How judicial cooperation is reshaping overlapping class actions

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In *Brazeau v. Canada (Attorney General)* (Brazeau) the Ontario and Québec courts adopted a novel approach to resolve motions in connection with overlapping class actions. The case concerned three class actions against the federal government for breaching the *Charter* rights of inmates held in administrative segregation. After all actions were certified/authorized, summary judgment was granted in the two Ontario class actions and the plaintiffs were awarded damages on an aggregate basis, plus further damages following individual issue trials. In the Québec action, Canada consented to a judgment of liability proportionate to its liability in the Ontario actions.

In view of the complex, multijurisdictional actions, the courts acted together in preparing a provisional decision for the parties to consider, holding a joint virtual hearing, and delivering a joint decision. The case sets a compelling example of how collaboration among the courts can achieve efficiency and economy in the management of multijurisdictional class actions.

One step further toward judicial cooperation in multijurisdictional class actions

The last year has seen a radical transformation of the traditional ways in which courts hear and manage class actions across Canada. The advent of virtual court hearings in the context of the COVID-19 pandemic, while originally born out of necessity and constraint, now has the potential to open up a plethora of new possibilities for parties, counsel, and judges to cooperate in multijurisdictional class actions.

The *Brazeau* case, which incidentally unfolded in the pandemic context, provides a compelling example of a highly collaborative judicial process in line with the courts' authority and discretion to conduct hearings outside of their home jurisdiction in accordance with *Endean v. British Columbia* (Endean), discussed by BLG in a previous article.[1] Such judicial cooperation across provinces is a promising way to promote efficiency, the economy of judicial resources, and coherent judgments while managing complex, multijurisdictional class actions.

This is not without precedent. In *Winder v. Marriott International Inc.*[2] (Winder), for instance, the parties consented to adopt the CBA Protocol, allowing the case management judges in the Alberta, British Columbia, Ontario, Québec and Nova Scotia actions to hold a joint case management conference in June 2020. At the hearing, after hearing submissions from the parties, the judges of the five courts respectively indicated that only the Ontario action would proceed, in line with the parties' agreement. As noted by Perrell J, the reasons released in *Winder* serve to "memorialize a successful collaboration of five superior courts from across the country that furthers access to justice and the fair and efficient administration of justice across the country."[3]

Similarly, in *McBain v. Hyundai Auto Canada Corp*.[4] (McBain), the Ontario Superior Court approved a common settlement that governed and resolved class actions in Ontario, Québec Saskatchewan and British Columbia. The Ontario court held a settlement approval hearing by videoconference, jointly with a hearing in the Superior Court of Québec. A single set of reasons was delivered for the settlement approval motions in both of the Ontario actions, and the Ontario court reviewed and adopted the reasons of Justice Gagnon in the Québec action, released concurrently. The parties agreed that they would discontinue the Saskatchewan and British Columbia actions, upon the approval orders from the Ontario and Québec actions being issued and entered.

[1] *Endean v. British Columbia*, 2016 SCC 42 at paras. 39 and 58.

[2] *Winder v. Marriott International Inc.*, 2020 ONSC 7701.

[3] *Winder* at para. 7.

[4] *McBain v. Hyundai Auto Canada Corp.*, 2021 ONSC 1734.

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