COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-031013-246, 500-09-031014-244, 500-09-031016-249, 500-09-031017-247, 500-09-031018-245, 500-09-031019-243, 500-09-031020-241, 500-09-031021-249, 500-09-031023-245, 500-09-031024-243, 500-09-031025-240
(500-06-001004-197)

DATE: October 23, 2024

BEFORE THE HONOURABLE LORI RENÉE WEITZMAN, J.A.

N°: 500-09-031013-246

PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
APPLICANTS – Respondents
v.

JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
APOTEX INC.
BRISTOL-MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
JANSSEN INC.
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PFIZER CANADA ULC
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA
SANDOZ CANADA INC.

SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031014-244

PFIZER CANADA ULC
APPLICANT – Respondent

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
APOTEX INC.
BRISTOL-MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
JANSSEN INC.
JODDES LIMITED
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA
SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031016-249

ETHYPHARM INC.
APPLICANT – Respondent

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
APOTEX INC.
BRISTOL-MYERS SQUIBB CANADA CO.
PFIZER CANADA ULC
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA
SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031017-247

ABBOTT LABORATORIES, LIMITED
APPLICANT – Respondent

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
APOTEX INC.
BRISTOL-MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
JANSSEN INC.
PFIZER CANADA ULC
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PHARMASCIENCE INC.

SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA
SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031018-245

SANDOZ CANADA INC.
APPLICANT – Respondent

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
APOTEX INC.
BRISTOL-MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
JANSSEN INC.
PFIZER CANADA ULC
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031019-243

PRO DOC LTÉE
APPLICANT – Respondent

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
APOTEX INC.
BRISTOL-MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
JANSSEN INC.
JODDES LIMITED
PFIZER CANADA ULC
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PURDUE FREDERICK INC.
PURDUE PHARMA
SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031020-241

PURDUE FREDERICK INC.
PURDUE PHARMA
APPLICANTS – Respondents

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED

APOTEX INC.
BRISTOL-MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
JANSSEN INC.
PFIZER CANADA ULC
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031021-249

JANSSEN INC.
APPLICANT – Respondent

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
APOTEX INC.
BRISTOL- MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
PFIZER CANADA ULC
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA

SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031023-245

BRISTOL-MYERS SQUIBB CANADA CO.
APPLICANT – Respondent

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
APOTEX INC.
ETHYPHARM INC.
JANSSEN INC.
PFIZER CANADA ULC
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA
SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031024-243

LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
APPLICANTS – Respondents

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
APOTEX INC.
BRISTOL-MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
JANSSEN INC.
PFIZER CANADA ULC
PHARMASCIENCE INC.
SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA
SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

N°: 500-09-031025-240

APOTEX INC.
APPLICANT – Respondent

v.
JEAN-FRANÇOIS BOURASSA
RESPONDENT – Applicant
and
ABBOTT LABORATORIES, LIMITED
BRISTOL-MYERS SQUIBB CANADA CO.
ETHYPHARM INC.
JANSSEN INC.
JODDES LIMITED
LABORATOIRE ATLAS INC.
LABORATOIRE RIVA INC.
LABORATOIRES TRIANON INC.
PFIZER CANADA ULC
PHARMASCIENCE INC.

SUN PHARMA CANADA INC.
TEVA CANADA LIMITED
PRO DOC LTÉE
PURDUE FREDERICK INC.
PURDUE PHARMA
SANDOZ CANADA INC.
SANOFI-AVENTIS CANADA INC.
IMPLEADED PARTIES – Respondents

JUDGMENT

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[1] The applicants, 16 pharmaceutical companies, seek leave to appeal the Superior Court judgment (the Honourable Gary D.D. Morrisson),[1] dated April 10 2024, and rectified on April 18, 2024 which authorised the respondent to institute a class action against them on behalf of all persons in Quebec who have been prescribed and have consumed any opioid medication, manufactured, marketed, distributed and/or sold by the applicants between 1996 and the present day and who have been diagnosed by a physician as suffering or having suffered from Opioid Use Disorder ("OUD").[2]

[2] The class action was authorised on the basis of three distinct recourses. First, the respondent seeks compensation for the prejudice allegedly suffered by the members of the class based on the civil liability of the applicants due to a safety defect of their opioid medications (art. 1468 and 1469 *C.C.Q.*). Next, the respondent seeks punitive damages under section 49 of the *Quebec Charter of Rights and Freedoms* (the "*Charter*")[3], alleging an infringement of the members' right to life, security and personal integrity resulting from the applicants' intentional failure to inform them of the risks inherent in the use of such drugs. Finally, the respondent seeks to recover damages under section 36(1) of the *Competition Act*[4] (the *"Act"*), alleging that the applicants breached section 52(1) of the *Act* by knowingly providing false or misleading information about opioid medications for the purpose of promoting their use, or by omitting to inform the public of the risks they pose.

