

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

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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

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