

SUPERIOR COURT

(Class action division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500-06-001368-253

DATE: April 22, 2025

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

DR. BRUCE J. GRIERSON
and
MARTINE CAPLETTE
and
JEAN-FRANCOIS TURGEON
and
JEAN GIROUX
and
YVES LANGLOIS
and
YVES PÉPIN
and
CHRISTIAN TURGEON
Plaintiffs

v.
RIO TINTO PLC
and
RIO TINTO CANADA MANAGEMENT INC.
and
RIO TINTO FER ET TITANE INC.
Defendants
and
FONDS D'AIDE AUX ACTIONS COLLECTIVES
Mis en cause

JUDGMENT ON APPROVAL OF NOTICES

OVERVIEW

[1] Plaintiffs ask that the Court approve the dissemination of notices to advise potential class members of a hearing to proceed jointly with a) the authorization to file a class action and b) the approval of a settlement putting an end to it.

CONTEXT

[2] Plaintiffs are former directors, officers or executives of Defendants Rio Tinto Canada Management Inc. ("**RTCMI**") and Rio Tinto Fer et Titane Inc. ("**RTFT**"). RTFT and RTCMI are fully owned Canadian titanium business units of the Defendant Rio Tinto PLC ("**Rio Tinto PLC**").

[3] Plaintiffs are beneficiaries or former beneficiaries of the Multi-Employer Rio Tinto Canadian Business Units Pension Plan for Certain Non-Unionized Employees (the "**RTCBU Plan**"). Certain Plaintiffs are also beneficiaries of a Supplementary Executive Retirement Plan (the "**SERP**").

[4] In 2023, Plaintiffs as well as other RTCMI and RTFT retirees (the "**Oppression Plaintiffs**") filed proceedings in the commercial division of this court (the "**Oppression Proceedings**")¹ seeking various declaratory, injunctive and rectification orders, as well as damage awards resulting from the alleged illegal and oppressive corporate conduct by the Defendants towards their former officers and executives.

[5] In summary, the Oppression Plaintiffs alleged that they had been led to believe that their pension benefits under the RTCBU Plan or the SERP would be indexed biennially by 50% of the Consumer Price Index (the "**CPI**"), provided that the Canadian titanium business unit was shown to be profitable (the "**Indexation Policy**").

[6] The Oppression Plaintiffs complained that Defendants, acting unilaterally and without notice, abolished the indexation of their pension plans. The Oppression Plaintiffs alleged that Defendants' actions prior to cancellation of the Indexation Policy, the cancellation itself and Defendants' subsequent efforts to mislead them constituted: a) a delictual fault; b) a breach of contract; and c) an abusive conduct within the meaning of the *Canada Business Corporations Act* ("**CBCA**")² and the *Québec Business Corporations Act* ("**QBCA**").³

[7] Defendants deny the existence of the Indexation Policy or any legal or contractual obligation to index Plaintiffs' pensions. They conclude that the interruption of the Indexation Policy cannot amount to a fault (contractual or delictual).

¹ *Grierson et al. c. Rio Tinto PLC et al.*, S.C.M.: 500-11-062170-234.

² *Canada Business Corporations Act*, RSC 1985, c. C-44, art. 238 and following.

³ *Quebec Business Corporations Act*, CQLR, c. S-31.1, art. 439 and following.

[8] On February 5, 2024, the undersigned dismissed a motion presented by the Defendants to partially dismiss the Oppression Proceedings.⁴

[9] On or about February 14, 2025, the parties entered into a Settlement Agreement ("**Settlement Agreement**").

[10] The Settlement Agreement would apply not only to the Oppression Plaintiffs but all those in a similar position.

[11] On March 19, 2025, Plaintiffs filed an Application for Authorization of a Class Action for Settlement Purposes and to Approve a Settlement Agreement (the "**Application for Authorization**").

[12] The purpose of the Application for Authorization is to approve the Settlement Agreement and ensure that it is binding on those individuals with defined-benefit entitlements under the RTCBU Plan and the SERP which are covered by the Settlement Agreement.

