



# 14TH NATIONAL SYMPOSIUM ON CLASS ACTIONS

This annual **must attend** program for the Class Actions bar is where you will hear from a cross-country panel of top experts

- Multi-jurisdictional class actions: plaintiff, defendant and judicial perspectives
- Motions for summary judgment and summary trial – who is bringing them and when?
- Can a defendant force a class to sue them in their home jurisdiction?
- The use of the representative plaintiff discovery transcript at trial – who does it bind?
- Is it ethical to accept an offer from another lawyer to stand down their competing litigation?
- Beyond boilerplate: getting to the substance of the settlement in your materials

Register today at:

[osgoodepd.ca/class-actions](http://osgoodepd.ca/class-actions)

## Program Chair

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

## Program Details

### DATE AND TIME

April 6-7, 2017

9:00 a.m. – 5:00 p.m.

9:00 a.m. - 12:15 p.m.

In Person

### LOCATION

Osgoode Professional  
Development

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

### ONLINE REPLAY

April 27, 28 2017



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

## Program Chair

**Garry D. Watson<sup>\*</sup>, QC**

Professor Emeritus,  
Osgoode Hall Law School,  
York University

## Program Faculty

**Marie Audren<sup>\*</sup>**, Audren Rolland LLP,  
Montréal

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

**Robert B. Bell**, Lerner LLP

**Ward K. Branch<sup>\*</sup>**, Branch MacMaster LLP,  
Vancouver

**Dr. A. Neil Campbell**, McMillan LLP

**Theodore P. Charney**, Charney Lawyers

**Jacqueline A. De Gagné**, Head, Law,  
Patents & Compliance, Bayer Inc.

**Brad W. Dixon**, Borden Ladner Gervais LLP,  
Vancouver

**Michael A. Eizenga**, Bennett Jones LLP

**Neil Finkelstein**, McCarthy Tétrault LLP

**Shaun E. Finn**, BCF, Business Law, Montréal

**Joe Fiorante, QC**, Camp Fiorante Matthews  
Mogerman, Vancouver

**Marianne Ignacz**, Norton Rose Fulbright  
Canada LLP, Montréal

**Jasminka Kalajdzic**, Associate Dean,  
Faculty of Law, University of Windsor

**Katherine L. Kay**, Stikeman Elliott LLP

**Jill M. Lawrie**, Blake, Cassels & Graydon LLP

**André Lespérance**, Trudel Johnston &  
Lespérance, Montréal

**Gordon McKee<sup>\*</sup>**, Blake, Cassels &  
Graydon LLP

**The Hon. Justice Wendy M. Matheson**,  
Ontario Superior Court of Justice

**Malcolm M. Mercer**, McCarthy Tétrault LLP

**David F. O'Connor**, Roy O'Connor LLP

**Ashley L. Paterson**, Bennett Jones LLP

**Michael J. Peerless**, McKenzie Lake  
Lawyers LLP, London, Ontario

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

**Peter J. Pliszka**, Fasken Martineau  
DuMoulin LLP

**Linda M. Plumptre**, Torys LLP

**Celeste Poltak<sup>\*</sup>**, Koskie Minsky LLP

**Michael G. Robb**, Siskinds LLP, London,  
Ontario

**Joel P. Rochon**, Rochon Genova LLP

**Michael Rosenberg**, McCarthy Tétrault LLP

**Louis Sokolov**, Sotos LLP

**The Hon. Justice Robert P. Stack**, Supreme  
Court of Newfoundland and Labrador (Trial  
Division), St. John's, Nfld.

**David L. Sterns**, Sotos LLP

**Jay S. Strosberg**, Sutts, Strosberg LLP,  
Windsor

**Brendan van Niejenhuis**, Stockwoods LLP

**Paul Vickery**, Formerly Senior General  
Counsel, Litigation Branch, Department of  
Justice Canada

**Linda Visser**, Siskinds LLP, London, Ontario

**Raymond F. Wagner, QC**, Wagners, Halifax

**Andrew P. Wilson**, JSS Barristers, Calgary

**Cheryl M. Woodin**, Borden Ladner  
Gervais LLP

**J. Kevin Wright**, DLA Piper (Canada) LLP,  
Vancouver

**Charles M. Wright<sup>\*</sup>**, Siskinds LLP, London,  
Ontario

<sup>\*</sup> Planning Committee

# 14th National Symposium on Class Actions

**Class Actions** continue to boom with a never ending list of high profile cases. These massive litigation files foster old and new challenges for counsel who must be on top of their game to succeed in this increasingly complex and competitive field.

Canada's **premier forum** for class actions debate is in a class of its own. This truly **national program**, now in its 14th year, assembles leading experts who will take you through the most critical issues in this constantly evolving field.

