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## 7th National Symposium on Class Actions

- The top 10 class actions decisions of the past year
- The class actions trial: how does it work?
- Discovery strategies and tactics
- Class counsel fees and financing
- Searching for a solution to the national classes conundrum
- Certifying the price-fixing cases: a brave new world?
- The situation in Québec: where do we stand now?
- Settlement strategies and issues
- Avoiding ethical traps
- Debunking class actions myths: plaintiff and defence counsel have their say

### Hear from a faculty of over 30 top experts, including:

The Hon. Justice James P. Adams, Supreme Court of Newfoundland and Labrador  
The Hon. Chief Justice Robert Bauman, Supreme Court of British Columbia  
The Hon. Justice Catherine L. Dawson, Court of Queen's Bench of Saskatchewan  
The Hon. Judge D. Brock Hornby, U.S. District Judge, District of Maine, Portland ME  
The Hon. Justice Louis Lacoursière, Superior Court of Québec  
The Hon. Justice Joan L. Lax, Ontario Superior Court of Justice  
The Hon. Justice Paul M. Perell, Ontario Superior Court of Justice  
The Hon. Justice André Prévost, Superior Court of Québec  
The Hon. Justice George R. Strathy, Ontario Superior Court of Justice



### DATES

April 29 - 30, 2010

### LOCATION

Osgoode Professional  
Development Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON

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Katherine L. Kay  
Stikeman Elliott LLP (2007)

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## 7th National Symposium on Class Actions

**“Excellent program. This conference is a must for lawyers who work in this area. The quality of people and range of experience of presenters was excellent”**

**Susan L. Bercov, Department of Justice, Alberta (2007)**

**C**lass actions are still booming, with a seemingly never-ending list of new cases attracting media attention. Despite the increased focus on class actions litigation, the perennial problems surrounding national class actions, class counsel fees and financing and ethical issues and conflicts remain. In addition, new trends are surfacing in price-fixing class actions, the changing situation in Québec and the questions surrounding conducting class actions trials, as litigators and judges are gradually getting some insights into how these trials actually work.

Canada’s premier forum for class actions debate brings together leaders from both sides of the bar as well as experienced judges and academics to share and explain the strategies and tactics at play in this form of high-stakes litigation. Through lively panel discussions, they will critically examine today’s hot-button issues, and guide you through the many complexities of class actions litigation.

Space is limited. Register for *the* authoritative Class Actions conference in Canada.

**Register now by visiting [www.osgoodepd.ca](http://www.osgoodepd.ca), calling 416.597.9724 or 1.888.923.3394, emailing [opd-registration@osgoode.yorku.ca](mailto:opd-registration@osgoode.yorku.ca) or faxing 416.597.9736.**

