

SEPTEMBER 22 & 23, 2008 • INTERCONTINENTAL TORONTO

The Canadian Institute's 9th Annual National Forum on

CLASS ACTIONS LITIGATION

A GUIDE TO MANAGING CLASS ACTIONS IN CANADA

CO-CHAIRS



Paul Martin
Partner
Fasken Martineau DuMoulin LLP



Gordon McKee
Partner
Blake, Cassels & Graydon LLP

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LEARN HOW TO NAVIGATE THE PATCHWORK OF CLASS ACTION LAWS ACROSS CANADA AND GAIN THE LATEST AND BEST INFORMATION TO HELP YOU:

- **MANAGE** financial risk and finance class action litigation
- **NARROW** the case: pre-certification strategies for plaintiff and defence counsel
- **OVERCOME** inter-jurisdictional hurdles
- **MITIGATE** the risks of multi-jurisdictional class actions
- **PLAN** your strategy: a view from the bench
- **INCORPORATE** arbitration clauses to prevent class actions
- **ADMINISTER** the settlement of class action lawsuits

Gain additional value by attending the post-conference workshop on September 24, 2008:

**PREVENTING AND DEFENDING CLASS ACTION LITIGATION:
A GUIDE FOR IN-HOUSE AND DEFENCE COUNSEL**



See inside for details



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WHY YOU SHOULD ATTEND

Canada has moved towards a more liberal allowance of class-action litigation in recent years and the likelihood of costly inter-jurisdictional claims that spread across the ten provinces and three territories is significant.

No industry or institution in Canada is immune from the risk of class action lawsuits. High profile class actions have been commenced for damages attributable to tainted blood, malfunctioning defibrillators, improper bank charges, unpaid overtime and the list goes on.

Now in its 9th successful year, the Canadian Institute's **National Forum on Class Action Litigation** is a must attend event for plaintiff and defence, government litigators and in-house counsel who need to stay on top of the patchwork of class action laws in Canada.

Attend this conference and you will acquire practical strategies from leading litigators and professionals to help you prevent and manage class action proceedings.

Register now to secure your place by calling The Canadian Institute at 1-877-927-7936 or by visiting our website at www.CanadianInstitute.com.

We look forward to seeing you at the conference.

WHO SHOULD ATTEND

- Plaintiff and Defence lawyers
- In-House/General Counsel
- Federal, Provincial and Municipal Government Lawyers
- Claims Lawyers
- Claims Managers
- Claims Adjusters



FACULTY LIST

Co-Chairs:

Paul Martin
Partner, Fasken Martineau DuMoulin LLP

Gordon McKee
Partner, Blake, Cassels & Graydon LLP

Speakers:

Edward Babin
Partner, Davies Ward Phillips Vineberg LLP

Andrew Borrell
Partner,
Fasken Martineau DuMoulin LLP (Vancouver)

Clint Docken, Q.C.
Docken & Company (Calgary)

Kerry Eaton
Vice President
Crawford Class Action Services

Norman Emblem
Partner, Fraser Milner Casgrain LLP

Eric R. Hoaken
Partner, Bennett Jones LLP

Lisa La Horey
Partner, McCague, Peacock, Borlack,

McInnis & Lloyd LLP

Dimitri Lascaris
Siskinds LLP

Douglas Lennox
Counsel, Klein Lyons

Robert W. Leurer, Q.C.
Partner
MacPherson Leslie & Tyerman LLP (Regina)

Dalton McGrath
Partner, Blake, Cassels & Graydon LLP (Calgary)

John A. McKiggan
Arnold, Pizzo, McKiggan (Halifax)

Warren B. Milman
Partner
McCarthy Tétrault LLP (Vancouver)

James Newland
Partner, Lerner LLP

Cameron Pallett
Barrister & Solicitor

Gina Papageorgiou
Counsel, Class Proceedings Committee

Russell Raikes
Partner, Cohen Highley LLP (London)

Joel Rochon
Partner, Rochon Genova LLP

Nick Rodrigo
Davies Ward Phillips and Vineberg LLP (Montréal)

Sylvie Rodrigue
Partner, Ogilvy Renault LLP

John Rossos
Principal, Bridgepoint Financial Services

Francis Rouleau
Partner, Blake, Cassels & Graydon (Montréal)

Gina Scarcella
Senior Counsel, Justice Canada

Peter Mantas
Partner, Heenan Blaikie LLP (Ottawa)

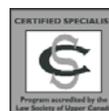
Workshop Leaders:

Norman Emblem
Partner, Fraser Milner Casgrain LLP

Tiffany D. Soucy
Fraser Milner Casgrain LLP

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This program has been accredited by the Law Society of Upper Canada towards the professional development requirement for certification.

