

16TH NATIONAL SYMPOSIUM ON CLASS ACTIONS

THE *must attend* annual symposium for the Class Actions bar.

- When should one provincial court defer to an action in another Canadian province?
- What does a damage assessment look like? Can damages be quantified on an aggregate basis?
- Lessons learned: tips and traps when negotiating settlements
- Interactive Notices Workshop: best practices from multiple perspectives
- Hot Topics Roundtable: document production; private funding; *and more...*
- An update on Ontario's Class Actions Reform Project

PLUS! Don't Miss the Special Debate:

What Class Actions Case is the Greatest of All Time?

In this interactive session you will observe 4 of Canada's most outspoken class action counsel vigorously debate this contentious question.

Register today at:

osgoodepd.ca/class-actions

Program Chairs

Gordon McKee

Blake, Cassels & Graydon LLP

Michael Rosenberg

McCarthy Tétrault LLP

Dates and Times

Day 1: April 4, 2019

9:00 a.m. - 5:00 p.m. EDT

Day 2: April 5, 2019

9:00 a.m. - 1:15 p.m. EDT

In Person Only

ONLINE REPLAY:

May 8-9, 2019

Location

**Osgoode Professional
Development**

**1 Dundas St. West, 26th Floor
Toronto, ON**

Drawing on the expertise of leading counsel, judges and academics from across the country, including:

Program Chairs



Gordon McKee
Blake, Cassels & Graydon LLP



Michael Rosenberg
McCarthy Tétrault LLP

Program Faculty

Daniel Bach
Siskinds LLP

Kirk Baert
Koskie Minsky LLP

Andrew Borrell
Fasken Martineau DuMoulin LLP, Vancouver

The Hon. Justice Ward K. Branch*
Supreme Court of British Columbia

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Services Canada, Ottawa

The Hon. Justice Chantal Chatelain
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Audren Rolland LLP, Montréal

Travis A. Henderson
Senior Counsel, Civil Litigation Section,
Department of Justice Canada, Ottawa

Peter Lawless
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Ministry of Attorney General, Victoria

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Reidar Mogerman
Camp Fiorante, Matthews, Mogerman, Vancouver

Jeff Orenstein
Consumer Law Group P.C., Montréal

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

Professor Catherine Piché
Faculty of Law, Université de Montréal

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Marie Audren, Audren Rolland LLP)

16th National Symposium on Class Actions

Class Actions continue to flourish with a never-ending list of high-profile cases. These massive litigation files continually present new and complex challenges that counsel must be on top of in order to succeed in this increasingly competitive field.

For 16 years, the **OsgoodePD** Class Actions Symposium has been Canada's **premier forum** for class actions debate. In a class of its own, this *truly national program*, brings together leading experts who will take you through the most critical issues in this constantly changing field.

Over 1½ intensive days you will:

- Get key updates on the most current and emerging issues in class actions from across the country
- Connect with and learn from experienced litigators and judges as they share their experience and insights
- Learn effective strategies to employ and learn the minefields to avoid

Who Should Attend?

- Plaintiff and Defence Counsel practicing in class actions
- In-house counsel
- Government litigators
- Liability insurers
- Notice and settlement specialists

Agenda – Day One

Thursday, April 4, 2019

8:30 a.m.

Registration

9:00 a.m.

Welcome and Introduction from the Chair

Gordon McKee, Blake, Cassels & Graydon LLP

9:05 a.m.

The Kings of Comity: When Should a Class Action Court Defer to a Case in Another Jurisdiction?

Moderator:

Gordon McKee, Blake, Cassels & Graydon LLP

Panelists:

Andrew Borrell, Fasken Martineau DuMoulin LLP, Vancouver

Jonathan Ptak, Koskie Minsky LLP

Kent E. Thomson, Davies Ward Phillips & Vineberg LLP

- Multi-jurisdictional Canadian class actions
- When should one provincial Superior Court defer to an action in another Canadian province?: *Kowalyshyn v. Valeant Pharmaceuticals International, Inc.*
- What is the preferable approach to national class actions?
- Staying multi-jurisdictional class actions as an abuse of process?: *BCE Inc. v. Gillis; Hafichuk-Walkin v. BCE Inc., Turner v. Bell Mobility Inc., Johnson v. Equifax Inc.*

9:45 a.m.

Multi-Jurisdictional Class Actions: A Quebec Perspective

Moderator:

The Hon. Justice Chantal Chatelain, Superior Court of Québec

Panelists:

Shaun E. Finn, BCF Business Law, Montréal

Jeff Orenstein, Consumer Law Group P.C. Montréal

Karim Diallo, Siskinds Desmeules, Quebec City

- Plaintiffs' and defendants' perspectives on national class actions filed in Quebec
- Issues and challenges in the management and settlement of national cases

10:30 a.m.

Refreshment Break

10:45 a.m.

