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THE LAW COLUMN

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CLASS ACTION SUITS: CLAIMANTS HAVE ADDED RESPONSIBILITY

By: *Me Pascal Comeau, lawyer*

Authorization from the Superior Court is required to institute a legal action. A recent judgment of the Court of Appeals has made it more difficult to obtain this authorization. In this appeal¹, three judges held upheld the decision of the Superior court rejecting a request from les Voisins du train de banlieue de Blainville inc. to authorize a legal action to obtain a permanent injunction against l'Agence métropolitaine de transport in order to put an end to problems related to a train corridor in their proximity and to seek damages.

We must first remember that a class action suit is an exceptional procedure that allows a person, (the representative), to act for a group of persons, (the members), without holding mandates from these members, and that the law imposes certain obligations when taking such an action. The representative must demonstrate that all the members have raised the same legal issues or similar or related facts. In other words, the members must all have similar claims against the defendant with regard to the facts, the defendant's fault and the type of damages they have suffered. The representative must also prove that it would be too difficult to obtain separate mandates to act on behalf of each individual member named in the class action suit.

The facts

In May, 1997, l'Agence métropolitaine de transport began to operate a commuter train between Blainville and Montreal. In the belief that the train service caused too much noise, vibration and pollutants, the Superior Court was asked to authorize an action to stop these problems and obtain damages.

The Superior Court

The Superior Court rejected the request for authorization. According to the Court, the members requesting authorization suffered different damages with regard to the intensity of noise and vibration and the amount of pollutants. As evidence of this, the Court considered the fact that many residents had opposed seeking damages and thus concluded that these residents had not suffered any damages. The Court also considered the fact that the passage of the train did not affect all the residents in the same way because at least one of them worked at night and rested during the day. According to the Court, this fact showed that the residents had different levels of tolerance and therefore damages would be specific to each member of the group and each claim different from the other.

The Court also found that the group's representative had not demonstrated that it had been difficult or impossible for him to obtain separate mandates to act of behalf of each member. In fact the representative had not made any effort to contact the residents living near the train tracks. This was an additional reason for the Court to reject the request for authorization.

The Appeals Court

The Appeals Court rejected the appeal and confirmed the decision of the Superior Court for the same motives.

Conclusion

This recent judgment of the Appeals Court increased the obligations of representatives in class action suits. The representatives must demonstrate the difficulty or the impossibility of obtaining a mandate from each member of the group. In this case, the fact that there were hundreds of persons involved did not seem to be an insurmountable problem, probably because all these people lived near the railway. The representative must also limit the members of the group to those who are subject to the same problems and are affected in the same way. As a result, a subjective element is added to the representative's burden of proof.

¹ *Voisins de train de banlieue de Blainville inc. vs Agence métropolitaine de transport*, EYB 2007-115050 (C.A.).

RECENT DEVELOPMENTS IN ACCESS TO MUNICIPAL DOCUMENTS

By: *Me Joanne Côté, lawyer*

During the past year, the Commission d'accès à l'information, hereinafter called the C.A.I.) and the Court of Quebec, (the C. Q.), delivered certain decisions of particular interest to municipalities. In particular, the decisions involve access to statements of accounts for legal fees and property evaluation roles.

1. Statements of accounts for legal fees

Before 2004, the C.A.I. ruled that details of legal actions listed on statement fees were covered by legal professional privilege and could not be obtained through requests for access to documents. However, according to the C.A.I., the amount of the fees and expenditures were public information. In April 2004, the Court of

Quebec, in the case of *Commission des services juridiques vs. Gagnier*¹, reversed a decision of the Commission ordering the disclosure of the amounts of fees and expenditures in a statement of accounts for legal fees. In so doing, the court of Quebec recognized that lawyer's bills include confidential information and concluded that the entire fee statement was covered by legal professional privilege instead of certain isolated elements.

Following this decision by the court of Quebec, the C.A.I. was nonetheless split on this subject. In fact, some C.A.I. decisions² abided by the Court of Quebec's decision that the entire statement of legal fees is protected by professional privilege. Other decisions³ continued to apply jurisprudence prior to *Gagnier*.

On November 16 2006, commissioner Guylaine Henri, in the case of *X vs. Ville de Sainte-Agathe-des-Monts*⁴, concluded that the entire statement of legal fees was covered by legal professional privilege, including the amounts of fees and expenditures paid to the lawyers. This was the latest decision of the Commission d'accès à l'information specific to this subject. Therefore the statement of legal fees including the amounts and the expenditures can be withheld from access to documents, and according to the majority decision of the C.A.I., these entire documents are protected by legal professional privilege.

2. Access to evaluation roles

A municipality's evaluation role is a data bank that contains personal information which, by law, is of a public nature when consulted for a legally valid purpose.

The C.A.I. had always ruled that consulting a municipality's evaluation role should be restricted to the purpose of the role, which is to learn property values. Any other reason for examining an evaluation role, such as to learn the name of the owner of a property was not considered a valid reason to examine an evaluation role.

However, on March 14 2007, the Court of Quebec⁵ reversed this trend by ruling that the name of a property owner registered in the evaluation role was public information because, when consulting a role, names of property owners form an integral part of the role.

Accordingly, from now on, an evaluation role may be examined by any person who wants to know the value of a property as well as the name of the owner of the property. The person responsible for access to information is responsible for deciding if consulting the role for any other reason is valid.

Article 55 of the *Loi sur l'accès aux documents*, introduced through Bill 86 in July 2006, prohibits consulting a bank of personal information of a public nature for any illegitimate purpose. However, the notion of "illegitimate purpose" is a concept the C.A.I. yet has to define. We will follow up on any future developments in this matter.

NEWS FROM OUR FIRM

■ We are pleased to welcome the following students: **Mme Caroline Daoust-Desmarais** who will be working at our bureau in Saint-Jérôme, **Mme Justine Vanier-Paquette** who will work with us in our Sainte-Agathe bureau, and **Mme Jolaine Charbonneau** who will be at our bureau in Blainville.

■ Once again, **Me Stéphane Sansfaçon**, from our firm's environment and municipal law division, has been asked to speak at the next congress of l'Association des directeurs municipaux du Québec (ADMQ), to be held in Orford and Magog, May 16th to May 18th. **Me Sansfaçon's** topics will include recent jurisprudence and legal developments in municipal and environmental law.

1 [2004] C.A.I. 568.

2 *X vs. Commission scolaire de la Rivière-du-Nord*, C.A.I. Montréal, no 04 17 24, May 29 2006 and *Turenne vs. Ville de Saint-Gabriel*, C.A.I. Montréal, no 04 00 49, 5 juin 2006.

3 *Laflamme vs. Hydro-Québec*, [2005] C.A.I. 228 and *La Tribune de Hemmingford vs. Municipalité du Canton de Hemmingford*, C.A.I. Montréal, no 05 01 33, May 12 2005

4 *X vs. Ville de Sainte-Agathe-des-Monts*, 05 11 33, November 16 2006.

5 *Gyulai vs. Ville de Montréal*, [2007] QCCQ 2225

■ The palliative care home in Saint-Jérôme has been open to patients and their families since October 16th 2006. At Pallia-Vie's last benefit dinner, held on Friday, May 4th, the assembled guests had the opportunity to hear moving testimony about the remarkable involvement and dedication of **Me Suzanne Fortin** who devoted so much of her energy to ensure the realization of this very successful project.

Me Fortin has been the president of this organization since 2006 and has brought honor to our firm by bringing this important project to completion. We want to thank her for her unflinching determination and leadership.



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