### Faculty

**The Hon. Justice James P. Adams**  
Supreme Court of Newfoundland and Labrador

**Kirk M. Baert,\*** Koskie Minsky LLP

**The Hon. Chief Justice Robert Bauman**  
Supreme Court of British Columbia

**Daniel Belleau,** Belleau Lapointe LLP, Montréal

**Ward K. Branch,\*** Branch MacMaster  
Barristers & Solicitors, Vancouver

**Silvana Conte,** Osler, Hoskin & Harcourt LLP, Montréal

**The Hon. Justice Peter A. Cumming\***  
Ontario Superior Court of Justice

**Alan D’Silva,** Stikeman Elliott LLP

**The Hon. Justice Catherine L. Dawson**  
Court of Queen’s Bench of Saskatchewan

**Mike Eizenga,** Siskinds LLP, London, Ontario

**Professor Peter W. Hogg, QC,** Osgoode Hall Law School  
Scholar in Residence, Blake, Cassels & Graydon LLP

**The Hon. Judge D. Brock Hornby,** U.S. District Judge  
District of Maine, Portland ME

**Craig E. Jones,** Counsel, Ministry of Attorney General  
British Columbia

**David W. Kent,** McMillan LLP

**The Hon. Justice Louis Lacoursière**  
Superior Court of Québec

**Adrian C. Lang,\*** Stikeman Elliott LLP

**Dimitri Lascaris,** Siskinds LLP, London, Ontario

**The Hon. Justice Joan L. Lax**  
Ontario Superior Court of Justice

**Robert W. Leurer, QC**

MacPherson Leslie & Tyerman LLP, Regina

**Larry P. Lowenstein,** Osler, Hoskin & Harcourt LLP

**Tristram J. Mallett,** Osler, Hoskin & Harcourt LLP  
Calgary

**Wendy Matheson,** Torys LLP

**John A. McKiggan,** Arnold Pizzo McKiggan, Halifax

**Reidar Mogerman,** Camp Fiorante Matthews, Vancouver

**The Hon. Justice Paul M. Perell**  
Ontario Superior Court of Justice

**Professor Catherine Piché,** Université de Montréal  
Faculty of Law, Montréal

**The Hon. Justice André Prévost**  
Superior Court of Québec

**Sylvie Rodrigue,** Ogilvy Renault LLP, Toronto and  
Montréal

**Peter L. Roy,** Roy Elliott O’Connor LLP

**Mary Jane Stitt,** Blake, Cassels & Graydon LLP

**The Hon. Justice George R. Strathy**  
Ontario Superior Court of Justice

**Harvey T. Strosberg, QC,** Sutts, Strosberg LLP

**Margaret L. Waddell**

Paliare Roland Rosenberg Rothstein LLP

**Professor Emeritus Garry D. Watson, QC\***  
Osgoode Hall Law School, York University

**David B. Williams,** Harrison Pensa LLP  
London, Ontario

**Charles M. Wright\***

Siskinds LLP, London, Ontario

\* Planning Committee (also includes Gordon McKee, Blake, Cassels & Graydon LLP)

# Agenda

Day One: Thursday, April 29, 2010

## 8:30 Registration and Continental Breakfast

## 9:00 Welcome and Introduction

**Professor Emeritus Garry D. Watson, QC**  
Osgoode Hall Law School, York University

## 9:10 Top 10 Canadian Class Actions Decisions of the Past Year

### Moderator

**The Hon. Justice Peter A. Cumming**  
Ontario Superior Court of Justice

### Panellists

**John A. McKiggan**, Arnold Pizzo McKiggan, Halifax

**Robert W. Leurer, QC**, MacPherson Leslie  
& Tyerman LLP, Regina

**Margaret L. Waddell**, Paliare Roland Rosenberg  
Rothstein LLP

**David B. Williams**, Harrison Pensa LLP, London, Ontario

## 10:10 The Class Actions Trial: How Does it Work?

### Moderator

**The Hon. Justice Joan L. Lax**  
Ontario Superior Court of Justice

### Panellists

**Kirk M. Baert**, Koskie Minsky LLP

**Wendy Matheson**, Torys LLP

- What are the special rules for a common issues trial?
- The representative plaintiff as a witness at trial
- The impact of the pleadings and certification order
- The role of the aggregated damages regime at trial
- Is a common issues trial any different, or should it be?

## 11:00 Refreshment Break

## 11:15 National Classes Conundrum: The Search for a Solution

### Moderator

**Professor Peter W. Hogg, QC**, Osgoode Hall Law School  
Scholar in Residence, Blake, Cassels & Graydon LLP

Professor Hogg will moderate this panel, and will make an opening statement on the constitutionality of national class actions.

