

Legal update

A #MeToo-era class action authorized, with a twist

May 2018

Class actions

Litigation

On May 22, Judge Donald Bisson of the Superior Court authorized a class action applied for by *Les Courageuses* (The Courageous Ones), a non-profit organization representing individuals who claim to have been assaulted or harassed by Gilbert Rozon.

The highly publicized allegations against Mr. Rozon are not the only reason this decision has garnered widespread interest. To our knowledge, this is the first class action to have been authorized in Quebec wherein an individual person has been named as the sole defendant. The court underlined this novelty, noting, “[t]he peculiarity of this file is that the applicant is not bringing its claim against the institution within which the alleged offender worked, but is instead bringing its claim solely against the alleged offender.”

Authorizations of class actions in Quebec

It is generally recognized that Quebec takes a flexible, liberal, and generous approach to authorizing class actions. At this stage, the primary objective is to prevent unnecessary litigation in which parties must defend against frivolous or untenable claims. In Quebec, class actions must be authorized once the applicant has demonstrated: (1) the claims of the class members raise identical, similar, or related issues of law or fact; (2) the facts alleged appear to justify the conclusions sought; (3) it would be impracticable for class members to assert their rights outside the context of a class action; and (4) the class representative can properly represent the class members. In this case, Judge Bisson found all four criteria were met.

The judgment – reasons given for authorization

First, and despite acknowledging the individualized nature of each allegation of sexual assault or harassment, Judge Bisson found the questions of fact or law raised by *Les Courageuses* to be sufficiently identical, similar, or related. In his reasons, Judge Bisson referred to the *Les Courageuses*' assertion that Mr. Rozon's *modus operandi* was common to all the alleged instances of sexual assault and harassment.

Judge Bisson also found sufficient commonality in the application for moral and pecuniary damages, considering that a common hearing of evidence would assist the court in its appreciation of the general consequences suffered by the alleged victims. Similarly, with respect to punitive damages, Judge Bisson found a common hearing of evidence would allow the court to more fully appreciate the seriousness of Mr. Rozon's alleged behaviour while preventing a repetition of legal and factual analyses.

Second, Judge Bisson found that Patricia Tulasne, the class representative, had an appearance of right to moral, pecuniary, and punitive damages. Ms. Tulasne's testimony was found to be in itself sufficient to demonstrate the

appearance of right, given the nature of the allegations. Regarding Ms. Tulasne, the application sought \$200,000 for moral damages and \$200,000 for pecuniary damages. Regarding the other class members, moral and pecuniary damages were sought on the basis of individual recovery. Interestingly, the application sought punitive damage on the basis of collective recovery, and this was not contested by Mr. Rozon. Ultimately, and should it be required, the method of recovery will be decided at a later stage.

Third, the court found the class was adequately described, despite a lack of temporal boundaries and the exact size of the class remaining unknown. Among his reasons, Judge Bisson explained that victims seeking to protect their identity would only be able to exercise their rights under the anonymity provided in the context of a class action.

Finally, Mr. Rozon did not contest Ms. Tulasne's suitability as class representative, and the court found that she met all the requirements to fulfil that role: Ms. Tulasne was found to have personal interest in the outcome of the case, the competence to act as mandatary, and no conflicts of interest.

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At the time of writing, no application for leave to appeal has been filed.

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