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1 *Bourassa c. Abbott Laboratories Ltd.*, 2024 QCCS 1245.
2 The complete list of the 130 opioids at issue is found in Schedule 1 of the judgement.
3 CQLR, c. C-12.
4 R.S.C. 1985, c. C-34.

[3] The applicants assert that the judge committed several errors in authorising such a wide scale class action. Although they have presented 10 distinct applications for permission to appeal, several grounds are common to all.

[4] First, the applicants argue that the judge erred by finding that the claims of the members raise "identical, similar, or related issues of law or fact" (as required by art. 575(1) *C.C.P.*) by failing to consider that each individual product (grouped together in a list of 130 opioids, used over a 30-year period) contains its own combination of molecules, active ingredients, potencies, warnings, regulatory histories, and suggested dosage.

[5] The applicants further claim that the judge erred by improperly extending the principles set out in *Banque de Montréal v. Marcotte*[5] (*Marcotte*) to a case of extra-contractual liability, leading him to conclude that the facts alleged appear to justify the conclusions sought as per the requirement of art. 575(2) *C.C.P.* They contend that the general and sweeping claims against the pharmaceutical industry at large are insufficient as a foundation for a class action against each individual applicant, for each of the three causes of action.

[6] Some applicants argue that the judge erred in assuming that there are putative members with claims against each of them, in the absence of evidence that any individuals took their specific medication and thereby developed OUD.

[7] With respect to the cause of action based on the *Act*, the applicants argue that the judge erred in finding that the allegation that they acted in concert to provide false information about their products was sufficient for authorisation purposes. In their view, the absence of any evidence regarding the nature, extent or content of the alleged false information provided renders a recourse pursuant to section 52 of the *Act* groundless.

[8] In addition, the following applicants raised arguments unique to them:

- Bristol-Myers Squibb refers to evidence tendered by affidavit indicating that it never engaged in marketing or advertising of any kind for its opioid products.

- Apotex similarly refers to affidavit evidence establishing that it never promoted its opioid products to physicians or to the public. It also claims that the judge failed to take into account the fact that its opioids were legally marketed with the consent of the Canadian Minister of Health, which implies that they are safe and effective.

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5 2014 SCC 55.

- Pfizer asserts that it demonstrated, through affidavit evidence, that its medication included in Schedule1 of the judgement is in fact not an opioid.

- ProDoc points out that it does not manufacture medications but simply buys generic medications for sale to pharmacies. It refers to the doctrine of *learned intermediary* and argues that it had discharged its duty to inform users by adequately informing healthcare professionals.

- Janssen contends that no claim can be brought against it under the *Act* without any allegations of detrimental reliance.

[9] Finally, the applicants argue that the claim for punitive damages based on the *Charter* cannot be justified, in the absence of any evidence regarding dissemination of false information about their products.

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[10] As the Supreme Court of Canada explains in *L'Oratoire Saint-Joseph du Mont-Royal,* determining whether a class action should be authorised pursuant to article 575 *C.C.P* is a purely procedural matter. The requirements of article 575 *C.C.P.* must receive a "broad interpretation and application" in keeping with the interest of favoring access to class actions.[6]

[11] The role of the authorisation judge is to screen out frivolous applications.[7] The merits of the case are not considered at this stage beyond a demonstration of a *mere possibility* of success: not even a "realistic" or "reasonable" possibility of success on the merits is required.[8]

[12] At the authorisation stage, all factual allegations are assumed to be true, and only those that are vague, general, or imprecise, will require the introduction of "some evidence".[9] Such evidence will also be required where allegations are found to be

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6 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 7-8, referring to *Bank of Montreal v. Marcotte*, 2024 SCC 55, par. 43, *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59, par. 60; *Marcotte v. Longueuil (City)*, 2009 SCC 43, par. 22.

7 *Desjardins Cabinet de services financiers inc. v. Asselin*, 2020 SCC 30, par. 27.