### Panellists

**Harvey T. Strosberg, QC**, Sutts, Strosberg LLP

**Craig E. Jones**, Counsel, Ministry of Attorney General  
British Columbia

**Sylvie Rodrigue**, Ogilvy Renault LLP, Toronto and  
Montréal

- Are there problems with the ULCC proposal?
- If so, what are the required adjustments?
- Should we resign ourselves to provincial watertight compartments?
- Contributions from the floor: symposium attendees to give their views

## 12:15 Networking Luncheon

## 1:15 Does the Certification of the Price-Fixing Cases Signal a New World?

### Moderator

**The Hon. Justice George R. Strathy**  
Ontario Superior Court of Justice

### Panellists

**Charles M. Wright**, Siskinds LLP, London, Ontario

**David W. Kent**, McMillan LLP

- Has waiver of tort gone from “not clearly bound to fail” to an accepted basis of liability?
- Vigilante (civil) justice – has waiver of tort become a freestanding basis for liability to bystanders?
- Proof prorogued – how far have *DRAM* and *HP* lowered the evidentiary bar?
- How does a price-fixing litigation plan work if damages are not assessed in the aggregate?
- Disgorgement – practical implications of a non-compensatory remedy
- Do co-defendants in price-fixing cases have rights and contribution and indemnity? What are the consequences if they don't?
- Should an amnesty applicant receive benefits applicable to follow-on civil litigation?

## 2:00 Class Action Discovery Strategies

**Reidar Mogerman**, Camp Fiorante Matthews, Vancouver

- How does discovery in class actions differ?
- When is discovery of class members allowed?
- How much discovery is too much?

## 2:30 Refreshment Break

## 2:45 Class Counsel Fees and Financing

### Moderator

**Professor Emeritus Garry D. Watson, QC**  
Osgoode Hall Law School, York University

### Panellists

**Peter L. Roy**, Roy Elliott O'Connor LLP

**Mary Jane Stitt**, Blake, Cassels & Graydon LLP

- Balancing access to justice and a loser pays costs regime – certification costs since *Pearson v. Inco*
- Third party indemnification agreements and financing arrangements – policy implications and practical considerations

## Agenda

**Day Two: Friday, April 30, 2010**

### **8:30 Registration and Continental Breakfast**

### **9:00 Introduction to Day Two**

**Professor Emeritus Garry D. Watson, QC**  
Osgoode Hall Law School, York University

### **9:05 Class Actions Ethics**

#### **Moderator**

**The Hon. Justice Paul M. Perell**  
Ontario Superior Court of Justice

#### **Panellists**

**Ward K. Branch, Branch MacMaster**  
Barristers & Solicitors, Vancouver

**Adrian C. Lang, Stikeman Elliott LLP**

- Class counsel being asked/agreeing not to represent opt outs or others in related or similar actions
- Defence or plaintiff counsel contacting proposed class members, and the limits on those discussions
- Does class counsel have to agree to represent all class members in the individual issues phase? (relevant to adequacy of the representative plaintiff and the workability of the litigation plan)
- Conflicts of interest in settlement discussions – considering/discussing class counsel fees
- Does class counsel have ethical duties to proposed class members pre-certification?
- When should the defence have input about carriage motions and other class counsel fights?
- Ethical limits on efforts to get clients
- Is the ethical issue a plaintiff or defendant problem?
- Revisiting *Lepine*: are there ethical concerns in settling claims in a national class action, where plaintiff's counsel is not a member of one of the outside jurisdictions?

### **9:50 Securities Class Actions**

#### **Moderator**

**Tristram J. Mallett, Osler, Hoskin & Harcourt LLP, Calgary**

#### **Panellists**

**Alan D'Silva, Stikeman Elliott LLP**

**Dimitri Lascaris, Siskinds LLP, London, Ontario**

- *Imax* securities class action
  - the threshold for the granting of leave
  - the certification of a global class
  - the certification of the common law misrepresentation claims
- *AIG* securities class action
  - the jurisdictional/forum non conveniens motion
- The disclosure of D&O insurance policies in the pre-certification phase of a securities class action

### **10:35 Refreshment Break**

- Percentage contingency fees vs. multiplier – is there any difference in fact?
- Relevant factors in determining a fair and reasonable counsel fee? Are over-lawyering and over-compensation concerns justified?
- Post-certification fees and implementation/administration costs – separate costs headings or included in the court approved fees?
- When and under what circumstances is it appropriate for the parties to agree to have the defendant directly pay class counsels' fees?
- Are there different considerations in fee approvals/settlements where class counsel fees are paid by the defendant and not from class recovery?

