QUEBEC: THE CANADIAN JURISDICTION OF CHOICE FOR CLASS ACTIONS?

by Catherine Piché, Esq. *
Fasken Martineau DuMoulin LLP, Montreal

While class actions are not as common in Canada as they are in the United States, they certainly have enjoyed an unprecedented growth in Canada in recent years. In Quebec, more specifically, the number of class actions filed by law firms and consumer protection groups has approached historic highs. In fact, Quebec is a key Canadian jurisdiction for class action activity and is likely to remain so in the future. Quebec offers a winning combination to Canadian plaintiffs: a complainant-biased certification process – described by some as a mere “rubber-stamp procedure” – and lenient courts at the certification stage. As a result, Quebec has earned the reputation of being the most plaintiff-friendly jurisdiction in the country in which to file a class action.

This article begins with an overview of class action reforms throughout Canada. It then addresses the Quebec criteria for the motion for “authorization” or certification and its applications in Quebec courts. This highlights the rather liberal stance adopted by the Quebec judiciary when applying and construing certification requirements. Following this are a discussion of the regime’s amendments of 2003, a review of two noteworthy features of the Quebec regime and a discussion of recent Quebec Court of Appeal case that confirmed the constitutionality of the class action regime. Finally, the author discusses the widening gap between Quebec’s class action scheme and that of the United States.

1. The Class Action Reforms Throughout Canada

Though well-established in the United States, class action litigation is relatively new to Canada. In 1978, Quebec became the first Canadian jurisdiction to allow a group of individual plaintiffs to proceed as one against a defendant or group of defendants. The legislation, entitled An Act Respecting the Class Action, was adopted in the midst of a major legal reform focused on social justice. From the start, the Quebec regime was intended to play out as a procedural tool that would facilitate access to justice and reduce congestion in Quebec courts. In drafting this legislation, Quebec drew on United States courts’ experience and used Rule 23 of the U.S. Federal Rules of Civil Procedure as a template.

At present, seven Canadian provinces have enacted comprehensive legislation dealing with class actions. Ontario was the first one to follow Quebec’s footsteps with the Class Proceedings Act, 1992, while British Columbia enacted its first class action law in 1995 and Saskatchewan and Newfoundland in 2002. The provinces of Manitoba and Alberta followed with the enactment of class action legislation in 2003 and 2004 respectively. In addition, the Federal Court of Canada, following the publication of a Discussion Paper and public consultations, enacted a comprehensive set of rules to govern class proceedings in Federal Court. In Canadian jurisdictions that have not yet implemented class action legislation, the courts must “fill the void” using their inherent power to determine the rules of practice and procedure, while striking “a balance between efficiency and fairness” in dealing with class proceedings.

In Quebec, new provisions regarding class actions were adopted as part of the larger revision of the Quebec Code of Civil Procedure rules and came into force on January 1, 2003 with immediate application to new motions for certification. The mandate of the Revision Committee was to adopt rules that would render the certification process more expeditious, accessible, efficient and less costly.
support of its position, the Committee underlined the fact that over the years, Quebec’s class action practice had shifted the certification hearing into one on the merits.14

The practical effect of the 2003 amendments, however, has been somewhat different than expected. Since the reform, Quebec has been described as a true “class actions haven,”15 because not only does it have a class action regime that is biased in favor of applicants, but also courts that are very lenient at the certification stage. As a result, it has become increasingly easier to get a class action certified in Quebec.

2. The Motion for “Authorization” or Certification in Quebec

The first and most significant hurdle in a class action is getting the case certified. Article 1002 of the Code of Civil Procedure (C.C.P) provides that a person cannot initiate a class action, except with the prior authorization of the Superior Court, obtained on a motion made to a judge of the Superior Court. The motion must state the facts giving rise to the proceeding, indicate the nature of the litigation for which certification is sought and describe the group on behalf of which the person intends to act.16 Notice of the motion for certification must be served on the defendant at least ten days before the motion is to be heard. Since 2003, the motion may only be contested orally and the judge may allow relevant evidence to be submitted.