When Should a Defendant Defend? The Timing of Defences in Class Actions

Moderator:

The Hon. Justice Sharon D. Matthews, Supreme Court of British Columbia

Panelists:

Mathew Good, Good Barrister, Vancouver

Sylvie Rodrigue, Ad.E., Torys LLP

- Benefits to the courts and parties of a complete pleading record
- Tension between necessary flexibility of class actions practice and requirements of the ordinary rules for civil litigation
- Effects of filing a defence on collateral procedures
- Consequences of filing a pro forma or inadequate defence

11:30 a.m.

What's Going on With False Advertising Cases?

Moderator:

Linda Visser, Siskinds LLP

Panelists:

Joey Zukran, LPC Avocats Inc., Montréal

Marc-André Grou, Audren Rolland LLP Montréal

John Green, Hanson & Co. Personal Injury Lawyers, Vancouver

- A review of recent cases: differences between Quebec and the common law provinces
- What is necessary to establish a *Competition Act* s 52 claim? If reliance is necessary, can it be certified as a common issue?

- What does a damages assessment look like and can damages be quantified on an aggregate basis?
- How should the class be defined in order to meet the identifiable class requirement?
- Do false advertising cases meet the preferable procedure requirement?
 - Do they serve the objectives of access to justice, judicial economy and behaviour?
 - Is there an alternative procedure that is preferable?

12:15 p.m.

Luncheon

1:15 p.m.

**“Under my Umbrella, ella, ella, ella...”:
A Preview of the SCC *Competition Act*
Appeals**

Moderator:

The Hon. Marshall Rothstein, C.C., Q.C.,
Osler, Hoskin & Harcourt LLP, Vancouver

Panelists:

Reidar Mogerman, Camp Fiorante,
Matthews, Mogerman, Vancouver

Vera Toppings, Fasken Martineau DuMoulin LLP

This session will focus specifically on the recent SCC *Competition Act* appeals. As the SCC sets up to decide if umbrella purchasers should be covered in *Competition Act* cases, you should know the tremendous impact these decisions will have on the class actions bar.

2:00 p.m.

**Lessons Learned from the (Near) Final
Resolution of Two of Canada’s Biggest Class
Action Settlements: IRS and Infineon**

Moderator:

Laura J. Bruneau, Senior Vice President,
Epiq Class Action Services Canada, Ottawa

Panelists:

Travis A. Henderson, Senior Counsel, Civil
Litigation Section, Department of Justice
Canada, Ottawa

Reidar Mogerman, Camp Fiorante,
Matthews, Mogerman, Vancouver

- Tips and traps when negotiating settlements
- The notice program
- What should you avoid?

- What would you do differently next time?
- What did you learn by doing this type of monster case?
- Boosting take-up rates

2:45 p.m.

Refreshment Break

3:00 p.m.

**Interactive Notices *Workshop*: Best
Practices from Multiple Perspectives**

Moderator:

Karine Chênevert, Borden Ladner Gervais,
Montréal

Panelists:

The Hon. Justice Ward K. Branch
Supreme Court of British Columbia

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

Robin Linley, Blake, Cassels & Graydon LLP

Megan McPhee, Kim Spencer McPhee
Barristers P.C.

This interactive session will have you working through a basic notice and notice plan. You will be asked to suggest improvements and corrections with a goal to discussing:

- Best practices perspectives
- Questions of timing – what is the best timing to issue notices in the face of appeals and pending trials?

3:45 p.m.

**Case Study: The Biggest Case You’ve Never
Heard Of: Marcl c. Commission scolaire de
la Jonquière, 2018 QCCS 3836**

The Hon. Justice Ward K. Branch
Supreme Court of British Columbia

Jean-Philippe Groleau, Davies Ward Phillips
& Vineberg LLP, Montréal

This discussion will highlight a case many common law lawyers and judges have never heard of, despite the \$154 million settlement that was approved in this certified school expense class action. Students could each receive approximately \$24/year per child after the payment of legal fees. Class counsel voluntarily lowered their 25% fee percentage to 12%, which still yielded \$18 million. Class counsel had spent more than 7 years and 11,000 hours on this case. The fee equated to a multiplier of around 3.3. What are the

implications? What should you take from this? Hear and learn from recognized leaders.

This session will lead us into the **Greatest of All Time Class Actions Debate...** perhaps it deserves to be treated as a contender!

4:00 p.m.

**The GOAT Debate: What is the Greatest
Class Action Decision Of All Time?**

Moderator:

The Hon. Justice Ward K. Branch
Supreme Court of British Columbia

Panelists:

Kirk Baert, Koskie Minsky LLP

Michael A. Eizenga, LSM, Bennett Jones LLP

Luciana Brasil, Branch MacMaster LLP
Vancouver

Larry Lowenstein, Osler, Hoskin & Harcourt LLP

This interactive session will put four of Canada’s most outspoken class action counsel in the fray. Counsel will vigorously debate which is the most important class action case of all time. Counsel will each be given 10 minutes to argue for their favourite and debate arguments posed by other candidates. The only rule – counsel cannot argue for a case they were counsel on.