8 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 58; *Tessier c. Economical, compagnie mutuelle d'assurance,* 2023 QCCA 688, par. 27.

9 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 59-60; *Homsy c. Google*, 2023 QCCA 1220, par. 24 (Morissette, J.A.), par. 27-28 (Sansfaçon, J.A.).

manifestly inaccurate or otherwise contradicted by the plaintiff's own evidence, or are based on opinion, hypothesis or speculation.[10]

[13] As the Court recently summarized in *Samsung Electronics Canada c. Arial*:

> [33] En application du paragraphe 2°, le juge de première instance doit décider si ce qui est allégué paraît justifier les conclusions recherchées – on est ici dans le domaine des apparences, et il est dans la nature des choses que celles-ci soient parfois trompeuses. Il s'agit donc pour le juge, simplement et uniquement, d'évaluer si la partie qui demande une telle autorisation présente une cause défendable eu égard aux faits et au droit applicable. Il n'est pas question à ce stade d'une cause dont on pourrait croire qu'elle est promise, selon toute probabilité, à une victoire au fond. En outre, au stade de l'autorisation, une jurisprudence constante enseigne que, sous réserve des quelques nuances abordées ci-dessous, les faits allégués doivent être tenus pour avérés. Et il est évident qu'à ce stade préliminaire, aucune question en litige n'est encore vidée.[11]
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> [references omitted; underscored in original]

[14] Suffice it to say, the threshold for authorisation of a class action is low, providing only a filtering mechanism to weed out manifestly groundless claims. In contrast, the threshold for obtaining permission to appeal from a judgment authorising a class action is high. Such appeals are reserved for "exceptional cases" in which the judgment appears on its face to be tainted by a decisive error either in the interpretation of the conditions for launching a class action or in the appreciation of the supporting facts. Permission to appeal will also be granted where the applicant establishes a flagrant case of incompetence of the Superior Court.[12]

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[15] None of the applicants has convinced me that it meets the very high threshold for granting permission to appeal.

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10 *Tessier c. Economical, compagnie mutuelle d'assurance*, 2023 QCCA 688, par. 27.

11 *Samsung Electronics Canada c. Arial*, 2024 QCCA 1195, par. 33.

12 *Centrale des syndicats du Québec c. Allen*, 2016 QCCA 1878, par. 57-59.; *L'Unique assurances générales inc. c. Centre dentaire Boulevard Galeries d'Anjou inc.*, 2021 QCCA 1757; *Bell Canada c. Langlois-Vinet*, 2023 QCCA 1197, par. 7 (Sansfaçon, J.A.); *Association des optométristes du Québec c. Raunet*, 2023 QCCA 490, par. 5-6 (Marcotte, J.A.); *Centre de services scolaire des Samares c. Labbé*, 2022 QCCA 564, par. 6 (Bachand, J.A.).

[16] The judge correctly summarised the applicable principles and concluded that the "[t]he evidence at this preliminary stage is not frivolous, nor is it vague and imprecise".[13] He found that the class action was *arguable*[14] which is all that needed to be established.

[17] The judge found that the issues are "identical, similar or related" (as per art. 575(1) *C.C.P.*) since the opioid medications identified in Schedule I of the judgement are a class of drugs which have similar adverse effects, despite differing active ingredients. He concludes that the differences in the individual medications at issue do not affect the standing of the putative class members, because, as he writes: "for authorization purposes, all of the alleged medications deliver or delivered opioid product to the putative class members, to whom they were prescribed, and who have also been diagnosed with OUD".[15] His reasoning is consistent with this Court's recent review of the first criterion of art 575 *C.C.P.* in *Lachaine c. Air Transat AT inc.* where it stated:

> [23] Le premier critère [de l'article 575 *C.p.c.*] doit être interprété largement et amène une conception souple de l'intérêt commun, puisqu'il suffit au juge d'identifier une question qui permet de faire progresser de manière non négligeable le règlement des réclamations de tous les membres du groupe. Ce critère n'exige pas une réponse identique pour tous les membres ni même une réponse qui bénéficie à chacun d'entre eux dans la même mesure. La Cour suprême a très bien établi l'approche à adopter, laquelle n'exige notamment pas que les demandes individuelles des membres du groupe soient fondamentalement similaires les unes aux autres ni que chaque membre du groupe soit dans une situation parfaitement identique à celle des autres ou possède une cause d'action directe contre chacune des intimées.[16]

[18] Regarding the contention that the respondent's allegations do not support a claim against each individual applicant, the applicants fail to identify an obvious error committed by the judge in his application of the case of *Marcotte,* which established that it is not necessary for the class representative to have a *direct cause of action against or a legal relationship with each defendant in the class action.*[17] The judge properly focused on the sufficiency of the similarity of the questions raised and there was no reason for him to distinguish between contractual and extracontractual claims in applying the principles of *Marcotte*.

