

Goodmans^{LLP} Update

Supreme Court of Canada Allows Environmental Class Action Seeking Only Punitive Damages to Proceed

The Supreme Court of Canada recently heard and dismissed an appeal in the “dieselgate” pollution class action case, *Volkswagen Group Canada Inc. v. Association québécoise de lutte contre la pollution atmosphérique*. The Supreme Court allowed a \$300 million class action against Volkswagen to proceed where the plaintiffs would not be claiming (or proving) damages for direct injury suffered by any person. The plaintiffs, led by a public interest environmental advocacy group, can move forward with their claim in respect of environmental wrongdoing, even though it only seeks punitive damages.

Background

The case arises from the scandal known as “dieselgate”, whereby certain Volkswagen and Audi diesel vehicles were secretly equipped with devices to falsify emissions test results. As a result, the vehicles in question, manufactured between 2009 and 2015 and estimated to include 100,000 vehicles sold in Canada, produced emissions that exceeded applicable Canadian standards. When the scandal came to light in 2015, Volkswagen quickly apologized for its actions. Various legal proceedings ensued.

A class action was brought by a Quebec-based environmental group on behalf of all people who resided in Quebec from 2009 to 2015, estimated to be in excess of eight million people. Brought under provisions of Quebec’s *Charter of Human Rights and Freedoms*, which guarantee the right to a “healthful environment”, the claim sought \$15 per person for “direct” damages, and \$35 per person for punitive damages. The compensatory damages sought totalled approximately \$120 million, while the amount sought in respect of punitive damages totalled approximately \$300 million.

At a hearing before the Quebec Superior Court on whether the class action should be certified, no evidence was led that any Quebec residents had suffered direct harm as a result of the excessive emissions, nor was it intended that direct harm would be proven at trial. The Superior Court held that since no direct damage would be proven, the claim for compensatory damages should be dismissed, but the claim for punitive damages could nonetheless proceed. The Superior Court judge was of the view that the law was unclear as to whether a purely punitive claim could succeed, and that the question should only be determined after a trial where a full factual record would be developed.

Volkswagen’s motion for leave to appeal to a single judge of the Quebec Court of Appeal was denied in a very brief 2018 decision, which held that there was no obvious error in the certification decision. Volkswagen was granted leave to appeal to the Supreme Court of Canada.

The Supreme Court of Canada Decision

Volkswagen’s appeal was heard on November 13, 2019 and dismissed from the bench in a 5-4 split decision. The majority of the Supreme Court held that the Court of Appeal did not err in exercising its discretion to deny leave to appeal. Three of the dissenting judges would have remanded the case to the Court of Appeal so that it could render a decision on the legal issue raised by Volkswagen, namely whether a class action seeking purely punitive damages could proceed. The fourth dissenting judge, Justice Côté, would have allowed the appeal and

Authors



Julie Rosenthal
jrosenthal@goodmans.ca
416.597.4259



Peter Kolla
pkolla@goodmans.ca
416.597.6279



Richard Corley
rcorley@goodmans.ca
416.597.4197

overturned the decision to certify the class action. Although no substantive reasons were given, it seems reasonable to conclude that Justice Côté was of the view that a class action that sought only punitive damages (i.e., a class action focused on punishing wrongdoing on behalf of all Quebecers without any personalized harm or prejudice) was not permitted by Quebec law.

Analysis

Responsibility for punishing parties for their wrongdoing has traditionally been understood to belong to public authorities like prosecutors and regulators, rather than to private litigants. In the absence of detailed reasons for their recent decision, it is difficult to discern what led a majority of the Supreme Court to depart from this traditional rule and permit a purely punitive claim to proceed.

However, based on the questions asked at the hearing, it appears that the decision may have been influenced by some or all of the following:

- a desire to allow the law to develop regarding “public interest class actions”, which are class actions brought not to vindicate any right or interest that is particular to the plaintiff, but rather to further the interests of society as a whole in seeing the laws obeyed;
- the possibility that, in enacting the relevant provisions of the provincial *Charter*, the Quebec legislature may have intended to facilitate precisely this type of public interest claim to enable private citizens to bring claims, including environmental-based claims, when government enforcement efforts may have been inadequate; and
- an argument that the diffuse nature of certain environmental impacts may make the traditional rules, requiring plaintiffs to prove “direct” injury in order to maintain a claim, inappropriate.

Further clarity as to the application of the foregoing will have to wait until after trial (assuming the case does not settle before trial like the vast majority of class actions).

However, the mere fact that the case has been allowed to proceed should be expected to spur interest in other environmental-based class actions. The template established by this case is most easily followed in Quebec, where the case originated and whose *Charter* provides an environmental guarantee. However, the case’s potential influence in other provinces should not be discounted, as groups and individuals looking for creative methods to address environmental issues such as climate change through the courts may seek to further develop the law surrounding public interest class actions, which is in its infancy.

For further information on this case, please contact any member of our [Litigation Group](#) or [Cleantech Group](#).