## Over two intensive days you will:

- Get key updates on the most current and emerging issues in class actions across the country
- Connect with and learn from experienced litigators and judges as they share their experience and insights
- Gain 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 6th

**8:30**

### Registration and Continental Breakfast

Sponsored By:



**9:00**

### Welcome and Introduction

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

**9:05**

### Multi-jurisdictional Class Actions & CBA Task Force Update

To open the conference **Jacqueline A. De Gagné**, Bayer Inc., will introduce the morning panels looking at multi-jurisdictional class actions from 3 perspectives, and provide a brief update on the CBA Task Force.

**9:20**

### Multi-jurisdictional Class Actions: What Are Plaintiffs Doing?

**Moderator:**

**Celeste Poltak**, Koskie Minsky LLP

**Panelists:**

**Jay S. Strosberg**, Sutts, Strosberg LLP, Windsor

**Joel P. Rochon**, Rochon Genova LLP

**André Lespérance**, Trudel Johnston & Lespérance, Montréal

- What are the implications of the *Barrick* Court of Appeal decision?
- Is the battle worth the war? Will there be more or less carriage motions going forward?
- Erosion of the first to file rule in Quebec

- Strategies for dealing with claims in other provinces (stay motions)
- How does plaintiffs' counsel deal with copycat claims across the country?
- Do we need a more objective rule like Quebec's first to file?
- *Bancroft-Snell v. Visa*

**9:50**

### Multi-jurisdictional Class Actions: What Are Defendants Doing?

**Moderator:**

**Ashley L. Paterson**, Bennett Jones LLP

**Panelists:**

**Katherine L. Kay**, Stikeman Elliott LLP

**Peter J. Pliszka**, Fasken Martineau DuMoulin LLP

- When can you get a stay based on a class action/class settlement in another province or country?
- Judicial treatment of article 577 of Quebec's Code of Civil Procedure: has it made it more difficult to obtain a stay of proceedings in Quebec?
- Efficient management and strategic considerations of parallel class actions and MDL proceedings
- Can a defendant force a class to sue them in their home jurisdiction? (*Facebook*)
- When will an Ontario court certify a global class? (*Excalibur Special Opportunities LP v. Schwartz Levitsky Feldman*)

**10:20**

**Break**

**10:35**

### Multi-jurisdictional Class Actions: What are the Courts doing?

**Moderator:**

**Marie Audren**, Audren Rolland LLP, Montréal

Marie Audren will moderate a cross country panel of judges who will discuss:

- The latest multi-jurisdictional case law
- Impact of the *Endean/Parsons* Supreme Court of Canada decision
- When is filing in multiple jurisdictions an abuse of process?
- Does the filing suspend the limitation period for non-resident class members?
- Impact of the new Civil Code of Procedure in Quebec

11:05

## Litigation Funding and Indemnities

### Moderator:

**Ward K. Branch**, Branch MacMaster LLP, Vancouver

### Panelists:

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

**Michael G. Robb**, Siskinds LLP, London, Ontario

**Brendan van Nijenhuis**, Stockwoods LLP

- What circumstances call for third party funding over counsel indemnities?
- What is plaintiff's counsel's role/obligation in the selection of a 3rd party funder?
- What role, if any, should defendants play in approval of 3rd party funding agreements?
- What terms are critical to the approval of a private 3rd party funding agreement?
- How does third party funding of counsel's ongoing legal fees affect the approval of contingency fees?
- Survival of old theories prohibiting the financing of procedures
- The role and involvement of the judge

11:50

## Motions for Summary Judgment and Summary Trial Cross Country

### Moderator:

**Gordon McKee**, Blake, Cassels & Graydon LLP

### Panelists:

**Michael J. Peerless**, McKenzie Lake Lawyers LLP, London, Ontario

**Neil Finkelstein**, McCarthy Tétrault LLP

**The Hon. Justice Robert P. Stack**, Supreme Court of Newfoundland and Labrador (Trial Division), St. John's, Nfld.

- Which side is bringing them and when? Who's winning?
- What factors should be considered with respect to timing?
- Leave test for pre certification?
- What kinds of issues have they been used to address?
- Are they "working"? Are they different from the *Securities Act* leave cases?
- What are the costs/fees involved? How much is being saved?

12:30

## Luncheon

1:30

## Post Certification but Pre-Trial...

### Moderator:

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

### Panelists:

**Jill M. Lawrie**, Blake, Cassels & Graydon LLP

**Brad W. Dixon**, Borden Ladner Gervais LLP, Vancouver

**Louis Sokolov**, Sotos LLP

- What kinds of motions to bring or not bring
- The extent of discovery, discovery motions; bifurcation of discovery
- Motions for bifurcation of common issues trial
- Beyond newspaper ads: how to provide meaningful and cost-effective notice to class members
- Discovery plans – the search for proportionality
- Summary judgment – are trials a relic of the past?