The requirements for certification of a class action are set out in Article 1003 C.C.P. According to this provision, the court must authorize the class action and ascribe the status of representative to the member it designates if the court believes that:

(a) the recourses [claims] of the members raise identical, similar or related questions of law or fact;
(b) the facts alleged seem to justify the conclusions sought;
(c) the composition of the group makes the application of article 59 or 67 difficult or impracticable; and
(d) the member to whom the court intends to ascribe the status of representative is in a position to represent the members adequately.

When all criteria in Article 1003 C.C.P. are met, a Quebec judge has very limited discretion and in theory no other option but to grant certification.17 However, there is a notion that courts should exercise discretion in examining the predominance of common questions over individual questions. This common law concept is absent from the Quebec leg-

islation, but was considered by the Quebec Court of Appeal to be one of the criteria for determining whether the class action should be authorized.18 Other Canadian provinces have added the requirement that the class action be the “preferable procedure” for the resolution of the common issues.19

3. Quebec Courts’ Interpretation of the Conditions for Certification

Throughout the years, Quebec courts have interpreted the conditions for certification in a liberal manner.20 For instance, they have consistently held that the certification stage constitutes a screening and filtering mechanism and that, being a summary procedure, the judge cannot draw any conclusion as to the merits of the case.21 Moreover, they have accepted summary allegations in the motion for certification, albeit vague ones,22 and have resolved subsisting doubts as to whether or not certification should be granted in favor of granting certification.23

More precisely, case law dealing with Paragraph 1003 (a) has shown that it is sufficient “if the claims of the members raise some questions of law or of fact that are sufficiently similar or sufficiently related to justify a class action.”24 Put differently, the commonality requirement will be met where the answer to the questions submitted establishes the defendant’s liability towards each member of the class and advances an important part of each member’s cause of action.25 The fact that some issues will have to be dealt with on an individual basis at trial,26 or that damages differ from one member to the other,27 is immaterial.

As for Paragraph 1003 (b), which provides that “the facts alleged must seem to justify the conclusion sought”, its purpose is to ensure that those claims that are frivolous or clearly unfounded are not certified.28 Further, the Supreme Court of Canada has held that the test of 1003(b) does not require a determination of the merits; rather, a “color of right” must appear prima facie.29 As for Paragraph 1003 (c), courts have held that what must be shown is that joinder of the actions is a difficult or inconvenient option.30 Hence, class actions are not reserved strictly for large groups of unidentifiable complainants.31

Finally, the “adequate representation” criterion in Paragraph 1003 (d) requires not only that the representative be in a position to represent the class adequately, but that he or she have standing to sue and that there be no conflict of interest with other members of the group.32 Further, the representative does not need to know the exact number of members forming part of the class or obtain detailed in-
formation regarding the potential members of the class.\textsuperscript{33}

4. New, More Relaxed Quebec Rules in 2003

Class actions are creatures of the law that were originally intended as a means of resolving disputes in a manner that is efficient and fair to all parties,\textsuperscript{34} while serving judicial economy, improving access to justice and deterring actual and potential wrongdoers.\textsuperscript{35} This goal has been jeopardized in Quebec, where the fairness and efficiency of the class action regime have been called into question with the enactment of new civil procedure rules in 2003. These amended rules have created a complainant-biased certification process, thereby reinforcing the idea of Quebec as the Canadian “class action haven”.\textsuperscript{36}

