

SEPTEMBER 23-24, 2009 | METROPOLITAN HOTEL, TORONTO

The Canadian Institute's 10th Annual National Forum on

CLASS ACTIONS LITIGATION

PRACTICAL STEPS AND STRATEGIES TO MANAGE EXPOSURE AND
MAXIMIZE LITIGATION SUCCESS IN INCREASINGLY COMPLEX CASES

CHAIR



Paul J. Martin
Partner
Fasken Martineau DuMoulin LLP

OUTSTANDING SPEAKER

FACULTY INCLUDES:

Laura Bruneau
President, The Bruneau Group Inc.

R. Douglas Elliott
Partner, Roy Elliott O'Connor LLP

Tony Merchant, Q.C.
Partner, Merchant Law Group LLP

Carla Swansburg
Senior Counsel, Royal Bank of Canada

Paul B. Vickery
Director and Senior General Counsel
Justice Canada

Susan Wortzman
Founder, Wortzman Nickle Professional
Corporation

Sponsored By: **FASKEN
MARTINEAU** 

FULLY UPDATED FOR 2009!

An outstanding faculty of leading plaintiff and defence counsel, in-house counsel, and third party experts will share their valuable hands-on experience and practical strategies to help you manage class actions litigation risks, including:

- DETERMINING the most attractive jurisdictions for plaintiffs
- ANTICIPATING the future of national class actions and carriage disputes
- PRESCRIPTIVE STEPS to avoid or mitigate class action litigation exposure
- BEST PRACTICES for document management and e-discovery
- GAINING INSIGHT into Maple Leaf's litigation and crisis management strategies
- MANAGING litigation risk arising from *Competition Act* amendments

PLUS! Gain additional practical insight
by attending the pre-conference workshop
on September 22, 2009

THE NUTS AND BOLTS OF
CLASS ACTIONS LITIGATION



See inside for details



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CLASS ACTIONS LITIGATION IS ESCALATING IN VOLUME AND COMPLEXITY. DO YOU HAVE THE TOOLS AND CAPACITY YOU NEED TO GIVE YOUR CLIENTS THE BEST ADVICE FOR LITIGATION SUCCESS?

Corporations and governments are increasingly exposed to business, financial, and reputational risks arising from class actions proceedings, which may be commenced in any of the provinces and territories in Canada. Growing areas for litigation include securities class actions — which alone increased by 125% over the past year — and employee overtime claims, while a significant risk of new actions arises from recent amendments to the federal *Competition Act*. Meanwhile, corporate Canada struggles to avoid, where possible, and cost-effectively manage, where necessary, class actions on a multijurisdictional and North American basis.

At **The Canadian Institute's 10th Annual National Forum on Class Actions Litigation**, our outstanding speaker faculty will provide you with the legal updates, innovative strategies, and best practices you need to know to avoid or mitigate exposure to class actions risks, including:

- DISCOVERING how to effectively navigate multijurisdictional hurdles
- OPTIMIZING your resources in managing class action litigation
- OBTAINING valuable advice on your top questions
- UNDERSTANDING views on waiver of tort across the country
- IDENTIFYING disclosure obligations in securities class actions
- And much more!

PLUS! Add value to your attendance and gain practical insights into the class actions litigation process at our pre-conference workshop on **The Nuts and Bolts of Class Actions Litigation**.

Register now by calling toll-free 1-877-927-7936 or online at www.canadianinstitute.com/ClassActions.

We look forward to seeing you in September!

WHO SHOULD ATTEND

- Private Practice Plaintiff and Defence Lawyers
- External Counsel to Large Corporations
- In-House Counsel
- Government Lawyers (Federal, Provincial, Municipal)
- VPs, Directors, and Managers of:
 - Class Actions
 - Litigation
 - Risk Management
- Claims Lawyers
- Claims Managers
- Claims Adjusters
- Third Party Class Action Administrators
- Third Party Class Action Funding Providers



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

Conference - Civil Litigation 12.5 hours
Workshop - Civil Litigation 2.5 hours

DISTINGUISHED SPEAKER FACULTY

Chair:

Paul J. Martin
Partner, Fasken Martineau DuMoulin LLP

Speakers:

Marie Audren
Partner, Borden Ladner Gervais LLP (Montreal)

Laura Bruneau
President, The Bruneau Group Inc.