[13] The class members that Plaintiffs seek to represent are divided into two subclasses:

13.1. Subgroup 1: "RTCBU Plan Retirees", which means:

- i) the retired members under the RTCBU Plan who, on December 31, 2023, were in receipt of a lifetime defined benefit pension from the RTCBU Plan or in accordance with a SERP, with the exception of those retired members who began receiving their pension payments between January 1, 2023, and December 31, 2023;
- ii) the former members who had defined benefit entitlements under the RTCBU Plan or the Predecessor Plans and who: (a) withdrew the present value of their pension benefits from such registered plan upon their termination of employment and (b) were only in receipt of a lifetime pension in accordance with a SERP on December 31, 2023, with the exception of those retired members who began receiving their pension payments between January 1, 2023, and December 31, 2023; and
- iii) the surviving spouses of retired or former members in Subgroup 1(i) or Subgroup 1(ii) above if such surviving spouses were in receipt of a lifetime pension from the RTCBU Plan or a SERP on December 31, 2023.

The RTCBU Plan Retirees who will not have opted out are referenced as the "**Settling RTCBU Plan Retirees**."

⁴ *Grierson c. Rio Tinto PLC*, 2024 QCCS 306.

- 13.2. Subgroup 2: All individuals with defined benefit entitlements under the RTCBU Plan, who will be subject to the Use of Surplus and Indexation Policy once adopted.

(together, the “**Class Members**”)

[14] The parties propose that the Class Members be informed that a joint hearing will be held to approve the class action for settlement purposes and approve the Settlement Agreement.

[15] They also propose that the opt-out period take place prior to the class action being authorized.

ANALYSIS

1. Applicable Law

[16] The authorization of a class action requires sending notices to the members (article 576 C.C.P.), which must specify (article 579 C.C.P.):

- 16.1. a description of the affected class;
- 16.2. the principal issues raised by the class action and the conclusions sought;
- 16.3. the name of the representative plaintiff, the name and address of his or her counsel and the district in which the class action will be brought;
- 16.4. the right of class members to opt out of the class, the procedure to be followed and the time limit for opting out;
- 16.5. the fact that a member who is not the representative or an intervenor will not be called upon to pay the legal costs of the class action; and
- 16.6. any other information that is considered necessary, such as the web address of the class action registry.

[17] Such notices play a crucial role. In a class action, a representative often acts, without a specific mandate, on behalf of several people. Since decisions made during a class action affect all the claimants involved in the action, the preservation of their individual rights relies on the timely transmission of relevant information. Notices are thus more than a mere procedural requirement. They guarantee that the class action respects the paramount principles of public order and fairness.⁵ This is especially true in the case of notices sent prior to the right to opt out of a class action. “Although it does not have to

⁵ *Hocking c. Haziza*, 2008 QCCA 800, para. 119, justice Chamberland in dissent but approved by the majority as to the principle, para. 229; *Lévesque c. Vidéotron s.e.n.c.*, 2015 QCCS 3561, para. 10; Yves LAUZON and Anne-Julie ASSELIN in Luc CHAMBERLAND and al., *Le Grand Collectif : Code de procédure civile : Commentaires et annotations*, 6th ed., volume 2, Éditions Yvon Blais, 2021, art. 579.

be shown that each member was actually informed, the way the notice procedure is designed must make it likely that the information will reach the intended recipients.”⁶

[18] The court must therefore pay particular attention to both the language of the notice and the manner of its dissemination.

[19] The language used should be simple and accessible to the average reader. Legal jargon should be avoided so that the notice is clearly understood by the members.⁷ The notice must be “clear and concise”.⁸

[20] As for dissemination, the appropriate means must be chosen to reach the members where they are. The court must determine the time, form and manner of publication “having regard to the nature of the class action, the composition of the class and the geographical location of its members.”⁹ Individual notification of members should be preferred when circumstances allow it.¹⁰

[21] The objective remains to reach the largest number of members while ensuring that the costs incurred are proportionate to the nature and purpose of the demand.¹¹ Because the target audience is often composed of a juxtaposition of fragmented subgroups that cannot be easily reached by a single medium, a combination of several means or the media must often be considered.¹²

[22] Publication of notices on the central class action registry (the “**Registry**”) is required by article 573 C.C.P.

