

SUPERIOR COURT

(Class actions chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500-06-001319-249

DATE: January 6, 2025

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

SEAN RYAN

Applicant

v.

ATTORNEY GENERAL OF CANADA

Defendant

JUDGMENT ON MOTION TO SUSPEND CLASS ACTION

OVERVIEW

[1] The Applicant, Mr. Sean Ryan, asks that the Application for permission to institute a class action that he filed in the province of Quebec be stayed in favour of parallel proceedings filed before the Superior Court of Ontario.

CONTEXT

[2] On July 2, 2024, the Applicant filed an application seeking authorization to institute a class action and to obtain the status of representative (the “**Quebec Application**”).

[3] The Applicant seeks to represent, “all persons imprisoned in a federal penitentiary in Québec on or after June 18, 1992”. The proposed class action is aimed towards the Defendant, the Attorney General of Canada. It claims damages pursuant to the *Canadian*

Charter of Rights and Freedoms and the *Civil Code of Quebec* (“**C.C.Q.**”) as a result of unlawful strip searches conducted in federal penitentiaries located in Quebec.

[4] On March 3, 2023, the Ontario Superior Court certified a national class action in *Farrell v. Attorney General of Canada*¹ between the same parties, based on the same facts and concerning the same subject matter (the “**Ontario Class Action**”).

[5] All potential class members of the Quebec Application are included in the definition of the certified class in the Ontario Class Action.

[6] On June 27, 2024, the plaintiffs in the Ontario Class Action amended their Statement of Claim, with the consent of the Defendant, to include an additional cause of action in extracontractual civil liability under article 1457 of the *Civil Code of Quebec*.²

[7] The Applicant seeks the suspension of the Quebec Application in favour of the certified national Ontario Class Action.

ANALYSIS

1. Applicable Law

[8] Article 3137 C.C.Q. allows a Quebec Court to stay proceedings brought before it “if another action, between the same parties, based on the same facts and having the same subject is pending before a foreign authority, provided that the latter action can result in a decision which may be recognized in Quebec”.

[9] Article 3155(4) C.C.Q. prevents the recognition of a foreign judgment when a similar action is pending in Quebec and the Quebec court was “first seized of the dispute”. Thus, a Quebec action can only be stayed under article 3137 C.C.Q. if the foreign action was filed first.³

[10] The Court of Appeal has observed that the general rules of *lis pendens* “do not apply neatly to motions for authorization to institute class actions”.⁴ For example, there can be identity of parties, even in the presence of different applicants if the proposed classes are similar.⁵

¹ *Farrell v. Attorney General of Canada*, 2023 ONSC 1474; Exhibit A-1.

² Exhibit A-2.

³ *Micron Technology Inc. c. Hazan*, 2020 QCCA 1104, paras. 30 and 31; *FCA Canada inc. c. Garage Poirier & Poirier inc.*, 2019 QCCA 2213, para. 45.

⁴ *Micron Technology Inc. c. Hazan*, *supra*, note 3, para. 26.

⁵ *Ibid*; *Schmidt c. Johnson & Johnson inc.*, 2012 QCCA 2132, para. 32 (Motion to dismiss an application for authorization to institute a class action granted, 2019 QCCS 419); *Hotte c. Servier Canada inc.*, [1999] R.J.Q. 2598 (C.A.).

[11] Given the above, it is generally recognized that a Quebec court can rely on article 3137 C.C.Q. to stay a Quebec motion to authorize a class action in favour of another Canadian class action proceeding if:

- 11.1. Both motions are directed against the same defendants;
- 11.2. The proposed group in the Quebec class action is included in the foreign class action;
- 11.3. Both motions are grounded in the same facts, have the same object and advance the same causes of action;
- 11.4. The motion to certify the foreign class action was filed first.

