the sanctions proposed by the settlement within the parameters of what is reasonable?

(b) Is the proposed settlement in the public interest?

16. The Tribunal also stated in *J.B. Côté*, at paragraph 14, that it would be desirable that this test be applied across “financial and consumer services legislation”, as this term is defined in section 1 of the *Financial and Consumer Services Commission Act*. I agree. Given that the *Mortgage Brokers Act*, the *Real Estate Agents Act* and the *Cost of Credit Disclosure and Payday Loans Act* come within the definition of “financial and consumer services legislation” and that the provisions in these statutes are virtually identical to those in the *Securities Act* and the *Pre-arranged Funeral Services Act*, I find the test set out in *Howse*, and adopted in *J.B. Côté*, should be applied in this matter.

17. As recognized in *Howse* and in *J.B. Côté et Fils Ltée*, the purpose of the legislation is also relevant in determining whether a proposed settlement is in the public interest. Neither the *Mortgage Brokers Act*, the *Real Estate Agents Act* nor the *Cost of Credit Disclosure and Payday Loans Act* enunciate a purpose. However, these statutes should be interpreted in the broader context of financial and consumer services legislation. Section 2 of the *Financial and Consumer Services Commission Act* sets out its dual purpose:

**Purposes of Act**

**2** The purposes of this Act are to

(a) enable the Commission to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors, and

(b) enable the Commission to disseminate knowledge and promote understanding of the regulated sectors and develop and conduct educational programs.

18. In *J.B. Côté*, the Tribunal further stated that a hearing panel should also consider the following in analyzing whether to approve a *Settlement Agreement*:

- whether the allegations in the *Settlement Agreement* fall within the Tribunal's jurisdiction;
- that the only evidence that can be considered by the Tribunal is that contained in the *Settlement Agreement*;
- whether sufficient evidence has been provided in the *Settlement Agreement* to allow the Tribunal to determine whether the proposed sanctions come within reasonable parameters;
- whether the sanctions contemplated in the *Settlement Agreement* fall within the Tribunal's jurisdiction;
- whether the proposed sanctions are preventive and prospective in nature and not remedial or punitive;
- that a *Settlement Agreement* arises out of negotiations between Commission staff and the Respondents and therefore significant weight should be given to the agreement reached between parties, given that a balancing of factors and interests has already taken place in reaching that agreement; and
- that settlements serve the public interest by resolving enforcement proceedings quickly, efficiently and with certainty and by avoiding the significant resources that would be committed to a contested proceeding.

## **B. PROPOSED SANCTIONS**

18. I find that the sanctions proposed under the *Settlement Agreement* fall within the parameters of what is reasonable.
19. In *Howse* and *J.B. Côté*, the Tribunal set out 10 factors to be analyzed in determining whether the sanctions come within the parameters of what is reasonable. I now turn to the analysis of these factors to assess the reasonableness of the sanctions.

**(i) Seriousness of the Allegations**

22. The allegations against the Respondents are serious, as they relate primarily to unlicensed or unregistered activity under the *Direct Sellers Act*.
23. In *New Brunswick (Financial and Consumer Services Commission) v. Rhino Ventures Inc., formerly named Privateworx Capital Inc., Daniel Gallant, and Caroline Savoie*, 2021 NBFCST 7 [*Rhino Ventures*], the Tribunal established the following at paragraph 22 of the decision:

22. [...] As with other regulated industries, licensing requirements are the cornerstone of regulation of the financial and consumer services sectors in New Brunswick and serve an important purpose. Licensing or registration is designed to ensure that those who operate in the regulated sectors are proficient in their field and act with integrity. Unlicensed or unregistered activity undermines consumer protection and the integrity of the financial and consumer services sectors.

24. While the Respondents had not obtained the necessary licences under the *Direct Sellers Act*, RH Entreprises nevertheless entered into direct sales contracts with 203 members of the public, constituting repeated violations under section 4(1) of the Act, an important aggravating factor in this matter.

