

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: 2008 SKQB 433

Date: 2008 10 27
Docket: Q.B. 956 of 2006
Judicial Centre: REGINA

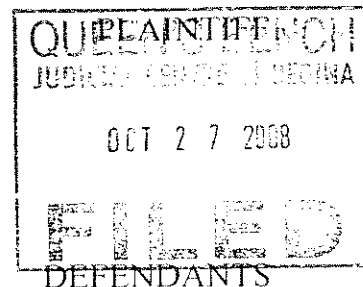
BETWEEN:

FRANK BROOKS

- and -

ATTORNEY GENERAL OF CANADA
MINISTER OF NATIONAL DEFENCE

THE DOW CHEMICAL COMPANY,
PHARMACIA CORPORATION



THIRD PARTIES

Counsel:

E.F.A. Anthony Merchant, Q.C.
Pat Alberts and
Casey Churko

for the plaintiff

Mark Kindrachuk
Scott Spencer
Michael Brannen
John Spence and
William Knights

for the defendants

Ivan C. Whitehall, Q.C.
Peter N. Mantas and
Peter T. Bergbusch

for the third party, Pharmacia Corporation

F. William Johnson, Q.C.
Alan H. Mark and
D. Michael Brown

for the third party. The Dow Chemical Company

FIAT
October 27, 2008

ZARZECZNY J.

[1] The court confirms its directions with respect to the scheduling of various matters related to the class action certification application in this case. There are presently two matters to be addressed, namely:

1. The scheduling for hearing of the class action certification application;
2. The scheduling for hearing of any preliminary motions or applications related to the certification application specifically or this class action generally.

[2] At the October 20, 2008 case tele-conference held with representatives of all parties, counsel for the defendant and third parties had indicated that the prior schedule proposed by the court would not provide them sufficient opportunity to prepare and file their pre-certification hearing motions nor to adequately and properly address all issues arising in respect of the certification application. On the other hand, counsel for the plaintiffs urge the court to maintain its proffered hearing schedule so

that the certification application and any and all motions raising objections to this action or the certification proceeding be heard expeditiously.

[3] The court considers it important that there be a balance struck between these two competing concerns. The plaintiffs are certainly entitled to a prompt hearing of their certification application and the current Saskatchewan *The Class Actions Act*, S.S. 2001, C. c-12.01 and *Queen's Bench Rules of Court* direct the same. Nevertheless, the court recognizes the multi-jurisdictional aspect of this case, and the existing certification applications that are outstanding in the various provinces of Canada. The court also acknowledges counsels' current prior commitments.

[4] A good example is the application for certification of a similar case in the province of New Brunswick, the province in which C.F.B. Gagetown and presumably many prospective members of the claimant class reside. That certification application is currently scheduled for hearing for two weeks beginning December 1, 2008. Most counsel involved in the Saskatchewan action are participating in the New Brunswick certification hearing. The schedule proposed by the court for the Saskatchewan proceedings contemplated a certification hearing beginning Tuesday December 16th. That date clearly imposes preparation hardships on those counsel involved in the New Brunswick proceedings.

[5] In establishing a new schedule, the court recognizes that it is desirable, in most cases, to hear any motions objecting to the regularity or otherwise challenging a class action proceeding at the same time or even after a certification application is

heard. This is so in order that the certification hearing is not unduly delayed. In this particular case, in order to maintain the best progress available leading to certification, the court has determined that the December hearing dates be retained for this purpose. The certification application will then proceed, if it is to be heard, on those hearing dates in March, 2009 reviewed with, and available to, all involved counsel.

[6] In the result, the following schedule is directed in respect to this case:

1. The plaintiff will serve and file all amendments to the Statement of Claim and the Notice of Motion for certification on or before November 7, 2008;
2. Any motions or applications sought to be brought by the defendants or the third parties, including supporting materials, shall be served and filed with the court on or before November 19, 2008;
3. Any affidavits or materials in reply to such motions or applications will be served and filed by the plaintiff on or before December 1, 2008;
4. Any and all briefs of law, cases and authorities in support of any defence or third party motions or applications will be served and filed on or before December 5, 2008. Any and all briefs of law,

cases and authorities in opposition to the defence or third party applications or motions shall be served and filed with the court on or before December 10, 2008;

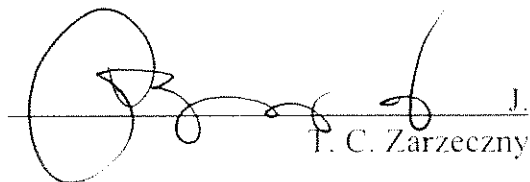
5. The pre-certification motions or applications of the defendants or the third parties will be heard December 17, 2008 and, if required, continue to be heard December 18th and December 19th.

[7] The certification application is scheduled for hearing to begin March 10, 2009 and continue thereafter for the balance of the week as required. The following schedule shall apply to the certification hearing:

1. Any affidavits or materials to be filed by the plaintiff in support of the application for certification shall be served and filed on or before January 15, 2009;
2. Any and all materials or affidavits in opposition to the certification application intended to be filed by the defendants or third parties shall be filed on or before January 30, 2009;
3. The plaintiff's Brief of Law, cases and authorities in support of the certification application shall be served and filed on or before February 13, 2009;

4. The defendant's and third parties' Briefs of Law, cases and authorities shall be served and filed on or before February 25, 2009.

[8] The court encourages all counsel to cooperate with each other and the court in order to ensure that there is compliance with the court's schedule and that the hearing dates established are sufficient for their purpose.



J.
T. C. Zarzeczny