[12] However, even if the above conditions are not met (for example even if the Quebec application was filed first), a Quebec court can still use its inherent jurisdiction under article 49 of the *Code of Civil Procedure* (“**C.C.P.**”) to stay a class action if the interests of the Quebec members and the proper administration of justice militate in favour of such a suspension.⁶

[13] It will generally not be in the interests of justice or of the parties “to have two class actions proceed on the merits in parallel in front of different courts”. “Besides the risk of conflicting judgments, there is also the cost to the parties and the waste of scarce judicial resources”.⁷

[14] Other factors to be considered include the risk of contradictory judgments and whether one of the proposed class actions “includes issues, remedies or class members not included in the other”.⁸

[15] In all cases, when it stays a Quebec application to authorize a class action, the court must strive to protect the rights and interests of the Quebec members.⁹ Among other things, the court must ensure that:

- 15.1. The proposed representative is in a position to properly represent them;
- 15.2. The Quebec residents receive the benefits of any applicable favourable Quebec legislation;
- 15.3. Any notices and other communications are disseminated in Quebec and in

⁶ *Micron Technology Inc. c. Hazan*, *supra*, note 3, paras. 35 and 47; *FCA Canada inc. c. Garage Poirier & Poirier inc.*, *supra*, note 3, paras. 73 and 78.

⁷ *Micron Technology Inc. c. Hazan*, *supra*, note 3, para. 51.

⁸ *Ibid*, para. 52.

⁹ Art. 577 C.C.P.

French.¹⁰

2. Discussion

[16] The conditions to stay the Quebec Application are met:

- 16.1. The Quebec Application and the Ontario Class Action are directed against the same defendants;
- 16.2. The proposed group in the Quebec Application is included in the Ontario Class Action;
- 16.3. Both motions are grounded in the same facts, have the same object and advance the same causes of action;
- 16.4. The motion to certify the Ontario Class Action was filed first.

[17] A suspension is also in the interest of justice and of the class members in that:

- 17.1. The Ontario Class Action has been certified, while the Quebec Application has not yet been presented to this Court;
- 17.2. The Ontario Class Action is moving forward, including steps that include a notice campaign and discovery, with the collaboration of all parties;
- 17.3. The plaintiffs and class members in both files are represented by the same counsel;
- 17.4. Quebec counsel are actively participating in proceedings underway in Ontario with a view to protecting the rights and interests of Quebec class members;
- 17.5. The applicable legal principles under the *Canadian Charter of Rights and Freedoms* are the same in Ontario and Quebec;
- 17.6. The Ontario proceeding has been amended to include a cause of action under the civil law of Quebec;
- 17.7. The class representative in Ontario can adequately represent the Quebec class members;
- 17.8. The Defendant does not contest the suspension.

¹⁰ *Micron Technology Inc. c. Hazan*, *supra*, note 3, para. 53.

[18] The order will include caveats to protect the interests of Quebec class members including praying act of class counsel's undertaking that notices be disseminated in both official languages.

FOR THESE REASONS, THE COURT:

[19] **ORDERS** a stay of proceedings in the file 500-06-001319-249 until a final decision is rendered in the matter of *Farrell v. Attorney General of Canada* (CV-20-00643396-00CP) or until this Court lifts this suspension;

[20] **PRAYS ACT** of the undertaking of Quebec class counsel and counsel for the defendants to ensure that any notices, web pages, advertisements, mass emails, dedicated phone lines, and similar official communication in relation to the class action be disseminated to Quebec class members in a way that makes it likely that the communication will be effective and that any such communication (and any attached documents prepared by the parties for the purpose of communicating with class members) be disseminated in both official languages;

[21] **ORDERS** Quebec class counsel to write to the Class action chamber coordinating judge at a minimum every six months to report on the progress of the Ontario Class Action;

[22] **THE WHOLE** without costs.

MARTIN F. SHEEHAN, J.S.C.

Mtre Lex Gill
Mtre Clara Poissant-Lespérance
TRUDEL JOHNSTON & LESPÉRANCE
and
Mtre Kent Elson
ELSON ADVOCACY
Lawyers for the Applicant

Mtre Marie Marmet
MINISTÈRE DE LA JUSTICE CANADA
Lawyers for the Defendant