

# COUR D'APPEL

CANADA  
PROVINCE DE QUÉBEC  
GREFFE DE MONTRÉAL

No: 500-09-027802-180  
(500-06-000484-093)

## PROCÈS-VERBAL D'AUDIENCE

DATE : Le 15 novembre 2018

L'HONORABLE PATRICK HEALY, J.C.A.

REQUÉRANTE	AVOCATES
<b>BAYER INC.</b>	Me SYLVIE RODRIGUE, <i>Ad. E.</i> Me GENEVIÈVE BERTRAND ( <i>Société d'avocats Torys s.e.n.c.r.l.</i> )
INTIMÉS	AVOCATES
<b>JANIE GUINDON GENEVIÈVE GLADU JULIEN LEBOEUF</b>	Me CAROLINE PERRAULT Me ERIKA PROVENCHER ( <i>Siskinds, Desmeules, avocats s.e.n.c.r.l.</i> )

DESCRIPTION : **Requête pour permission d'appeler d'un jugement qui met fin à l'instance rendu le 26 juillet 2018 par l'honorable Guylène Beaugé de la Cour supérieure, district de Montréal.**  
(Art. 357, 578 C.p.c.)

Greffier d'audience : Quentin A. Desrosiers

SALLE : RC.18

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AUDITION

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9 h 36 Ouverture de l'audition. Identification des avocats

Échanges entre le Juge et les parties.

Suspension de l'audition.

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9 h 38 Reprise de l'audition.

Me Rodrigue dépose un cahier de source au soutien de la requête.

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9 h 39 Argumentation de Me Rodrigue.

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10 h 30 Argumentation de Me Perreault.

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11 h 17 Réplique de Me Rodrigue.

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11 h 17 PAR LE JUGE : Le jugement sera rendu sur procès-verbal au courant de la journée.

Jugement – voir page 3.

Fin de l'audition.

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Quentin A. Desrosiers

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Greffier d'audience

**BY THE JUDGE**

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**JUDGMENT**

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[1] It is often said that class actions exist to promote access to justice,<sup>1</sup> subject to initial vetting in the procedure for authorisation.<sup>2</sup> For this reason the jurisprudence in Quebec has repeated many times that the threshold for authorisation of a class action is relatively low.<sup>3</sup> That jurisprudence has also repeated, for the same reason, that the threshold for leave to appeal from the authorisation of a class action is conspicuously high.<sup>4</sup> Leave will be refused if the motion rehearses the original application for authorisation or, even worse, if it seeks indirectly to test the merits of the case. Leave will be refused if the motion does not reveal an obvious error of law or a groundless assessment of relevant claims of fact.<sup>5</sup> Otherwise this court, and in particular a judge in chambers, will defer to the decision of the authorising judge.<sup>6</sup>

[2] These principles are common to all class actions and apply as just stated in cases involving pharmaceutical products as in any other type of case.

[3] The Superior Court concluded that the respondents on this motion for leave had satisfied the four criteria for authorisation of a class action.<sup>7</sup> The judge determined that the respondents had presented a plausible case and, in accordance with her assessment of the facts alleged, defined the class, reformulated the related substantive issues for trial and stated the conclusions sought.

[4] The questions raised by the petitioner would invite a consideration of matters that are properly reserved to a judge on the merits at trial.

[5] **FOR THESE REASONS THE UNDERSIGNED:**

[6] **DISMISSES** the motion for leave to appeal with costs of justice to the respondent.

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<sup>1</sup> *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59

<sup>2</sup> Article 575 C.C.P. See *Vivendi Canada Inc. v. Dell’Aniello*, 2014 SCC 1; *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59.

<sup>3</sup> See, e.g., *Baratto v. Merck Canada Inc.*, 2018 QCCA 1240; *Centrale des syndicats du Québec v. Allen*, 2016 QCCA 1878, paragraph 19.

<sup>4</sup> *Centrale des syndicats du Québec v. Allen*, 2016 QCCA 1878.

<sup>5</sup> *Vivendi Canada Inc. v. Dell’Aniello*, 2014 SCC 1, paragraph 33; *Centrale des syndicats du Québec v. Allen*, 2016 QCCA 1878, paragraph 59.

<sup>6</sup> *Asselin v. Desjardins Cabinet de services financiers Inc.*, 2017 QCCA 1673; *Sibiga v. Fido Solutions Inc.*, 2016 QCCA 1299.

<sup>7</sup> *Option Consommateurs v. Merck & Co. Inc.*, 2013 QCCA 57.

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A handwritten signature in black ink, appearing to read 'P. Healy', written in a cursive style.

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PATRICK HEALY, J.C.A.