[19] With respect to the claim based on art. 1468 *C.C.Q.*, the judge's authorisation of a class action is grounded in his finding that "prescription opioid medication contains an

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13 *Bourassa c. Abbott Laboratories Ltd.*, 2024 QCCS 1245, par. 153.
14 *Id.*, par. 199, 208, 222, 259, 264.
15 *Id.*, par. 135.
16 *Lachaine c. Air Transat AT inc.*, 2024 QCCA 726, par. 23.
17 *Bank of Montreal v. Marcotte*, 2014 SCC 55, par. 43.

inherent danger and does not afford the expected safety to its users, with the result that it can and has given rise to OUD".[18]

[20] The applicants do not identify any error in the judge's application of the principles laid out in *Brousseau* and in *Imperial Tobacco* where the Court explained that the recourse pursuant to art. 1468 *C.C.Q.* does not require proof of fault.[19] For the purposes of authorisation, the respondent only had to allege that the drugs in question pose a danger, i.e. that they have the capacity to cause a particular side effect,[20] that he suffered prejudice, and that the prejudice was caused by this danger.[21]

[21] As to the judge's assumption that there will be class members against all and each of the applicants, the judge bases his conclusion on the evidence that Canadians are the second highest consumers of prescription opioids in the world, and that approximately 10 % of patients prescribed opioids for chronic pain become addicted.[22] I see no obvious error in this factual conclusion that would meet the high threshold for leave to appeal.

[22] With respect to the applicants' arguments that the allegations of misrepresentations were insufficient to ground claims both under the *Charter* and the *Competition Act*, they appear to conflate sufficiency of allegations with sufficiency of evidence. The judge was obliged to take the allegations as true, and the applicants fail to demonstrate an error in his conclusion that they could support the relief sought.[23] In the absence of frivolous or vague allegations, no evidence was required to support the claim that the applicants provided misleading information about the benefits of their opioid medications and / or omitted to warn of their potential harm.

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18 *Bourassa c. Abbott Laboratories Ltd.*, 2024 QCCS 1245, par. 71, 197-199.

19 *Brousseau c. Laboratoires Abbott limitée*, 2019 QCCA 801, par. 76-91, application for leave to appeal dismissed, April 9, 2020, nº 38745; *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358, par. 365, both cited in *Bourassa c. Abbott Laboratories Ltd.*, 2024 QCCS 1245, par. 185, 187.

20 *Brousseau c. Laboratoires Abbott limitée*, 2019 QCCA 801, par. 105-109, application for leave to appeal dismissed, April 9, 2020, nº 38745.

21 The respondent did not even have to allege the absence of sufficient warnings about the dangers posed by the medications, since a claim pursuant to art. 1468 places the burden of proving the sufficiency of the warnings on the manufacturer: *Brousseau c. Laboratoires Abbott limitée*, 2019 QCCA 801, par. 88-89, application for leave to appeal dismissed, April 9, 2020, nº 38745; *Depuy Orthopaedics Inc. c. Melançon*, 2019 QCCA 878, par. 11-12; *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358, par. 392.

22 *Bourassa c. Abbott Laboratories Ltd.*, 2024 QCCS 1245, par. 115-126, 130.

23 *Id.*, par. 209-274. Even in a case where the merits of the recourse can be questioned, a summary analysis of the proposed cause of action is sufficient at the authorisation stage, see for eg.*Johnson & Johnson inc. c. Gauthier*, 2020 QCCA 1666, par. 18-21 (Marcotte, J.A.).

[23] Possible defences regarding the *learned intermediary*[24] and those related to the exact nature or extent of the misrepresentations alleged, are issues to be dealt with on the merits, as are claims by some applicants regarding an absence of marketing of their products.[25]

[24] Regarding the absence of any allegation of detrimental reliance by the respondent on the allegedly false information provided by the applicants, s. 36 of the *Act* does not expressly require detrimental reliance.[26] The question here is related to the applicants' more general contention, about the insufficiency of the respondent's theory of causation in order to establish the applicants' liability under the *Act.* The respondent essentially alleges that the applicants' misleading narrative about their opioid products (notably their safety for long-term use) led to increased reliance on them, increased prescription sales, and in turn OUD.[27] At the authorisation stage, this provides a sufficient basis for causation, the strength of which will be decided on the merits.