Conference: Civil Litigation 11.0 hours
Post-Conference Workshop: Civil Litigation 2.5 hours

Register at 1-877-927-7936 or in Toronto 416-927-7936 or www.CanadianInstitute.com

8:00 Registration Opens and Coffee Served 

9:00 **Opening Remarks from the Co-Chairs**

Paul Martin

Partner

Fasken Martineau DuMoulin LLP

Gordon McKee

Partner, Blake, Cassels & Graydon LLP

9:15 **Navigating the Patchwork of Class Action Litigation: A Cross-Canada Update**

Nick Rodrigo

Davies Ward Phillips and Vineberg LLP (Montréal)

Robert W. Leurer, Q.C.

MacPherson Leslie & Tyerman LLP (Regina)

Douglas Lennox

Counsel, Klein Lyons

John A. McKiggan

Arnold, Pizzo, McKiggan (Halifax)

- Reviewing significant cases from across Canada
- Identifying the best forum for your class action
 - What are the most plaintiff and defendant friendly provinces for class action litigation and why?
 - Has there been a retrenchment by the courts in Quebec and if so, what are the implications for pursuing a case in Quebec?
- Analyzing the impact of changes to Saskatchewan's class action legislation
- Assessing causes of action post *Hoffman*: Will the Saskatchewan approach influence other jurisdictions?
- Update on Nova Scotia's legislation and how it is playing out
- The threshold for certification: a province by province comparison
 - What kind of expert evidence is being used and accepted at the certification hearing?
- Establishing a cause of action for authorization in Quebec post *Harmegnies v Toyota*
- Bringing actions against numerous defendant companies: an update on the law
- Recognizing and enforcing non-Quebec national class action settlements: what lessons can be learned from *Société Canadienne des Postes v. Lépine*?

10:45 Networking and Refreshment Break

11:00 **Getting Direction from the Court for Tactical Planning Purposes**

In this session, participants will have the opportunity to hear from the bench and ask the most pressing questions regarding class action litigation, including:

Moderator

Sylvie Rodrigue

Partner, Ogilvy Renault LLP

Panel

The Honourable Mr. Justice Masuhara

British Columbia Supreme Court

The Honourable Mr. Justice Wagner

Quebec Superior Court

- How does the court approach multi-jurisdictional class actions?
- How do judges view forum shopping and how do they see their role in multi-jurisdictional class actions?
- Is a national class action in the court's jurisdiction?
- What are judges looking for in the litigation plan?
- Are class action trials on the rise?
- What kinds of motions are well received and when?
- Tips for getting private financing for class action suits without violating the rules against champerty & maintenance
- What are judges looking for when asked to approve class action settlements?
- Practice tips for managing class action cases with the case management judge

12:00 **Networking Luncheon for Delegates and Speakers** 

1:15 **Using Arbitration Clauses to Prevent Class Actions: A Status Report for Plaintiff and Defence Counsel**

In this session, get clarification from lead counsel in the largest class action case in Canada about the status of arbitration clauses to prevent class actions after the Supreme Court of Canada's decision in Dell and its impact on consumer class actions in Canada.

Edward Babin

Partner, Davies Ward Phillips Vineberg LLP

2:00 **Financing Class Action Litigation and Managing Financial Risk**

John Rossos

Principal

Bridgepoint Financial Services

Gina Papageorgiou

Counsel

Class Proceedings Committee

Eric R. Hoaken

Partner, Bennett Jones LLP

- Identifying opportunities for financing class actions
- Managing financial risk through indemnities
- Understanding public funding legislation in Canada
- Meeting the criteria for public funding: application tips
- Financing by class members
 - What you should consider when drafting agreements
- Getting judicial approval to work with private investors: best practices
 - Partnering with other legal counsel
 - Partnering with insurers
- Discussing the role of limited partnerships in class action financing: advantages and disadvantages
- Update on the law of interim disbursements in class actions

3:15 Networking and Refreshment Break

3:30 **Handling Inter-Jurisdictional Hurdles: Carriage Motions and Co-Counsel Agreements**

In this unique session, you will examine the Merck Frosst Canada, Vitapharm, Medtronic and Guidant cases and learn practical tips from experienced litigators about how to handle inter-jurisdictional hurdles.