**(ii) Past Conduct**

25. There are no past violations of financial and consumer services legislation by the Respondents.

**(iii) Experience and Level of Activity in the Sectors**

26. In New Brunswick, RH Entreprises operated in the area of home renovations with a focus on the installation of insulation and mini-split heat pumps and the remediation of mould and mildew. There is no indication that the Respondents conducted direct selling activities in New Brunswick prior to their activities beginning in the summer of 2019.

**(iv) Recognition of the Seriousness of the Improper Activity**

27. The Respondents acknowledged the seriousness of the breaches in this matter by signing the *Settlement Agreement* and agreeing to the significant financial penalties. They have admitted to their breaches of the *Direct Sellers Act*.

**(v) Benefit Received as a Result of the Improper Activity**

28. RH Entreprises entered into a large number of direct sales contracts and, as a result, earned significant income from the activities it conducted without a licence.

**(vi) Risk to Customers in the Regulated Sectors**

29. The *Settlement Agreement* will prohibit the Respondents from engaging in regulated activities for a period of one (1) year, eliminating any risk to the public during that time. In addition, the significant administrative penalties agreed to in the *Settlement Agreement* should have the effect of deterring the Respondents from breaching the *Direct Sellers Act* in the future, which will also mitigate the risk to the public.

**(vii) Damage Caused to the Integrity of the Regulated Sectors**

30. All instances of unauthorized entities engaging in activities regulated by financial and consumer services legislation undermine the integrity of the regulated sector. However, this damage will be mitigated by the administrative sanctions proposed and the market bans set out in the *Settlement Agreement*.

**(viii) Deterrence and Education**

31. In analyzing the sanctions provided in the *Settlement Agreement*, I must determine whether they fulfil the goals of general and specific deterrence (see **Rhino Ventures** at paragraph 33). In my view, the sanctions proposed will accomplish the goals of general and specific deterrence.
32. The maximum administrative penalties under subsection 24.71(1) of the *Direct Sellers Act* are \$15,000 for an individual and \$75,000 for a person other than an individual. Each of the Respondents agreed to pay a significant administrative penalty in accordance with the obligations they failed to meet. These sanctions should deter the Respondents from breaching financial and consumer services legislation in the future.
33. In **Rhino Ventures**, the Tribunal explained that the purpose of general deterrence is to deter other industry participants from breaching financial and consumer services legislation (paragraph 38). The significant sanctions provided in the *Settlement Agreement*, as well as the ban on market participation, will have a deterrent effect and raise awareness of the need to comply with legislation governing regulated activities.

**(ix) Mitigating Factors**

34. The Respondents were very cooperative with the Commission in this matter and admitted to their acts of non-compliance.

**(x) Previous Decisions Made in Similar Circumstances**

35. The parties have submitted previous decisions on contraventions related to direct selling but none dealing specifically with the requirement to be registered or licensed.
36. In *Summit Energy Management Inc. v. Ontario (Energy Board)*, 2013 ONSC 318, the court upheld the decision of the Ontario Energy Board [the “OEB”] on appeal. The OEB imposed administrative penalties totalling \$234,000 on the Respondent after determining that, through the actions of five of its sales agents, the Respondent was guilty of 43 violations of the law and codes in connection with 17 of the 28 direct sales contracts in question. These 17 contracts were cancelled, and the Respondent was ordered to repay the money.
37. Having found that the Respondent had committed contraventions with a view to economic gain, the Board concluded that most of the contraventions fell into the high end of the “moderate” category. Contraventions classified as “unfair practices” fell within the “major” category. Although the decision did not explicitly state which unfair practices the Respondent was found guilty of, examples of unfair practices under the legislation include making false, misleading or deceptive statements, failing to disclose information about products or services, failing to give a consumer notice of the price to be paid and failing to provide a copy of the written contract. Among the “moderate” contraventions was failure to deliver a written copy of the contract to the consumer within the time prescribed. The 23 “moderate” violations carried penalties of \$9,000 each, while the two “major” contraventions carried penalties of \$13,500 each.
38. Consumer Protection BC has issued several rulings on contraventions related to direct selling. The first is the decision in the report to the director in the matter of *Simply Green Home Services (BC) Inc. #30128* (June 9, 2020), dealing with five consumer complaints. The arbitrator found that Simply Green had contravened the prohibition of deceptive acts and practices. While the legislation authorized a maximum fine of \$5,000 for an individual and \$50,000 for a corporation, the arbitrator ordered a penalty of \$8,000 for the company. (It should be noted that the legislation includes specific guidelines that prescribe the penalty to be imposed as well as aggravating or mitigating circumstances.)
39. Another Consumer Protection BC decision is the decision in the report to the director in the matter of *Bath Time Innovations #30228* (October 15, 2019), in which the respondent was found guilty of three violations in its dealings with a complainant. The consumer had sought to cancel a direct sales contract for bathroom renovation and

