

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

04 octobre 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.

Par

[Breanna Needham](#)

Services

[Actions collectives](#)

BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

blg.com

Bureaux BLG

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, rue De La Gauchetière Ouest
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

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir soupesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à desabonnement@blg.com ou en modifiant vos préférences d'abonnement dans blg.com/fr/about-us/subscribe. Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à communications@blg.com. Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur blg.com/fr/ProtectionDesRenseignementsPersonnels.

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.