### **3:30 Settlement Structures and Processes**

#### **Moderator**

**The Hon. Justice André Prévost**  
Superior Court of Québec

#### **Panellists**

**Mike Eizenga, Siskinds LLP, London, Ontario**

**Professor Catherine Piché, Université de Montréal**  
Faculty of Law, Montréal

- Issues surrounding reversionary settlements
- The role of class counsel in the claims process
- The role of defence counsel in the claims process
- Crafting a claim process and selecting an administrator
- Cy prés as part of a settlement

### **4:15 Debunking Class Actions Myths: Plaintiff and Defence Counsel Speak Out**

**Larry P. Lowenstein, Osler, Hoskin & Harcourt LLP**

**Kirk M. Baert, Koskie Minsky LLP**

**Adrian C. Lang, Stikeman Elliott LLP**

**Harvey T. Strosberg, QC, Sutts, Strosberg LLP**

- Certification is too easy nowadays
- Class actions don't go to trial and plaintiffs don't expect them to
- Cy prés distributions are like a tax and have no place in the civil litigation system
- Defendants delay cases and bring appeals to try and wear out plaintiffs and avoid the real issues being addressed
- Judges should manage class actions better to avoid this
- The real money in class actions is made on the defence side

### **5:00 Day One Adjourns**

#### *Wine & Cheese Reception*

Immediately following the last session of Day One.  
All delegates and faculty are cordially invited to attend.

**10:50 The Present Québec Situation: Where Do We Stand Now?**

**Moderator**

**The Hon. Justice Louis Lacoursière**  
Superior Court of Québec

**Panellists**

**Daniel Belleau, Belleau Lapointe LLP, Montréal**

**Silvana Conte, Osler, Hoskin & Harcourt LLP, Montréal**

- Has Québec lost its status as the “class action paradise”?
- A general overview of the most important new trends in Québec from the plaintiff and defendant’s respective points of view
- Has the Québec Court of Appeal been tightening the rules for authorization (certification)?
- The common law preferable procedure test – has it been imported as a 5th criteria in Québec?
- Articles 4.1 and 4.2 of the Code of Civil Procedure: has it changed the way to approach authorization? The practical outcomes of the decision of the Supreme Court of Canada in *Marcotte and Breslaw*
- Does the class representative have to show interest/standing to sue each of the defendants in a multi-party class action?

**11:30 Judicial Panel: A View From the Bench**

**Moderator**

**Ward K. Branch, Branch MacMaster**  
Barristers & Solicitors, Vancouver

**Panellists**

**The Hon. Chief Justice Robert Bauman**  
Supreme Court of British Columbia

**The Hon. Justice Catherine L. Dawson**  
Court of Queen’s Bench of Saskatchewan

**The Hon. Justice James P. Adams**  
Supreme Court of Newfoundland and Labrador

**The Hon. Judge D. Brock Hornby, U.S. District Judge**  
District of Maine, Portland ME

**The Hon. Justice Joan L. Lax**  
Ontario Superior Court of Justice

This is an opportunity for symposium participants to put their questions to an experienced panel of judges. Participants can also email their questions in advance to: [dthomas@osgoode.yorku.ca](mailto:dthomas@osgoode.yorku.ca). We will pass on your questions ensuring that you will get the most out of this session.

**12:30 Closing Address; Conference Concludes**

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## Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

## Dates & Times

April 29 - 30, 2010

Day One: 9:00 a.m. - 5:00 p.m.

Day Two: 9:00 a.m. - 12:30 p.m.

Wine & Cheese Reception - April 29, 2010: 5:00 p.m.

Please arrive a half hour early on Day One for sign-in and material pick-up.

Dress is business casual.

## Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

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