

Class Counsel Fee the Determinative Factor for Carriage

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In August 2018, a fire at 650 Parliament Street in Toronto damaged two residential towers. The blaze left hundreds of residents without a home, and several with injuries. Two competing class actions soon materialized, both commenced by experienced class counsel. Class counsel did not form a consortium, and Justice Belobaba of the Ontario Superior Court of Justice was forced to determine which of the two law firms should have carriage of the action.

In his decision in *Chu v. Parwell Investments Inc.*, Justice Belobaba, having found all other factors to be essentially equal, selected one firm over the other on the basis of the fee arrangements proposed.

In reaching his decision, Justice Belobaba considered the experience of the competing firms, the parties proposed in the competing class actions, the causes of action alleged, and the states of preparation, as between the competing firms. He found no clear winner on these factors: competing class counsel had the requisite experience, and both had commenced and developed compelling lawsuits.

The determinative factor was class counsels' proposed fee arrangements. Class counsel awarded carriage proposed a scaled contingency fee and, because a contested certification motion was unlikely and an early settlement very likely (defence counsel having acknowledged that liability would not be an issue), the scaled fee proposed would yield a lower counsel fee in the circumstances. Justice Belobaba held that this could yield a multi-million-dollar increase of the damages paid out to class members, and this impact informed his decision that the fee arrangement was the most objectively determinative factor on the carriage motion.

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