Delegates will be asked to vote for their favourite case based on the debate and the winning case will be announced on Day 2. Delegates who voted for the winning case will be entered into a separate draw to win a signed copy of the **Hon. Justice Ward K. Branch’s** 2nd edition of *Class Actions in Canada* and a free online webinar (of your choice) from OsgoodePD. (*To Win – delegates must be on site Day 2 to claim their prize!*)

5:00 p.m.

Day One Concludes

**Wine & Cheese
Reception**

Immediately Following Day 1

Agenda – Day Two

Friday, April 5, 2019

8:30 a.m.

Registration

8:55 a.m.

Welcome from Chair

Michael Rosenberg, McCarthy Tétrault LLP

9:00 a.m.

Wild World of Fees

Moderator:

The Hon. Justice David Masuhara
Supreme Court of British Columbia

Panelists:

Daniel Bach, Siskinds LLP

Cheryl M. Woodin, Bennett Jones LLP

- Is there a tension between mega-fund fee analysis and “garden variety” fee approvals?
- Should Canadian courts take guidance from US fee approval jurisprudence? What can we learn?
- Is the success of the claims program relevant? How is success evaluated? How should class counsel fees reflect claims program performance?
- How are interim fee approvals being used to manage mega-fund cases? What issues do they create?
- What role can amicus counsel play in mega-fund cases and what are the limitations on their use?

10:15 a.m.

Refreshment Break

10:30 a.m.

Certification: Is It Summary Judgment Light?

Moderator:

Michael Rosenberg, McCarthy Tétrault LLP

Panelists:

Ian C. Matthews, Borden Ladner Gervais LLP

Laura K. Fric, Osler, Hoskin & Harcourt LLP

Scott Maidment, McMillan LLP

- Have some recent decisions suggested that courts are willing to dig into the merits on certification, particularly when interpreting contracts?
- Have other recent decisions suggested that courts are reluctant to engage with evidence on certification, particularly when considering commonality?
- Are these cases really different in substance?

Can such approaches be reconciled?
Does the test for certification depend on the judge applying it?

- What is the standard for considering evidence on certification?

11:15 a.m.

Managing Third Party Claims in Class Proceedings

Moderator:

Darryl A. Cruz, McCarthy Tétrault LLP

Panelists:

James Sayce, Koskie Minsky LLP

Kate A. Crawford, Borden Ladner Gervais LLP

- Should third party claims be permitted in a class action at all?
- What is the relevance of third-party claims at a certification motion?
- Does a restricted claim by the representative plaintiff, that only pursues the defendants for their several liability, make a difference?
- How does the existence of third-parties impact on a common issues trial?
- When, where and how should third party claims be adjudicated?
- Are there different considerations when the claims in the main action are equitable or not negligence-based?

12:00 p.m.

Hot Topics Roundtable

Moderator:

Celeste Poltak, Koskie Minsky LLP

Panelists:

Raymond F. Wagner, QC, Wagners, Halifax

Catherine McKenzie, IMK Avocats, Montréal

Peter Lawless, Government HCCRA Claims in Class Actions, Ministry of Attorney General, Victoria

- The need to manage provincial subrogated claims when settling class actions
- Update on private funding
- Document production: how deep does it need to go at certification and common issues stages?
- Using the courts to pressure government into taking action more action on the environment (*ENvironnement JEUnesse v. Attorney General of Canada*)

12:30 p.m.

Ontario's Class Actions Reform Project – Report from the LCO

Professor Catherine Piché, Faculty of Law, Université de Montréal

The LCO's *Class Actions: Objectives, Experiences and Reforms* Project is an examination of the effectiveness of collective relief in Ontario.

The LCO has identified a number of key concerns: the delay and cost of moving class actions forward in the current court system; the fact that certification motions are resource intensive and are often appealed to multiple levels of courts; and the delays associated with carriage motions and multi-jurisdictional proceedings, among other things. This session will discuss the recommendations the LCO have made in this context.

1:15 p.m.

Program Concludes

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Here's what past attendees had to say about this program:

“Very high quality in terms of interesting and relevant topics, diverse and impressive speakers, advanced level of legal analysis.”

“Exceptionally high quality speakers.”

“Great content, engaging speakers.”

“A great opportunity to get a national overview of new developments and issues in one seminar with very knowledgeable speakers.”

“The best thing about the program was the interplay between plaintiff and defense counsel.”

“Very educational and informative. Good balance of plaintiff and defence perspectives.”

“Breadth of and quality of speakers was top notch.”

Registration Details

Fee per Delegate

\$1,695 plus HST

Fees include attendance, program materials, lunch and break refreshments.

Group discounts are available. Visit www.osgoodepd.ca for details. Please inquire about financial assistance.

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's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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