



Top Ontario court opens the door to recognition of foreign class action judgments binding Ontario plaintiffs

Currie v. McDonald's Restaurants of Canada Ltd. (Ontario Court of Appeal)¹

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In a decision released last month, the Ontario Court of Appeal agreed with the finding of Cullity J. of the Superior Court of Justice that foreign class actions that include Canadian plaintiffs as class members may be recognised and enforced in Ontario – as long as Ontario plaintiffs are given sufficient procedural protections in the foreign proceeding.

In *Currie*, McDonald's sought to dismiss an Ontario class action brought on behalf of all McDonald's customers in Canada regarding the promotional contests McDonald's had run between 1995 and 2001. A class action on the same issues that purported to include Canadian class members had already been brought, certified and settled in Illinois. An Illinois court had issued an order approving the settlement of that class action. McDonald's argued that the Canadian class actions should be dismissed because they sought to re-litigate issues that had already been decided by the Illinois court.

The Court of Appeal found that the Illinois court had a real and substantial connection to the subject matter of that proceeding, given that the contest at issue had been run from Illinois. This is normally enough to allow the foreign court's jurisdiction to be recognised and its judgment enforced.² However, the Court of Appeal went on to observe that class actions raise unique concerns regarding plaintiffs residing outside the jurisdiction in which they are brought – i.e. why would the customer of an Ontario McDonald's restaurant ever expect that their rights would be dealt with in an Illinois court?

Procedural protections to protect Ontario class members, the court found, are important in alleviating potential unfairness to Ontario plaintiffs and in determining whether the foreign judgment will be recognised. These protections include the provision of adequate notice to Ontario plaintiffs, the adequacy of the legal representation of the Ontario plaintiffs, and the right for the Ontario plaintiffs to opt out of the proceeding and pursue a remedy elsewhere. Provided such procedural protections are afforded by the foreign jurisdiction, the court found that it might be appropriate to bar Ontario residents from bringing local actions due to their failure to opt out of a foreign class action.

In *Currie*, however, the Court of Appeal agreed with the judge below that the notice given to Canadian plaintiffs regarding the Illinois action was inadequate.³ It found that the failure to provide adequate notice had a bearing on both the jurisdiction of the Illinois court over Ontario plaintiffs and on the fairness of enforcing its judgment against Ontario residents. Recognition of the Illinois judgment was refused and the Ontario class action brought by Mr. Currie and others against McDonald's was allowed to proceed.

Despite its decision not to recognise the Illinois judgment in this case, the Court of Appeal has nevertheless still opened the door for class actions to be conducted entirely abroad and then enforced in Canada – provided adequate provisions are made to notify class members in Canada, provide them with adequate legal representation, and allow

them the chance to opt out. In the past, parallel class proceedings were usually brought against international corporations in several jurisdictions, including Canada. The *Currie* decision may, in some cases, remove the necessity of bringing a separate Canadian class action. Nevertheless, the only way

defendants can be certain that foreign class actions will be enforced in Canada is to insist that parallel actions be commenced in Canada for purposes of obtaining court approval of any settlement that may result.



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1 A full copy of the *Currie* decision can be found on the *Court of Appeal's* website at:
<http://www.ontariocourts.on.ca/decisions/2005/february/C41264.htm>

2 See *Beals v. Saldanha*, 2003 SCC 72

3 The Illinois court had required notice in Canada to be published in three French-language newspapers, *Maclean's* magazine, and two U.S. publications with circulation in Canada.