On January 1, 2003, new provisions of the C.C.P. dealing with class actions came into force with immediate application to new motions. These provisions profoundly changed the rules governing authorizations to institute class actions.\textsuperscript{37} Whereas the former civil procedure rules required that certification be obtained by way of a motion supported by an affidavit from the group representative, the amended regime no longer requires applicants to execute affidavits in support of the facts alleged in their motions.\textsuperscript{38} The defendants thus lose all rights to examine the applicant before the certification hearing on the facts alleged. Furthermore, the new rules provide that defendants can only present their defenses orally, contrary to the previous rule which provided that the defendant could ask the court’s permission to file a written defense.\textsuperscript{39} These particular provisions are an exception to the general civil procedure regime under which a motion is supported by an affidavit attesting to the veracity of all the facts alleged.\textsuperscript{40}

In addition, the defendant can no longer file evidence before the certification hearing,\textsuperscript{41} and at the certification hearing, the judge may allow evidence to be presented, but only if he or she considers it to be “relevant”.\textsuperscript{42} Therefore, the possibility of adducing evidence at the hearing is entirely subject to the judge’s vast discretionary power, giving rise to a great deal of uncertainty for defendants.\textsuperscript{43}

Another interesting amendment is a broader definition of the concept of “member.” The amendments provide that a legal person established for a private interest (such as a private corporation), a partnership or an association may be a member of a class, but only if (a) at all times during the twelve-month period preceding the motion for authorization, no more than 50 persons bound to such a member by contract or employment were under its direc-

Most defense counsel have vigorously criticized these amendments.\textsuperscript{44} One of their main arguments is that the effect of the reform is to strengthen, to the detriment of defendants, a regime already favorable to petitioners, where certification has become quasi-automatic. Thus, far from rendering the whole process more expeditious, they say that this opens the floodgates and creates a backlog of cases before the courts.\textsuperscript{45}

5. Two Peculiarities of the Quebec Regime: A One-Sided Right of Appeal and Quebec State Funding

The long-established liberal tradition of the judiciary towards certification of class actions and the new rules of 2003 are not the only features of Quebec’s class action regime that favor plaintiffs. In Quebec, defendants have no right to appeal a judgment granting certification.\textsuperscript{46} This prohibition results from a 1982 legislative amendment designed to prevent delays and costs incurred by petitioners as defendants appealed from virtually each and every order for certification.\textsuperscript{47} The constitutionality of this provision has been challenged, but the Court of Appeal upheld its validity.\textsuperscript{48} Therefore, only complainants can appeal pleno jure judgments dismissing their motion for certification.\textsuperscript{49}

Another feature of the Quebec regime is that the government subsidizes petitioners willing to launch a class action.\textsuperscript{50} Quebec petitioners can benefit from a public fund called “Fonds d’aide aux recours collectifs” (“Fonds”),\textsuperscript{51} which, under specific conditions, assists them with lawyer’s fees, experts’ fees, court costs and other expenses. The Fonds assesses whether a class action may be brought or continued without financial assistance and, if the status of representative has not yet been afforded to the applicant seeking financial assistance, considers the merits of the proposed action.\textsuperscript{52} If and when assistance is granted, the Fonds will agree upon the conditions with the applicant or his or her attorney.\textsuperscript{53} Eventually, the recipient or his or her attorney will have to reimburse the Fonds for the amount paid up to the amounts received from third parties as fees, costs or expenses.\textsuperscript{54} Another advantage to the petitioner is that in the event that his or her motion for certification is dismissed, costs to be paid to the court are limited to fifty dollars.\textsuperscript{55}
6. The Constitutionality of the Quebec Certification Process

In April 2005, the Quebec Court of Appeal upheld the constitutional validity of the January 1, 2003 legislative provisions governing the authorization of class actions in Quebec, in the Pharmascience case.\(^{56}\) Two months later, the Supreme Court of Canada dismissed the application for leave to appeal from this judgment, holding, that: "There is no need to rule on constitutionality of [articles 1002 and 1003 C.C.P.]." The Pharmascience case is noteworthy not only for its constitutional analysis, but also for its comments regarding the nature of the certification process, which will most certainly influence the future conduct of class actions in Quebec.

