

Best Interests of the Class: No Role for Self-Represented Representative Plaintiffs

October 04, 2019

The recent decision of Justice Fothergill of the Federal Court in [Rooke v Canada \(Health\)](#) confirms that self-represented individuals cannot act in a representative capacity in class actions.

Mr. Rooke, a self-represented litigant, sought to have an action for unpaid dental expenses certified as a class proceeding, with himself as the representative plaintiff. His previous attempt to file a statement of claim with respect to the proposed class proceeding had been rejected. After he learned that he could not bring a motion for certification without an underlying proceeding, his second statement of claim (which did not identify the action as a proposed class proceeding) was accepted.

Mr. Rooke then proceeded to file a motion to certify his action as a class proceeding. The assigned case management judge, Prothonotary Tabib, determined that the motion should not be accepted for filing because it did not comply with Rule 121 of the Federal Court Rules, which requires that parties acting in a representative capacity be represented by counsel:

Unless the Court in special circumstances orders otherwise, a party who is under a legal disability or who acts or seeks to act in a representative capacity, including a representative proceeding, shall be represented by a solicitor.

On appeal, the Federal Court upheld the decision. Justice Fothergill found that the plain language of the rule was clear, as was the rationale. When an individual acts on her own behalf without legal counsel, it is only her own rights and interests that are implicated. However, the rights and interests of others are at risk when an individual proposes to act in a representative capacity without the benefit of counsel, particularly in a situation where the self-represented litigant likely has neither the resources nor the insurance to do so.

While Mr. Rooke took the position that a lawyer is only required following the certification of the action, the Court disagreed. Citing Justice Winkler (as he then was) for the proposition that a class proceeding is not “...an individual action that metamorphosises to a class proceeding when certified,” the Court was clear that the rights of putative class members could be prejudiced from the initiation of an action

onwards in the absence of legal representation, including in respect of matters such as the framing of common issues and any applicable limitation period considerations.

The Court's focus on protecting the rights and interests of putative class members recognizes the inherent limits on the capacity of self-represented individuals to represent others, and highlights the importance of a putative class proceeding being advanced in the best interests of the class.

By

[Breanna Needham](#)

Expertise

[Class Actions](#)

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.

© 2025 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.