[25] Furthermore, contrary to what some applicants suggest, the judge did not frame the cause of action under the *Act*, as a "conspiracy to misinform". The judge reviewed the requirements of s. 52 of the *Act* as well as the misrepresentations claimed by the respondent, in addition to his claim that the applicants acted in concert. I see no obvious error in his conclusion that these allegations were sufficient, at the authorisation stage, to support a claim that each of the applicants had conveyed false or misleading information, in contravention of s. 52.[28]

[26] The applicants also highlight that the drugs in question received marketing authorisation from the Federal Minister of Health without pointing to any error made by the judge about this fact. Compliance with government regulatory requirements is not a

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24 On this subject, see *Brousseau c. Laboratoires Abbott limitée*, 2019 QCCA 801, par. 163-172, application for leave to appeal dismissed, April 9, 2020, nº 38745.

25 Regarding the affidavit evidence of Bristol-Myers Squibb and Apotex supporting the absence of advertising or marketing of these products, given the broad wording of section 52 (*Apotex Inc. v. Hoffman La-Roche Limited*, 195 DLR (4th) 244, 2000 CanLII 16984 (Ont. C.A.), par. 18), it is questionable whether the *Competition Act* requires that the false representations be made specifically in the context of marketing or advertising. The same goes for the requirements for an action under the *Charter.*

26 *Live Nation Entertainment, Inc. v. Gomel*, 2023 BCCA 274, par. 110-127, application for leave to appeal dismissed, April 4, 2024, nº 40930; *Valeant Canada LP/Valeant Canada S.E.C. v. British Columbia*, 2022 BCCA 366, par. 232-236, application for leave to appeal dismissed, May 25, 2023, nº 40556.

27 *Bourassa c. Abbott Laboratories Ltd.*, 2024 QCCS 1245, par. 228-237.

28 *Id.*, par. 223-231, 421.

bar to authorisation and the impact of such compliance is yet another issue that may be considered on the merits.[29]

[27] Finally, Pfizer claims that it should not be included as a defendant in the class action because, according to an affidavit filed by its Head of Regulatory Affairs, Robaxisal was not classified by Health Canada as an opioid. However, in the absence of unequivocal evidence that Robaxisal is not an opioid, the respondent's allegations cannot be said to be implausible or clearly wrong,[30] and the authorisation judge did not make a manifest error by including this drug in Schedule 1. Pfizer retains the right to make a motion to dismiss the class action, where this issue can be properly debated.

FOR THESE REASONS, THE UNDERSIGNED:

[28] **DISMISSES** the applications for leave to appeal the judgment authorising the institution of a class action rendered on April 10, 2024, rectified on April 18, 2024, by the Superior Court;

[29] **WITH** legal costs.

LORI RENÉE WEITZMAN, J.A.

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29 *Brousseau c. Laboratoires Abbott limitée*, 2019 QCCA 801, par. 158, 160, application for leave to appeal dismissed, April 9, 2020, nº 38745.

30 *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35, par. 42; *Benjamin c. Crédit VW Canada inc*, 2022 QCCA 1383, par. 39; *Baratto c. Merck Canada inc.*, 2018 QCCA 1240, par. 51, application for leave to appeal dismissed, March 28, 2019, nº 38338.

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SOCIÉTÉ D'AVOCATS TORYS
For Pfizer Canada ULC

Mtre Yves Robillard
Mtre Fadi Amine
MILLER THOMSON
For Pro Doc Ltée

Mtre Stéphane Pitre
Mtre Alexis Alain Leray
BORDEN LADNER GERVAIS
For Purdue Frederick inc., Purdue Pharma

Mtre Noah Michael Boudreau
Mtre Mirna Kaddis
Mtre Peter J. Pliszka
FASKEN MARTINEAU DUMOULIN
For Sandoz Canada inc.

Mtre Sylvie Rodrigue
Mtre Corina Manole
Mtre Karl Boulanger
SOCIÉTÉ D'AVOCATS TORYS
For Sanofi-Aventis Canada inc.

Date of hearing: September 24, 2024