In Pharmascience, the plaintiffs alleged that several pharmaceutical companies, makers of generic drugs, had illegally granted bonuses, rebates and other benefits to pharmacists. They sued the companies in the name of buyers of the defendants’ products since January 1, 1995, claiming a reduction in the premiums, deductibles and co-insurance amounts from which they would have benefited if the price of the medication they bought had excluded the cost of these benefits granted to pharmacists. The pharmaceutical companies objected on several preliminary grounds to the plaintiffs’ motion for authorization. One of these grounds was that Article 1002 C.C.P. was unconstitutional because it violated one basic procedural guarantee – that is, the right to a full defense – enshrined in Quebec’s Charter of Human Rights and Freedoms. If successful, the consequence of this attack would have been to render the whole Quebec class action regime inoperative.\(^{59}\)

Upholding the constitutionality of Quebec’s class action procedure, specifically of articles 1002 and 1003 C.C.P., the Court of Appeal held that:

*Within the mechanism of filtering and verification, the judge must, if the allegations of fact appear to give rise to the rights claimed, grant the motion and authorize the claim; evidence will not be required in all cases... [T]he amendment to Article 1002 C.C.P. fits perfectly in the new environment created by the reform... which increases the level of intervention by the Court in the management of the proceeding in order to assist in bringing it to the essential step of the hearing on the merits...*

The recent amendments made to Article 1002 C.C.P. do not change the role of the judge as defined by the jurisprudence. It is in conformity with the new philosophy of civil procedure, which increases the level of intervention of the judge in the conduct of the proceeding... This modified regime does not violate section 23 of the Quebec Charter since, on the one hand, it permits contesation by the defendant at the preliminary stage of authorization while preventing a substantive defence on the merits to be made by the defendant, and on the other hand, it leaves unchanged and applicable all the rules of civil procedure from the inception of the action up to the final judgment. [author’s translation; emphasis added]\(^{60}\)

The Court of Appeal stated, however, that the certification stage, even if considered a “screening mechanism” cannot be disregarded and that the oral contestation of this motion to authorize must nonetheless remain “real, vigorous and unreserved”.\(^{61}\) One can only hope that the Quebec Superior Court will apply this teaching to adopt a broad and liberal interpretation of Article 1002 when authorizing the introduction of relevant evidence at the certification stage.

By dismissing the leave to appeal from the Court of Appeal case of Pharmascience, the Supreme Court of Canada effectively endorsed Quebec as Canada’s “class action haven”. Indeed, while it deems the current system to be constitutional, the Supreme Court in failing to grant leave (and thereby forgoing the opportunity to review Quebec’s procedural reforms) leaves considerable uncertainty with regard to the evidence that might be adduced at the certification hearing. In fact, the certification stage is rendered largely meaningless and authorization of class actions is almost automatic.\(^{62}\) This, in itself, is inconsistent with earlier Supreme Court cases that had characterized the motion for certification as a crucial step in class proceedings.\(^{63}\)

7. A Large Gap Between the U.S. and Quebec Class Action Regimes

Although Quebec’s class action regime was originally modelled on Rule 23 of the Federal Rules of Civil Procedure,\(^{64}\) it has retained but a few of its requirements.\(^{65}\) For instance, there is no requirement that the claims of the representative be typical of the claims of the class members or that the class be so numerous that direct joinder of the members is impracticable;\(^{66}\) common issues need not predominate over individual ones (although they do need to be substantial and important); and finally, the class action does not have to be superior to other means of resolving the dispute.\(^{67}\) Thus, Quebec’s class action regime is very different from Rule 23 and is generally considered to be much more conducive to the certification of class actions. As a result, a large gap exists between the U.S. and Quebec class action regimes.