[23] Moreover, it is customary to require that class counsel publish the notices on their website and to forward a copy of the notices to members who have registered with them.¹³

⁶ *Canada Post Corp. c. Lépine*, 2009 SCC 16, paras. 42 and 43; *Meubles Léon Itée c. Option consommateurs*, 2020 QCCA 44, para. 78 (Closing Judgment, 2024 QCCS 5046); *Knafo c. Barilla Canada inc.*, 2025 QCCS 451, para. 20.

⁷ Barreau du Québec, *Actions collectives : Guide sur les avis aux membres*, 2016, p. 8, online : <<https://www.barreau.qc.ca/media/sc5bnn50/guide-avis-membres-action-collective.pdf>>, visited April 17, 2025; *Hocking c. Haziza*, *supra*, note 5, par. 116; *Boyer c. Agence métropolitaine de transport (AMT)*, 2010 QCCS 4984, paras. 9 and 10.

⁸ Art. 581 C.C.P.

⁹ Art. 579(2) C.C.P.

¹⁰ *Chevalier c. Air Transat AT inc.*, 2022 QCCS 671, para. 26; *Huard c. Innovation Tootelo inc.*, 2021 QCCS 4209, para. 32; *Asselin c. Desjardins Cabinet de services financiers inc.*, 2021 QCCS 1340, para. 28; Yves LAUZON and Anne-Julie ASSELIN, *supra*, note 5.

¹¹ Barreau du Québec, *Actions collectives : Guide sur les avis aux membres*, *supra*, note 7, p. 7; *Defrance c. Banque de Montréal*, 2019 QCCS 4615, para. 11; *Asselin c. Desjardins Cabinet de services financiers inc.*, *supra*, note 10, paras. 13 to 27; *A.B. c. Clercs de Saint-Viateur*, 2019 QCCS 1521, para. 22 (Appeal allowed; Superior Court retains jurisdiction over all other aspects of the case to come, 2023 QCCA 527); *Boyer c. Agence métropolitaine de transport (AMT)*, *supra*, note 7, paras. 10 and 11; *Comments of the Minister of Justice on art. 579 C.C.P.*; Pierre-Claude LAFOND, *Le recours collectif, le rôle du juge et sa conception de la justice: Impact et évolution*, Cowansville, Éditions Yvon Blais, 2006, p. 170.

¹² *Hocking c. Haziza*, *supra*, note 5, para. 234.

¹³ *Knafo c. Barilla Canada inc.*, *supra*, note 6, para. 32.

[24] Costs of the notices are usually assumed by the Defendants.¹⁴

2. Discussion

[25] In the normal course, notices are sent after the class action has been authorized.¹⁵

[26] In the present case, the parties propose that the notices be sent, and thus that the exclusion period elapse, before the class action is authorized for settlement purposes.

[27] While this is unusual, the Court considers that the *Code of Civil Procedure* allows for it.

[28] Article 581 C.C.P. provides that notices to class members can be ordered, “[a]t any stage of a class action [...] if it considers it necessary for the protection of their rights”.

[29] When a settlement occurs prior to the class action being authorized, parties sometimes agree to combine the class action authorization hearing with the settlement approval hearing.¹⁶

[30] Proceeding in this fashion provides certain advantages to class members.

[31] Firstly, costs and delays are reduced as this allows for the sending of one notice and proceeding with one hearing instead of two notices and two hearings.

[32] More importantly, it allows potential class members to be informed of the terms of the proposed settlement prior to exercising their right to opt out. This advantage is not insignificant as in the normal course, class members are called upon to exercise their right to opt out before a settlement is announced and may be bound by a settlement that they disagree with if the court decides to approve it.

[33] However, when a combined notice and hearing is contemplated, the notices must include information about the proposed class action (referred to in paragraph [16] above) as well as information about the settlement for which approval is sought (article 590 C.C.P.). This additional information includes:

33.1. The date, time and place that the transaction will be submitted to the court for approval.

33.2. The nature of the transaction, the method of execution chosen and the procedure to be followed by class members to file their claim.