Clint Docken, Q.C.

Docken & Company (Calgary)

Joel Rochon

Partner, Rochon Genova LLP

- Putting together your class action team to avoid carriage motions
 - Why counsel should work together: lessons learned from *Vitapharm*
- Competing for class action carriage post *Merck Frosst Canada*
 - What factors are the courts considering when deciding carriage motions?
- Clarifying the role of defence counsel in carriage motions
- Drafting co-counsel agreements: the do's and don'ts
- Best practices for using co-counsel association agreements in cross border cases
 - What are the benefits and risks?
 - How far will Canadian courts dig into co-counsel arrangements?

4:30 Co-Chairs Recap
Conference Adjourns

TUESDAY, SEPTEMBER 23, 2008

8:15 Coffee Served ☞

8:45 Opening Remarks from the Co-Chairs

9:00 **Mitigating the Risks of Multi-Jurisdictional Class Actions**

Francis Rouleau

Partner, Blake, Cassels & Graydon LLP (Montreal)

Peter Mantas

Partner, Heenan Blaikie LLP (Ottawa)

- Reviewing case law and identifying the risks and problems faced by defendants in multi-jurisdictional class actions
 - Managing multiple claims and reducing wasted resources
 - Maneuvering for the jurisdictional part of the battle
 - Limiting or enlarging the class as part of your strategy
 - Discussing legal doctrines that may be of assistance
- Analyzing how courts are approaching multi-jurisdictional cases: an overview of the law
 - The constitutionality of national class actions
 - Multi-jurisdictional class actions when the Crown is defendant
 - Assuming that a class action is certified in one province, what effect would it have on the residents of another?
 - What if certified classes overlap?
 - Race to the wire: does a certification in one jurisdiction bind another?
- Can the multi-jurisdictional dilemma be solved?
 - National class actions
 - Court enforced choice of forum
 - Expanding the jurisdiction of the Federal Court: Fuller Construction revisited

10:00 Networking and Refreshment Break

10:15 **Narrowing the Case: Pre-Certification Strategies for Plaintiff and Defence Counsel**

Moderator

Robert W. Leurer, Q.C.

Partner

MacPherson Leslie & Tyerman LLP (Regina)

Panel

Andrew Borrell

Partner, Fasken Martineau DuMoulin LLP (Vancouver)

Gina Scarcella

Senior Counsel, Justice Canada

Cameron Pallett

Barrister & Solicitor

Plaintiff Counsel's Perspective

- Streamlining your case: lessons learned from the Mad Cow class action
- Weighing the risks and benefits of pursuing your case: what are the most important things to consider?
- Strategies for responding to pre-certification motions
- Identifying the pros and cons of settlement pre and post certification

Defence Counsel's Perspective

- Analyzing the claim
 - Key things to look for when deciding whether to oppose certification or seek an early settlement
- An overview of how pre-certification strategies vary between provinces
- Optimizing the timing for bringing pre-certification motions
 - When should you bring a motion to strike?
 - When motions to strike based on no duty of care will be successful: lessons learned from recent cases
- Understanding the implications of bringing your motion to strike after certification
- Discussing the strategic use of motions to stay and motions to change forum
 - What considerations are relevant to this analysis
- Using confidentiality agreements as a defence strategy
- Tips for making sure defendants are on the same page when defending a class action

11:30 **Prosecuting and Defending Secondary Market Securities Class Actions: An Emerging Threat for Securities Issuers**

Dimitri Lascaris

Siskinds LLP

Dalton McGrath

Partner, Blake, Cassels & Graydon LLP (Calgary)