American courts have also better safeguarded the defendant’s basic procedural rights than Quebec courts, at the certification stage. In 1974, the
U.S. Supreme Court held that one should not delve into the merits of the dispute when assessing whether a class action should be certified.68 However, four years later, it recognized that the evaluation of many of the questions entering into the determination of class action questions is “intimately involved with the merits of the claims.”69 Recent cases have also acknowledged that courts should not ignore the merits of the case at the certification stage. In Castano v. American Tobacco Co., the Fifth Circuit held that “[g]oing beyond the pleadings is necessary, as the court must understand the claims, defenses, relevant facts, and applicable substantive law.”70 In Enzenbeacher v. Browning-Ferris Industries, the Illinois appellate court ruled that:

The appropriate way to determine whether to certify a class is by a motion for class certification. At the time such a motion is presented for hearing, the trial court may consider any matter of law or fact properly presented by the record, including pleadings, depositions, affidavits, answers to interrogatories, and any evidence adduced at hearing on the motion.71

The gap between the United States and Quebec regimes was recently further reinforced by the enactment, in the United States, on February 18, 2005 of the new Class Action Fairness Act (“CAFA”), which amends both Rule 23 F.R.C.P. and 28 U.S.C. § 1332.72 The stated purposes of CAFA are to reduce frivolous class action lawsuits, provide class action litigants (including defendants) with broader access to federal courts (by facilitating the removal of large, multidistrict class actions from state to federal court), decrease forum-shopping, and curb class settlements that provide significant fees to class counsel, with marginal benefits to class members. Many commentators believe that the enactment of CAFA will result in fewer consumer class actions being filed, as well as a higher rate of dismissal or denial of class certification for those that are filed. Others may believe that plaintiffs’ lawyers will find ways around CAFA, by, for example, simultaneously filing duplicative class actions in separate state courts or carefully crafting complaints to fall within one of the Act’s exceptions. Notwithstanding these comments, it will be interesting to see how the parameters of CAFA will be refined in the upcoming years through federal district court and appellate litigation.

Conclusion

The Quebec rules for certification of class actions were the most favorable in North America even before the 2003 Reform. Now, with the Reform, there seems to be an even bigger gap between the Quebec regime and the other jurisdictions where class action exists – notably, the United States. The debate raised in Pharmascience enhances the distress already felt by Quebec defendants in class actions and thus reinforces this gap. In this respect, legislative or judicial action would be desirable to more clearly define the certification process in Quebec. +

ENDNOTES

1 Quebec, Fonds d’aide aux recours collectifs, “Annual Report of 2003-2004” [Annual Report] at 7–8. The Annual Report explains that in 2003, 65 requests for funding were made to the Fonds d’aide aux recours collectifs [Fonds]. This is the second-highest number of requests made since the Fonds’ creation. The number of files opened in 2003 was well above the historical average and can be explained by the abnormally high number of requests for funding made by consumer groups.


11 Western Canadian Shopping Centres Inc. v. Dutton, [2001] 2 S.C.R. 543 at paras. 34, 44 [Dutton].

12 See Bill 54, Act to Reform the Code of Civil Procedure, Quebec, 2002, C. 7 (enacted on June 6, 2002 and assented to on June 8, 2002) [Reform Act].
Québec. La révision de la procédure civile: Une nouvelle culture judiciaire (Québec: Comité de révision de la procédure civile, 2001).

Ibid.


Contrary to the Ontario and United States regimes, the C.C.P. does not allow for representative defendants, only representative plaintiffs. Indeed, Art. 999 C.C.P. defines the member of a class as a “natural person, a legal person established for a private interest, a partnership or an association that is part of a group on behalf of which such a person, a partnership or an association brings or intends to bring a class action” [emphasis added]. In that same article, “class action” is defined as “the procedure which enables one member to sue without a mandate on behalf of all the members.”


Comité d’environnement, ibid. at 659, where the court stated “the common questions of fact and law in this case would appear to be far from trivial. On the face of things, the common questions seem to me substantial and of considerable importance in relation to the individual questions to be decided.”

