

Legal update

Class actions cannot serve as a pretext to conduct commissions of inquiry

July 2018

Class actions

On June 26, the Honourable Gary D.D. Morrison, J.S.C. of the Quebec Superior Court dismissed a class action instituted against 49 respondents, including governments, a municipality, a Crown corporation and several dozen companies active in a variety of industries spanning automobile manufacturing, power transmission and distribution, telecommunications, the hotel industry, the restaurant sector, air transport and household appliance manufacturing.¹

The proposed class action had a rather unprecedented scope: it covered the "cumulative effects" of electromagnetic field (EMF) pollution emitted not only by the respondents, but also by all other emitters of EMF pollution not sued in the instituted proceeding. On behalf of virtually all Quebecers, the applicants were claiming damages of more than \$100,000 for each class member and seeking the issuance of injunctions prohibiting the respondents from emitting EMF pollution exceeding the threshold unilaterally established by the applicants' experts and falling well below applicable standards, in Canada or internationally.

This judgment gave the Superior Court (the Court) the opportunity to reaffirm that class actions, despite their social motives, cannot serve as a pretext to conduct commissions of inquiry.

Class description and theory of "cumulative effects"

The class description proposed by the applicants covered any person living, working or studying in Quebec, as well as flora and fauna exposed to EMF pollution exceeding the threshold established by the applicants' experts. The applicants believed it necessary to include, within the class description, a parameter based on the exposure threshold to EMF pollution in order to define the class in accordance with their theory based on the "cumulative effects" of EMF pollution.

However, in the Court's view, having class membership depend on an exposure threshold to EMF pollution described in technical and complex terms rendered the class description so unclear that most people would be unable to determine whether or not they were included in the class.

Faced with this and several other deficiencies, the Court concluded that it is not its role to redefine the class, which it could not do in this case without altering the inherent nature of the instituted class action.

Class action as a pretext for a commission of inquiry

The Court also concluded that, through their class action, the applicants were essentially seeking to bring about significant reform to EMF regulations in Quebec. However, the Court reaffirmed that it could not exercise regulatory

powers intended to supersede legislative and executive powers, and that the courts were not an appropriate forum for debating scientific theories removed from a true factual context that may give rise to legal action.

Ruling on the theory of the "cumulative effects" put forward by the applicants, the Court concluded that this theory had, in reality, the same scope as an action directed indiscriminately against all emitters of stray particles in the ambient air or noise, and that it was not the courts' role to rule on this type of issue.

At the end of its analysis, the Court concluded that the scope of the proposed class action was contrary to the guiding principle of proportionality. This conclusion also reflected the Court's acknowledgement of how the applicants had managed their case since 2015, multiplying amendments and other preliminary exceptions to the point where the hearing of the application for authorization required four hearing days, close to three years after the action was instituted.

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Footnote

¹ *Durand v. Attorney General of Quebec*, June 26, 2018, 500-06-000760-153.

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