

Claims struck against McDonald's, Cohon

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Personal liability of officers and directors for the tortious acts of corporations is limited to situations where they have acted outside the scope of their duties or where their own acts are tortious, a motions court has ruled in striking a claim against George Cohon and other senior officers of McDonald's Restaurants of Canada Limited and the parent McDonald's Corporation.

Superior Court Justice Ian Nordheimer found that the plaintiffs had "failed to establish a nexus" between their allegations and the named corporate officers, adding: "If plaintiffs wish to advance claims against officers or directors of corporations it is not unreasonable to hold plaintiffs to a fairly high standard regarding the content of their pleadings."

The motion was related to a claim resulting from a Toronto McDonald's selling a Big Mac said to contain a rat's head, "complete with eyes, teeth, nose and whiskers." The claim alleges that in June 1999, Ayan Abdi Jama ate part of the hamburger before discovering it contained more than an all-beef patty. Through her litigation guardian, Jama sued, alleging physical and extensive psychiatric damages.

In order to have the personal claims and those against the U.S. parent dismissed, the defendants had to show it was "plain and obvious" the claims could not succeed: *Hunt v. Carey Canada Inc.*, [\[1990\] 2 S.C.R. 959](#). Justice Nordheimer also considered "the frequently expressed concern of judges in this court of the tendency for plaintiffs to advance claims against officers and directors for tactical or leverage purposes." He cited *AGDA Systems International Ltd. v. Valcom Ltd.* (1999), [43 O.R. \(3d\) 101](#), in which the Ontario Court of Appeal held: "Business cannot function efficiently if corporate officers and directors are inhibited in carrying on a corporate business because of a fear of being inappropriately swept into lawsuits "

Justice Nordheimer concluded that the "allegations would appear to have little, if anything, to do with the prevention of indiscriminate actions of rogue employees intent on contaminating a particular sandwich."

The fact "that McDonald's Canada employs 70,000 people and that McDonald's U.S. operates 27,000 restaurants in 119 countries" demonstrates the remoteness of the defendant officers from the facts in this action.

The plaintiff was represented by Ted Charney of Falconer Charney and the defendants by Brian Brock of Dutton Brock and Mark Veneziano of Lenczner Slaght.

(Reasons in *Jama v. McDonald's*, 2046-020, 13 pp., are available from FULL TEXT.)