Ont. Act, s. 5(1)(d); B.C. Act, s. 4(1)(d); Sask. Act, s. 6(1); Newf. Act, s. 5(1)(d); Man. Act, s. 4(1); Alta. Act, s. 5(1)(d); Federal Court Rules, R. 299.18(1)(d). Some argue that preferenceability of the class action is covered by the Quebec requirements that the action raise identical, similar or related questions and that the composition of the group render joinder or mandate impracticable options: see W. Branch, Class Actions in Canada (Aurora, Ont.: Canada Law Book, 2005) ¶ 4.830 and ff.


Comité Environnement, supra note 17; Nadon, supra note 5.


Comité d’environnement, supra note 17.


Dicaire v. Chambly (Ville de), J.E. 2000-735 (C.A.) [Dicaire]; Billette, ibid. In fact, individual claims of class members are dealt with in Art. 1037 C.C.P. and ff.

Riendeau v. Compagnie de la Baie d’Hudson, J.E. 2000-641 (C.A.) at para. 35; Comité d’environnement, supra note 17.

Rouleau, supra note 17; F. Fontaine, “The meaning of the expression ‘the facts alleged seem to justify the conclusions sought’ “, Class Action 1:3 (2002) 60.

Guimond, supra note 17.


Gélinas v. Shawinigan (Ville de), J.E. 98-1870 (S.C.). This criterion is different in other Canadian provinces, where all that is required is that the class have two or more persons, see Branch, supra note 19 ¶ 4.190 and ff.

Guilbert v. Vacances sans frontières, [1991] R.D.J. 513 (C.A.); Handicap-Vie-Dignité v. Hôpital St-Charles-Borromée, J.E. 2000-31 (S.C.). Other provinces’ statutes require that the representative file a plan setting out a workable method of advancing the proceedings and notifying the class members of the action, see e.g., s. 5(1)(e) of the Ont. Act; s. 4(1)(e) of the B.C. Act; s. 5(1)(e) of the Newfoundland Act.

Association des consommateurs du Québec v. W.C.I. Canada Inc., J.E. 97-2064 (C.A.) [W.C.I. Canada]. In other Canadian provinces, however, the representative must establish the existence and the scope of the class, see Branch, supra note 19 ¶ 4.230 and ff.


See Kugler & Kugler, supra note 15; see also N. Van Praet, “Companies ‘Revolt’ over Suits”, National Post (16 April 2005).

Reform Act, supra note 12.
38 See ibid. Arts. 27 and 150, repealing Art. 176 C.C.P. and amending Art. 1002 C.C.P.

39 Arts. 59-61 of the Rules of Practice of the Court of Appeal in Civil Matters, R.S.Q., c. C-25, s. 47. See also Y. Martineau & N. Mercier-Filteau, “L’article 1002 du Code de procédure civile et la preuve appropriée: entre le devoir et la discrétion?” in Service de la formation permanente du Barreau du Québec, Développements récents sur les recours collectifs, (Cowansville,QC: Yvon Blais, 2004) 57. This permission would frequently be afforded to the defendant, and as a result, granted both the petitioner and the defendant an equal opportunity to set forth their allegations in court.

40 Art. 88 C.C.P.

41 See e.g., Martotte v. Banque de Montréal, J.E. 2003-1919 (S.C.).

42 Art. 1002 C.C.P. Strangely, the French version of Art. 1002 C.C.P. provides that the judge may allow “appropriate evidence” to be submitted. Usually, the standard for allowing evidence in civil law is relevance, not appropriateness.

43 See Martineau & Mercier-Filteau, supra note 39 at 64.

44 Reform Act, supra note 12, s. 149, amending Art. 999 C.C.P. It should be noted, however, that pursuant to Art. 1048 C.C.P., in fine, no legal person established for a private interest, partnership or association, except a legal person governed by Part III of the Companies Act, a cooperative governed by the Cooperatives Act, R.S.Q. c. C-67.2, or an association of employees within the meaning of the Labour Code, R.S.Q. c. C-27, may obtain financial assistance from the Fonds to pursue a class action.

