

Mixed Decision in Québec Environmental Class Action Lawsuit



So-called “class actions” are becoming more common in Canada when groups of people feel that they’re the victim of environmental violations, such as chemical spills that impact large tracts of land or groundwater. But class actions have had limited success in environmental cases. For example, although an environmental class action in Ontario was initially successful, the verdict was overturned on appeal. Another recent case in Québec has resulted in a mixed verdict for the plaintiffs. Here’s a look at the decision in that case.

THE CASE

What Happened: Residents of a municipality sued the federal government, a research center and a munitions manufacturer in a class action for allegedly spilling the solvent trichloroethylene (TCE) on the ground and contaminating the water table and their drinking water wells. They claimed that the TCE contamination was the cause of an abnormally high number of instances of cancer, illnesses and other health effects among former and current residents of the town. The residents sought compensation and damages as well as an order requiring the defendants to decontaminate the water table. They also asked for punitive damages for injuries to their physical integrity and the enjoyment of their property.

What the Court Decided: The Québec Superior Court ruled that the residents hadn’t proved the TCE contamination caused increased cases of cancer but it did find that the water contamination was a nuisance.

The Court’s Reasoning: The decision focused on whether there was an abnormally high number of cases of cancer, illnesses and other ill effects among the residents and, if so, whether TCE was the cause of these illnesses. The court noted that it wasn’t known when the TCE reached the different water supply sources or what the TCE concentration level was in the water in the past. In addition, the evidence didn’t prove that it was specifically the TCE that caused the cancers that some residents developed. In fact, some of the types of cancer aren’t associated with exposure to TCE. And the same number of cancer cases was found among people living in residences whose water contained increased TCE concentrations as among those living in residences whose water contained minimal or even non-existent TCE concentrations. So the court concluded that the

residents had failed to prove on a balance of probabilities that it was likely that the defendants had contaminated the water table with TCE and that there was a causal link between this contamination and the damages claimed.

But the court did find that the defendants' contamination of the water table and wells amounted to an abnormal nuisance. When the well contamination became known, some residents were deprived of drinking water for a year. So the court awarded \$12,000 (\$1,000 per month) to those residents for the fears, worries, troubles and nuisances associated with having lost a source of drinking water under such circumstances. Residents with children in an affected residence got an additional \$3,000. The court also ordered the defendants to pay the residents' expert fees, which exceeded \$1.6 million. As to the requested order, the court refused to issue one, noting that the defendants were already carrying out the necessary decontamination measures [*Spieser v. Canada*, [2012] QCCS 2801 (CanLII), June 21, 2012 (in French)].

ANALYSIS

The *Spieser* case is a good illustration of how complex cases involving environmental contamination can be and the challenge in proving a link between pollutants and health-related injuries. For example, this case took over 115 days of trial, during which 74 witnesses—including 23 experts—testified on topics such as hydrogeology, vapor intrusion, toxicology, epidemiology and oncology. The impact on people of industrial activities that produce contaminants isn't always clear. And this scientific uncertainty makes it difficult for allegedly injured parties to meet their burden of proof. Despite these challenges, however, it's likely that the Canadian courts will continue to see more class actions in environmental cases.