

Class actions grow in Quebec

Veteran Montreal litigation lawyer Jean Saint-Onge had never been involved with a class action lawsuit before 1997. But that all changed when he helped to defend Manulife in one of a series of class actions instituted by policyholders of participating life insurance policies that provide the benefit of premium offset, which led to several multi-million-dollar settlements across Canada and the United States.

"I developed a real interest in class actions after that, to the point where it now represents 90 per cent of my work," said Saint-Onge, a partner with Lavery and chair of the Barreau du Québec's committee on class actions since 2006.

According to Saint-Onge, who does exclusively defence work for mostly large Canadian companies and multinationals, class action is "terrific work" that requires him to collaborate closely with top executives and legal departments of sophisticated clients to help protect their reputations and money — often for potentially vast sums — in cases that involve everything from consumer protection and product liability laws to environmental nuisance and sexual abuse.

"It's an exciting field of law that is constantly evolving," said

Saint-Onge. "You need to be involved and to stay abreast of developments to properly advise clients."



Jean Saint-Onge

That's why he and other members of the small community of Quebec lawyers whose practices revolve around class action work are eagerly awaiting several judgments from the Court of Appeal of Quebec that deal with recent changes to the rules governing class actions in la belle province.

Part of a major reform of the Quebec Code of Civil Procedures intended to improve access to justice, the changes include an end to the rule that denied companies with less than 50 employees standing to institute or be part of a class action, as well as a

reinforcement of the principle that Quebec courts must consider the interests of Quebec members of multi-jurisdictional class actions before granting discontinuances of motions for authorizations to allow class actions introduced in other Canadian jurisdictions involving Quebec residents to proceed or to allow Quebec class actions to be stayed.

The biggest change, however, is an end to the asymmetrical right of plaintiffs in class action suits to appeal judgments that disallow an authorization. Introduced in 1978, when Quebec became the first province in Canada to adopt an American-modeled, plaintiff-oriented class action regime, the rule was long considered an irritant by the defence bar as an infringement on the principles of procedural fairness.

The new rule, which grants defendants the right to seek leave to appeal judgments granting class action authorization, is being sought in three cases currently before the Court of Appeal of Quebec, *Duproprio inc. c. Fédération des chambres immobilières du Québec*, *Énergie éolienne des Moulins, s.e.c. c. Labranche* and *Centrale des syndicats du Québec c. Allen*.

For Vincent de l'Étoile, a partner at Langlois lawyers LLP who works almost exclusively defending class actions for large corporate clients in Quebec and across Canada, the changes will help smooth out the procedural differences between the nine common law provinces and Quebec's Civil Code regime.

"I think it will help to bring more work in Quebec," said de l'Étoile. He added that interest and prevalence of class action suits has been growing in recent years in Quebec, where there is now an average of about one filing a week for authorization.

But Quebec lawyers who represent plaintiffs in class actions say the recent procedural changes will do little to improve — and could make it even more difficult — their mostly self-financed efforts to bring forward costly cases.

"In theory, these changes are intended to increase access to justice, but in practice, they may actually make things longer and cause more delays," said Fredy Adams of Adams Gareau, a plaintiff-side class actions firm in Montreal.

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Contact **Stacey Ball** at
(416) 921-7997 ext. 225 or srball@82scollard.com
web: www.staceyball.com