45 Reform Act, ibid., Arts. 151 and 155, amending Arts. 1025 and 1026 C.C.P.


47 Rodrigue, ibid at 111.

48 Art. 1010 C.C.P. The Court of Appeal, however, has ruled that the bar also applies to petitioners who are dissatisfied with the terms of the certification order. See Popove v. Ville de Montréal, [2004] J.Q. 11005 (C.A.) (QL). See also Rule 23(f) of the U.S. Federal Rules of Civil Procedure, 28 U.S.C. (1966) [F.R.C.P.], which provides that “[a] court of appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification under this rule if application is made to it within ten days after entry of the order.”

49 Branch, supra note 19 ¶ 4.1820.


51 Art. 1010 C.C.P. A member of the potential class may also, by leave of the Court of Appeal, appeal the judgment dismissing the motion for certification.

52 Kugler & Kugler, supra note 15 at 157; Van Praet, supra note 36.

53 Established by An Act Respecting the Class Action, R.S.Q. c. R-2.1, art. 6 [AARCA].

54 Art. 23 AARCA.

55 Arts. 6 and 25 AARCA. The Agreement between the Fonds and the recipient shall, inter alia, provide for the terms and conditions of reimbursement of the advances received or of the assistance and the subrogation of the Fonds in the rights of the recipient or his or her attorney up to the amounts paid to them.

56 Art. 30 of the AARCA. In practice, parties include a clause in proposed settlement agreements whereby the plaintiff and/or his or her attorney undertake to reimburse the Fonds, out of the settlement funds, an amount equal to the financial assistance received.

57 Kugler & Kugler, supra note 15 at 157.

58 Pharmascience, supra note 3.

59 R.S.Q., c. C-12 [Charter]. More precisely, they argued at first instance and on appeal that Article 23 of the Charter (which states that “[e]very person has a right to a full and equal, public and fair hearing by an independent and impartial tribunal, for the determination of his rights and obligations or of the merits of any charge brought against him.”) includes the obligation for petitioners to demonstrate the facts that underlie the exercise of private or civil rights against a third party and the fundamental right to require from this third party his or her evidence before preparing its defense. Art. 1002 C.C.P. abolished the petitioners’ obligation to demonstrate the facts in support of his arguments of law by removing the requirement that an affidavit accompany the motion for certification. On this basis, the pharmaceutical companies asked that the court invalidate Art. 1002 C.C.P., rendering it inapplicable and the whole class action regime inoperative.

60 Pharmascience, supra note 3 at paras. 30, 39.

61 See Pharmascience, ibid.

62 See Pharmascience, ibid at para. 32, where the Court of Appeal refers to Vaughan, supra note 50, where the Court of Appeal held that the certification stage was a mere procedural formality.

63 Dutton, supra note 11; Hollick, supra note 35; Rumley, supra note 35.
Sections 901 to 909 of the New York Civil Practice Law and Rules were also referred to in drafting the Quebec rules.

Lafond, supra note 5 at 333-34.


Fed. R. Civ. P. 23(b)(3). With regard to the “important and substantial requirement”, see notably Bell, supra note 17; W.C.I. Canada, supra note 33; Dicaire, supra note 26.


Coopers & Lybrand v. Livesay, 437 U.S. 463, 469 n. 12, 98 S.Ct. 2454, 2458 n. 12 (1978), cited in Feldman, ibid. at 22 (“The ... presence of common questions of law or fact are obvious examples. The more complex determinations required in Rule 23(b)(3) class actions entail even greater entanglement with the merits...”).

84 F.3d 734, 744 (5th Cir. 1996), cited in Feldman, ibid. at 23.

774 N.E. 2d 858, 862 (Ill. App. 2002), cited in Feldman, ibid. at 23.

Class Action Fairness Act of 2005 Senate Bill S.5 [CAFA].

Cite as 26 Class Action Rep. 559 (2005).

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