2:15

## The Latest in Competition Law Class Actions

### Moderator:

**J. Kevin Wright**, DLA Piper (Canada) LLP, Vancouver

### Panelists:

**Linda Visser**, Siskinds LLP, London, Ontario

**Dr. A. Neil Campbell**, McMillan LLP

- LCD appeal decision
- Potential new battlegrounds
- What are the courts doing with *Wakelam*? Can it be extended?
- Umbrella purchasers: *Shah* - status of appeal
  - ODD and CRT
- Certification of international class
  - cargo appeal

2:45

## Break

3:00

## Privacy Class Actions

### Moderator:

**Marie Audren**, Audren Rolland LLP, Montréal

### Panelists:

**Shaun E. Finn**, BCF, Business Law, Montréal

**Theodore P. Charney**, Charney Lawyers

- Update on case law across the country

- The types of injuries that can give rise to damages: what works, what doesn't
- Impact of the US *Spokeo* decision in Canada
- Best practices in case of a security breach

3:45

## Certification Decisions in Common Law Misrepresentation

**David F. O'Connor**, Roy O'Connor LLP

**Linda M. Plumptre**, Torsys LLP

**Andrew P. Wilson**, JSS Barristers, Calgary

- Interplay between common law misrepresentation claims and secondary market misrepresentation claims under the various *Securities Acts*
- Reliance, causation and damages as individual or common issues?
- Impacts of consumer protection legislation (or other statutes) on common law misrepresentation claims
- Issues of multiple, parallel or related proceedings

4:15

## Unique issues in Common Issues Trials

### Moderator:

**The Hon. Justice Wendy M. Matheson**, Ontario Superior Court of Justice

### Panelists:

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

**Michael Rosenberg**, McCarthy Tétrault LLP

- What should be the role of the case management judge?
- How much representative evidence is "enough"?
- Use of rep plaintiff discovery transcript at trial – who does it bind?
- What is the future of aggregate damages at trial?
- How does class counsel ensure the matter gets to trial on time?
- How do limitations periods come into play in defending a common trial?
- Use of statistical evidence re class experience – does *Tyson Foods* (US) have any relevance here?

5:00

## Day One Concludes

## Wine & Cheese Reception

Immediately following the last session on Day One; all delegates and faculty are cordially invited to attend.

# Agenda Day Two

Friday, April 7th

8:30

## Registration and Continental Breakfast

9:00

### Use of Class Actions to Effect Regulatory/Political Change

#### Moderator:

**Jasminka Kalajdzic**, Associate Dean, Faculty of Law, University of Windsor

#### Panelists:

**Raymond F. Wagner, QC**, Wagners, Halifax

**Joe Fiorante, QC**, Camp Fiorante Matthews Mogerman, Vancouver

- The use of media, public opinion, engagement in political process to effect change
- Is this approach effective? Does it work?
- Pros and cons of using the courts to compel action of some kind
- Access to justice – does it exist for foreign victims of overseas conduct?
- Review of recent cases

9:45

### Creative & Novel Settlement Structures

#### Moderator:

**Cheryl M. Woodin**, Borden Ladner Gervais LLP

#### Panelists:

**Marianne Ignacz**, Norton Rose Fulbright Canada LLP, Montréal

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

- Claims made vs. settlement fund
- Inventory settlements
- Insured claims, multiple insurers and how this affects settlement
- Parallel U.S. litigation and implications
- Parallel criminal or regulatory litigation and implications
- Settlement of class actions: at the core of the New Civil Code of Procedure of Quebec
- Process for Court supervised settlement conferences
- Increased number of settlement of class actions within CCAA framework
- Recent trends in settlement of class actions

10:30

## Break

10:45

### Settlement Approvals - Process & Materials

#### Moderator:

**Robert B. Bell**, Lerner LLP

#### Panelists:

**David L. Sterns**, Sotos LLP

**Paul Vickery**, Formerly Senior General Counsel, Litigation Branch, Department of Justice Canada

- Disclosure of risks of case: how much is too much information?
- Can you/should you disclose details of mediation positions?
- Should defendants be allowed to review draft settlement approval materials?
- Settling cases where the law has moved unfavourably for the plaintiff (*Waldman v. Thomson Reuters*)
- Dealing with objectors
- Dealing with judicial skepticism
- Beyond boilerplate: getting to the substance of the settlement in your materials

11:30

### Ethics: Conflicts, Referral Fees & Advertising

#### Moderator:

**Ward K. Branch**, Branch MacMaster LLP, Vancouver

#### Panelists:

**Michael A. Eizenga**, Bennett Jones LLP

**Malcolm M. Mercer**, McCarthy Tétrault LLP

- Is it advisable, ethical or legal to seek agreements to stand down your competing litigation?
- Is it advisable, ethical or legal, to accept an offer from another lawyer to stand down their competing litigation? If so, on what terms?
- Can a carriage dispute be settled? If so, on what terms and must approval be sought from one or more courts?
- Is it ethical to pursue individual litigation contemporaneous with class litigation?
- Is it ethical to opt out all your clients?
- If your client is dead, can they give you instructions?

12:15

## Conference Concludes

Thank you  
to this year's sponsors

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HARRISON PENSEA  
*In any case.*

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

“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.”

“Thought provoking discussion on panels. Good materials.”

## Registration Details

### Fee per Delegate

**\$1695 plus HST**

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca/group-discounts](http://www.osgoodepd.ca/group-discounts) 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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