- Determining when to pursue securities class actions
 - Tips for weighing the pros and cons of pursuing the case
- Building the evidentiary record to support the application for leave
- Guidance on what experts to retain and when
- Getting the court's permission to adduce evidence
- Acquiring evidence without the use of formal discovery
- Clarifying how common law causes of action work in concert with the *Securities Act*
- Techniques for identifying witnesses in possession of material evidence
- Accessing damages in relation to securities class actions
 - How to get around the presumptive methodology for damages
 - What other methodologies are legitimate and in what circumstances can you use them?
- Exploring available defences
- Identifying defensive and protective strategies for corporations to avoid being sued
- Strategies for defending leave applications

12:15 Networking Luncheon for Delegates and Speakers



1:30 Managing the Settlement of Class Action Litigation

Kerry Eaton

Vice President

Crawford Class Action Services

Norman Emblem

Partner, Fraser Milner Casgrain LLP

- Lessons learned from settlement administration
 - Best practices for managing class action settlements
 - When should counsel consider involving settlement administrators and why?
- Exploring the purpose of redress plans
- Designing and implementing a redress plan
- Strategic and tactical considerations regarding court approval of a redress plan
 - The need for an independent administrator
 - The need for transparency

2:30 Networking and Refreshment Break

2:45 Proving and Disproving Damages: Where Are We Now?

James Newland

Partner

Lerners LLP

Warren B. Milman

Partner

McCarthy Tétrault LLP (Vancouver)

- Update on the law of certifying punitive damages
- Asking for common issues related to punitive damages as a defence strategy: practice tips
- Separating determination of conduct from determination of amount of award
- Aggregate damages and the fallout from *Cassano* and *Markson*: a cross-Canada review
- Reviewing how causation is being defined across Canada
- Proving damages on a class wide basis post *DRAM*
- Using statistical evidence effectively to prove or disprove global damages
- Establishing individual damages at the common issue trial: best practices
- Update on cases applying the waiver of tort threshold
 - What does waiver of tort mean in the class action context?
 - Is it a remedy or independent cause of action?

3:45 Protecting You and Your Clients from Excessive Cost Awards

Russell Raikes

Partner

Cohen Highley LLP

Lisa La Horey

Partner, McCague, Peacock, Borlack, McInnis & Lloyd LLP

- Discussing the implications of *Danier Leather* for plaintiffs and their counsel
- Tips for choosing your representative plaintiff post *Danier Leather*
- Best practices for minimizing exposure for plaintiffs and their counsel following *Danier Leather*
 - Can you assign a cause of action to a numbered company? Will this insulate plaintiffs and their counsel?
- Clarifying the obligation to indemnify representative plaintiffs for cost awards post *Poulin v. Ford Motor Co. of Canada*

4:30 Closing Remarks from the Co-Chairs Conference Concludes

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INTERACTIVE LEARNING SESSION

Wednesday, September 24, 2008

9:00 a.m. to 12:00 p.m. (Registration opens at 8:30 a.m.)

PREVENTING AND DEFENDING CLASS ACTION LITIGATION: A GUIDE FOR IN-HOUSE AND DEFENCE COUNSEL

Courts are showing a greater willingness to certify class actions, which is giving rise to more class action discoveries and trials. In this interactive workshop, you will learn from leading experts about winning strategies for preventing and defending class actions.

Norman Emblem

Partner, Fraser Milner Casgrain LLP

Tiffany D. Soucy

Fraser Milner Casgrain LLP

- Clarifying how provincial and federal class action litigation applies to companies operating in different parts of Canada
 - Which laws apply to your company?
- Incorporating mandatory arbitration clauses into consumer contracts to preclude class proceedings: best practices
- Strategies for preventing unpaid overtime class action lawsuits
- Putting a suitable adjudication plan in place as part of your defence strategy
- Strategies for pulling apart the statement of claim
- Drafting effective pleadings
 - What should and should not be included in the Statement of Defence
- Putting together the Respondent's Brief for Certification
 - Tips for determining what should be before the court
- How to stay organized: tips for managing files and ensuring effective communication between in-house and outside counsel

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CLASS ACTIONS LITIGATION

A GUIDE TO MANAGING CLASS ACTIONS IN CANADA

Top Reasons to Attend

- ✓ Hear the latest on innovation in financing class actions and how to mitigate risk
- ✓ Learn how to tailor your strategy to mitigate the risks of multi-jurisdictional class actions
- ✓ Stay up-to-date on recent case law and legislation

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To expedite your registration, please mention your Priority Service Code

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