



Quebec court authorizes Canada's largest environmental class action to date

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The Quebec Superior Court has recently authorized what may be the [largest environmental class action](#) ever instituted in Canada. The lawsuit concerns the release of a cloud of toxic gas from Canadian Electrolytic Zinc's refinery in Quebec in August 2004. The Court has authorized representative plaintiff François Deraspe to act on behalf of all persons in certain specified areas who claim to have experienced noxious symptoms including eye, skin, and throat irritation, respiratory problems, coughing, and asthma attacks, when they were exposed to the gas cloud. Counsel has indicated that Mr. Deraspe will seek between \$5,000 and \$10,000 in damages, plus \$5,000 in punitive damages, for each class member. It has been reported that the total damages could be [up to \\$900 million](#).

BACKGROUND

Canadian Electrolytic Zinc Ltd. ("CEZ") has a treatment plant at Salaberry-de-Valleyfield, Quebec. On the evening of August 9, 2004, Mr. Deraspe, the representative plaintiff, observed a heavy fog around his house (7.4 kilometers from the plant). He learned from media reports that the breakdown of a pump at the plant had caused several tons of sulphur trioxide to vent into the air over nearby residential areas. Sulphur trioxide is a corrosive gas that generates sulphuric acid on contact with water, and can result in chemical burns. Mr. Deraspe sought court authorization to bring a class action on behalf of persons exposed to the toxic cloud who showed the health symptoms characteristic of exposure to sulphur trioxide.

The case has had a lengthy procedural history. The first motion for authorization to bring a class action was [rejected](#) by the Quebec Superior Court in 2008. In 2009, the Court of Appeal [upheld](#) that decision, for two reasons. First, the class definition was too vague. Second, individual issues predominated over common issues, as the toxic cloud could have different effects on different persons, and therefore, individual evidence would be required to establish fault, injury, and damages. The Court noted that imposing geographic and time limits would improve the class definition, but refused to let Mr. Deraspe modify the class definition to that extent on appeal.

Mr. Deraspe brought a new motion for authorization with a new, spatially and temporally limited, class definition. The defendant tried unsuccessfully to have the motion [dismissed as res judicata](#) and [appealed](#) that issue unsuccessfully all the way to the Supreme Court of Canada, (leave was denied). Mr. Deraspe's second attempt to obtain court authorization was therefore heard in 2012.

THE DECISION

The judge focused on the issues identified by the Court of Appeal in its decision on the original motion for authorization: the vagueness of the class definition, and the predominance of individual issues. She held that both had been improved enough by the new class definition to justify authorizing the class action. The new definition limits the proposed class: (i) geographically to persons who were physically present in specified areas along the path of the gas cloud, and (ii) temporally, to persons who claim to have experienced adverse symptoms simultaneous with their exposure to the gas cloud. The judge certified as common issues those related to CEZ's fault or negligence in relation to venting sulphur trioxide, the path and chemical composition of the gas cloud, the types of health problems that could generally have resulted from exposure to the gas cloud, and the appropriateness of punitive damages. Although causation and damages would still require individual determination, the individual issues no longer predominated over the common ones, as the determination of these common issues would significantly advance the action.

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