

Blakes Bulletin

Class Actions

Court of Appeal Confirms Judgment Refusing to Authorize Largest Proposed Class Action in Québec's History

ROBERT TORRALBO AND NASSIF BOUMALHAB

In a judgment rendered on May 23, 2008, the Court of Appeal confirmed the judgment rendered by the Superior Court of Québec on January 17, 2006 refusing to grant Option Consommateurs the authorization to institute a class action against a number of drug manufacturers seeking damages in the amount of approximately C\$4-billion in *Option Consommateurs v. Novopharm et al.*

The motion seeking authorization to institute the class action was filed in February 2003, shortly after a newspaper article appeared in La Presse reporting that certain unnamed pharmaceutical manufacturers may have given "illegal" rebates to pharmacists in Québec and other provinces in the form of benefits and further reporting that an investigation was launched into this matter by the *Régie de l'assurance maladie du Québec*.

By way of its proceeding, Option Consommateurs sought to represent all Québec residents against nine manufacturers based on this newspaper article and on general vague allegations that "illegal" rebates purportedly granted by these manufacturers cost Québec residents more for their private or public drug insurance plans.

In rendering this judgment, the Court of Appeal of Québec has maintained the direction initiated by the judgment of the Superior Court of Québec in this case, and in class proceedings generally, namely that despite class action legislation that has earned the Province of Québec the reputation of a class action haven, the authorization of class action proceedings is not simply a rubber-stamp process which invites the institution

of proceedings grounded merely on general and vague allegations and pure speculation.

The Court of Appeal for Québec also clarified the legal principle pertaining to standing in the context of class actions. In this respect, the court confirmed that save for special circumstances, such as situations where the respondents to a proposed class action are alleged to have conspired in committing the alleged fault, petitioners to a proposed class action must demonstrate some contractual or other legal relationship with each and every named respondent.

Blakes successfully represented one of the respondents in these proceedings, and significantly contributed to maintaining a precedent which will hopefully serve in the defence of future class action proceedings and relieve the reputation Québec has developed as a class action haven.

For more information on this case, please contact one of the following co-authors:

Montréal	<u>Robert Torralbo</u>	514-982-4014
	<u>Nassif BouMalhab</u>	514-982-4041

Or, you may contact any of the following members of Blakes national Class Actions Group:

Ottawa	<u>Gord Cameron</u>	613-788-2222
Toronto	<u>Jeff Galway</u>	416-863-3859
	<u>Jill Lawrie</u>	416-863-3082
	<u>Gordon McKee</u>	416-863-3884
Calgary	<u>Dalton McGrath</u>	403-260-9654
	<u>Web Macdonald</u>	403-260-9604
Vancouver	<u>David Neave</u>	604-631-3338
	<u>James Sullivan</u>	604-631-3358

Go to blakes.com/english/subscribe.asp to subscribe to other Blakes Bulletins.

Blakes periodically provides materials on our services and developments in the law to interested persons. If you do not wish to receive further bulletins or other materials from Blakes, please contact Blakes Marketing Department at 416.863.3036 or dorothy.byers@blakes.com. For additional information on our privacy practices, please contact us at privacyofficer@blakes.com. Blakes Bulletin is intended for informational purposes only and does not create a lawyer-client relationship. The transmission of this information does not suggest Blakes or any of its lawyers are practising law of any jurisdiction other than Canada. The information provided in this bulletin is summary in nature and does not constitute legal advice. We would be pleased to provide additional details or advice about specific situations if desired. For permission to reprint articles, please contact Blakes Marketing Department at 416.863.2403 or lynn.spencer@blakes.com. ©2008 Blake, Cassels & Graydon LLP.