

CITATION: Forbes v. Toyota Canada Inc., 2018 ONSC 3613
COURT FILE NO.: 16-70667-CP
DATE: 2018/06/08

COURT OF ONTARIO
SUPERIOR COURT OF JUSTICE
In the matter of the *Class Proceedings Act, 1992, S.O. 1992, c. 6*

RE: DEVIN FORBES, STEVEN LAGACÉ, MICHAEL EVELAND
and JOSEPH EDWARD PAUL RATZ, Plaintiffs

AND:

TOYOTA CANADA INC., Defendants

BEFORE: Mr. Justice Calum MacLeod

COUNSEL: Jeff Orenstein, for the Plaintiffs

Sylvie Rodrigue, for the Defendant

HEARD: June 8, 2018 – In Writing

ENDORSEMENT

[1] I am the judge assigned to case manage this proposed class proceeding and to hear all motions in accordance with s. 34 of the Act.

[2] As outlined in an earlier ruling in this matter (2017 ONSC 2743, released May 2nd, 2017) there were originally four proposed class proceedings in relation to the same issue. One of those proceedings was and is in Montreal and the other three were in Ontario (Ottawa, Toronto and London). These class proceedings largely mirrored class proceedings recently resolved in the United States.

[3] The procedural issues identified in my earlier ruling were resolved when agreement was reached between counsel in the various actions with approval of the courts in Quebec and Ontario. The result of this has been consolidation of the three Ontario actions and cross-court communication between the superior courts of Ontario and Quebec. There are now two proposed class proceedings, this consolidated Ontario action in which the plaintiffs seek certification of a national class (but excluding members of the class residing in Quebec) and the Quebec class proceeding (N^o: 500-06-000825-162, District of Montreal) which will include only members of the class residing in Quebec.

[4] The plaintiffs and the defendants have now reached an agreement. Without admission of liability, Toyota Canada Inc. has agreed to a settlement under which both class proceedings would be certified as class proceedings. This will allow members of the class to be identified, notified of the proposed settlement and given an opportunity to opt out of the class or to be heard should they

wish to oppose the settlement or otherwise make submissions. It is also proposed that certain benefits will be made available to members of the class immediately rather than waiting until the settlements are approved.

[5] For this to occur, it has been necessary for counsel to obtain approval simultaneously in Quebec and in Ontario and to schedule the hearings for approval of the settlement either on the same date or in close proximity to each other. Consequently over the past two weeks, counsel have been in close communication with Mr. Justice Gagnon in Montreal and myself in Ottawa.

[6] Justice Gagnon and I both agreed to deal with the certification motion in this matter simultaneously in writing and by means of electronic communication with hearings or conference calls if necessary. Although we contemplated a joint hearing of the two courts by video-conference it appeared that would not be necessary as the matter was proceeding on consent and counsel responded to concerns or requirements voiced by either court. We also determined that it would not be necessary to hold the hearings for approval of the settlement simultaneously. The hearing in Montreal has been scheduled for September 5th, 2108 and the hearing in Ottawa will take place on September 7th, 2018.

[7] I have now reviewed the draft documents and considered the criteria set out in s. 5 of the Ontario legislation. I am satisfied that certification for the purpose of identifying and notifying the class, providing some benefits to the class and ultimately seeking approval of the settlement is in the best interests of the class and is in fact the preferable manner of resolving the common issue identified in the draft judgment. The proposal provides options for members of the class to opt out of the class or to remain in the class and to provide input or opposition to the approval of the proposed settlement. I am also satisfied that it is appropriate to certify a national class that does not include class members residing in Quebec because there is a parallel class proceeding in Quebec which provides the same protections and benefits to the Quebec class. In both proceedings the courts have required that the members of the class have identical access to benefits and information in either English or French.

[8] I have the benefit of the judgment issued by Justice Gagnon earlier this afternoon.

[9] In conclusion, I am granting the order in the form proposed and with the attachments and appendices provided through the exchange of e-mails. The draft order approved by me is attached.

[10] Counsel for the plaintiff is to immediately arrange with the Registrar to ensure the order is issued and entered and the appropriate documents filed in the court record.

[11] I commend all counsel for their prompt response to comments from the court and I thank my colleague in Montreal with whom it has been a pleasure to collaborate.

Mr. Justice Calum MacLeod

Date: June 8, 2018