fitting services. The consumer had paid a deposit of a little over \$9,000 toward a total contract price of over \$36,000 before giving notice of intention to cancel the contract. The respondent failed to refund the deposit and was found in breach of the legislation. Bath Time Innovations was ordered to pay an administrative monetary penalty of \$12,500, determined according to the same guidelines used in the *Simply Green* case.

40. Another decision regarding Bath Time Innovations is the decision in the report to the director in the matter of *Bath Time Innovations #30119* (May 29, 2019). The company was found liable for failing to issue a refund within 15 days of the cancellation of a direct sales contract and for using a consumer contract not in compliance with statutory requirements. The arbitrator imposed an administrative penalty of \$6,500.
41. Administrative penalties for the above-mentioned direct sales activities ranged from \$6,500 in *Bath Time Innovations #30119* to \$13,500 in *Summit Energy Management*.
42. Given the case law, because the Respondents in this matter were not registered or licensed under the *Direct Sellers Act*, I conclude that the \$7,000 administrative penalty proposed for Raynald Huet and the \$35,000 administrative penalty proposed for RH Entreprises appear reasonable in the circumstances of this matter. These administrative penalties amount to approximately 50% of the maximum penalties under the *Direct Sellers Act*.

### **C. PUBLIC INTEREST**

43. I find that the administrative sanctions proposed in the *Settlement Agreement* serve the public interest. The activities in question constituted a serious breach, since the Respondents were not registered and did not have the necessary licences in accordance with financial and consumer services legislation. Therefore, significant and appropriate sanctions should be imposed.

### **V. ORDER**

#### **44. I hereby order that:**

- a) Pursuant to subsection 24.71(1) of the *Direct Sellers Act*, the Respondent Raynald Huet shall pay to the Financial and Consumer Services Commission an administrative penalty in the amount of \$7,000.
- a) Pursuant to subsection 24.71(1) of the *Direct Sellers Act*, Respondent 9206-4880 Québec Inc. doing business as RH Entreprises/Les Entreprises RH Isolation et Décontamination shall pay to the Financial and Consumer Services Commission an administrative penalty in the amount of \$35,000.

- c) Pursuant to paragraph 24.7(1)(c) of the *Direct Sellers Act*, the Respondents shall cease conducting all or any regulated activities for one (1) year following the date on which the settlement order is signed.
- d) Pursuant to subsection 44(1) of the *Financial and Consumer Services Commission Act*, the Respondents shall jointly and severally pay the Financial and Consumer Services Commission investigative costs of \$3,000.
- e) Pursuant to paragraph 24.7(1)(h) of the *Direct Sellers Act*, the Respondents and all administrators and employees of 9206-4880 Québec Inc. doing business as RH Entreprises/Les Entreprises RH Isolation et Décontamination shall cease breaching the Act;
- f) Pursuant to subsection 22(2) of the *Direct Sellers Act*, all requests to cancel direct sales contracts entered into by Respondent 9206-4880 Québec Inc. doing business as RH Entreprises/Les Entreprises RH Isolation et Décontamination that met the requirements of section 22 of the *Direct Sellers Act* shall hereby be honoured, and failure to do so shall constitute another violation under subsection 24.6(1) of the Act.

DATED this 30<sup>th</sup> day of March 2024

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Mélanie McGrath  
Tribunal Chair