

The Tessier case: The Court of Appeal refuses to authorize an insurance-related class action

April 30, 2024

In its decision in Tessier ([2023 OCCA 688](#)), the Québec Court of Appeal upheld the dismissal of an application for authorization to institute a class action against various insurance companies. The application alleged a failure to disclose the existence of agreements with contractors in the insurance companies' network.

Analysis

Further to a review of the allegations, the Court of Appeal confirmed that the application should be dismissed since the existence of the agreements at issue did not allow to demonstrate a negative impact on the insureds, and therefore did not meet the test of the arguable case. Here are the key points of the judgment:

- **The application for authorization is based on opinion and conjecture:** [translation] "The application for authorization, as is evident on its face, confirms that this entire matter is based on intuition or contingencies",¹ which are not facts that can be considered proven.
- **No personal right of action:** The Court of Appeal points out that a court must examine the criterion of an arguable case from the standpoint of the representative plaintiff's personal right of action. Since the appellant has no personal right of action against his insurer,² the application must fail for the entire group.
- **Commission of inquiry:** The Court reiterates that a class action is not a commission of inquiry. [translation] "I myself would be tempted to view the action contemplated by the appellant as a vast 'fishing expedition' seeking to provide a basis for an unfounded claim".³

Comment

In Tessier, the Court reiterates that while the obligation to establish an arguable case is not onerous, [translation] "mere assertions are insufficient without some form of factual underpinning". The Court also points out that the arguable-case criterion must be assessed from the standpoint of the representative plaintiff's personal right of action.

Without raising the threshold, the Court of Appeal appears to confirm the recent tendency whereby allegations must be accompanied by some evidence in order to **establish an arguable case**. It also reminds that the Court's role is to ensure that the allegations can actually be considered proven. Finally (and above all) the Court reiterates that a class action is not a commission of inquiry.

¹ See para 69 of the judgment

² See para 71 of the judgment

³ See para 79 of the judgment

By

Stéphane Pitre, Marc-André McCann

Expertise

Disputes, Class Action Defence, Insurance

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription

preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.