¹⁴ *Conseil pour la protection des malades c. Centre intégré de santé et de services sociaux de la Montérégie-Centre*, 2020 QCCS 1663, para. 14.

¹⁵ Art. 576 C.C.P.

¹⁶ *Picard c. Ironman Canada inc.*, 2022 QCCS 380; *Rahmani c. Groupe Adonis inc.*, 2021 QCCS 1579.

33.3. The right of class members to make representations before the court regarding the proposed transaction and the distribution of any remaining balance.

[34] Proceeding with a combined hearing is appropriate in the present case given that:

34.1. The vast majority of putative class members are advanced-age retirees.

34.2. The Surplus Utilization and Indexation Policy provided for in the Settlement Agreement should be approved this summer in order to be in force by the end of the year.

34.3. The Settlement Agreement provides for the amendment of the RTCBU Plan which must be registered by Retraite Quebec and is subject to the procedure provided for in the *Supplemental Pension Plans Act* (c. R-15.1).

[35] Therefore, the parties believe that it is in the interests of putative class members that the class action will be authorized for settlement purposes only once regulatory approval has been obtained for the amendment of the RTCBU Plan.

[36] If the class action were authorized for settlement purposes and regulatory approvals were not obtained, the parties would find themselves in the position of having to ask the Court to set aside the authorization judgment.

[37] Thus, the Court agrees with the timeline proposed by the parties.

[38] The content of the notices is in line with the legislative requirements.

[39] The distribution plan provides for the notice to be sent directly to the class members, which is the best course of action when such method is available.

FOR THESE REASONS, THE COURT:

[40] **APPROVES** substantially the form and content of the Notice Regarding Proposed Class Action and Settlement Approval Hearing (the “**Settlement Notices**”) (Exhibit R-1);

[41] **AUTHORIZES** the dissemination of the Pre-Approval Notices in accordance with the dissemination plan set out in the Notice Plan (Exhibit R-2):

41.1. A bilingual copy of the Notice (Schedule B) will be sent by mail to all Class members who are RTCBU Plan retirees, surviving spouses, beneficiaries and deferred plan members;

41.2. A bilingual copy of the Notice (Schedule B) will be sent by email to all Class members who are active employees of Rio Tinto;

[42] **AUTHORIZES** the Defendants to communicate to Concilia Services Inc. the list of Class Members they hold, as well as their last known residential address or email address (as the case may be), in order to facilitate the distribution of the Pre-Approval Notices to Class Members;

[43] **ORDERS** that Concilia Services Inc. shall maintain confidentiality over and shall not share the information provided pursuant to this judgment with any other person, unless doing so is strictly necessary for executing the notice plan;

[44] **ORDERS AND DECLARES** that this judgment constitutes a judgment compelling the production of the information from the Defendants within the meaning of applicable privacy laws, and that this judgment satisfies the requirements of all applicable privacy laws;

[45] **RELEASES** the Defendants from any and all obligations pursuant to applicable privacy laws and regulations in relation to the communication of any personal and/or private information to Concilia Services Inc. provided for in this judgment;

[46] **ORDERS** Concilia Services Inc. to notify the Pre-Approval notices, pursuant to the Notice Plan within thirty days of the present judgment;

[47] **ORDERS** that any potential class member wishing to opt-out of the class action will have to do so by informing the court clerk prior to July 6, 2025;

[48] **SCHEDULES** the authorization and settlement approval hearing on July 8, 2025, at the Montreal courthouse in a room to be determined, which will be posted on Class Counsel's website prior to the hearing;

[49] **ORDERS** that the date and time of the settlement approval hearing shall be set forth in the Pre-Approval Notice, but may be adjourned by the Court without further notice to the Settlement Class Members, other than such notice as may be posted on Class Counsel's website;

[50] **THE WHOLE** without costs.

MARTIN F. SHEEHAN, J.S.C.

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Hearing date: Judgement rendered based on written representations.