John A. Champion
Partner, Fasken Martineau DuMoulin LLP

Peter Cavanagh
Partner, Fraser Milner Casgrain LLP

Laura F. Cooper
Partner, Fasken Martineau DuMoulin LLP

Chesley E. Crosbie, Q.C.
Partner, Ches Crosbie Barristers (St. John's)

Andrea DeKay
Partner, Siskinds LLP

R. Douglas Elliott
Partner, Roy Elliott O'Connor LLP

Norman J. Emblem
Partner, Fraser Milner Casgrain LLP

Joel S. Feldman
Partner, Sidley Austin LLP (Chicago)

Kelly Friedman
Partner, Ogilvy Renault LLP

Deborah A. Glendinning
Partner, Osler, Hoskin & Harcourt LLP

Chris Hersh
Partner, Cassels Brock & Blackwell LLP

Peter Jervis
Partner, Davis LLP

Henry Juroviesky
Managing Partner, Juroviesky and Ricci LLP

Ian F. Leach
Partner, Lerner LLP

Jeffrey Leon
Partner, Bennett Jones LLP

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

Mark G. Lichty
Partner, Blaney McMurtry LLP

Peter Mantas
Partner, Heenan Blaikie LLP

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

Tony Merchant, Q.C.
Partner, Merchant Law Group LLP (Regina)

Peter J. Pliszka
Partner, Fasken Martineau DuMoulin LLP

Brian Reny
VP, National Director of Electronic Discovery
KPMG LLP

Joel Rochon
Partner, Rochon Genova LLP

John Rossos
Principal, BridgePoint Financial Services Inc.

Jean Saint-Onge
Partner, Lavery, de Billy (Montreal)

Glenn Smith
Partner, Lenczner Slaght Royce Smith Griffin LLP

Louis Sokolov
Partner, Sack Goldblatt Mitchell LLP

R. Paul Steep
Partner, McCarthy Tétrault LLP

Colin P. Stevenson
Partner, Stevensons LLP

Steven Stieber
Partner, Stieber Berlach LLP

Carla Swansburg
Senior Counsel, Royal Bank of Canada

Paul B. Vickery
Director and Senior General Counsel, Justice Canada

Susan Wortzman
Founder, Wortzman Nickle Professional Corporation

Glenn M. Zakaib
Partner, Cassels Brock & Blackwell LLP

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Maximize your organization's visibility in front of key decision-makers in your target market. For more information, contact Senior Business Development Executive **Andrew Thompson** at 416-927-0718 ext. 232, toll-free 1-877-927-0718 ext. 232 or by email at a.thompson@CanadianInstitute.com



Fasken Martineau has experience in virtually all types of class actions including product liability, insurance, mass torts, competition, securities, employment and benefits, and public law. Our firm has been engaged in such well-known class action cases as vanishing premiums, breast implants, insurance deductibles and after-market parts, employee mass terminations, international cartels, defective consumer products, pharmaceuticals, medical devices, environmental contamination, institutional abuse, and shareholder disputes. As well, our firm and our lawyers have been consistently ranked at the top of the Lexpert rankings in the class action area. www.fasken.com

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

8:00 REGISTRATION OPENS AND COFFEE SERVED ☞

8:45 **OPENING REMARKS FROM THE CHAIR**

Paul J. Martin

Partner, Fasken Martineau DuMoulin LLP

9:00 **CROSS-CANADA CLASS ACTIONS UPDATE: DISCOVERING THE STATE-OF-THE-ART AND STATE OF PLAY**

Class actions in Canada continue to face recurring challenges and uncertainty as this area of litigation matures within each jurisdiction. In this session, obtain an overview of the key legislative and case law developments across the country that may impact upon your clients' choice of forum, ability to successfully bring or defend a class action suit, litigation strategy, and available remedies.

Moderator and Speaker:

Deborah A. Glendinning

Partner, Osler, Hoskin & Harcourt LLP

Panelists:

Marie Audren

Partner, Borden Ladner Gervais LLP (Montreal)

Chesley F. Crosbie, Q.C.

Partner, Ches Crosbie Barristers (St. John's)

Robert W. Leurer, Q.C.

Partner, MacPherson Leslie & Tyerman LLP (Regina)

John A. McKiggan

Partner, Arnold Pizzo McKiggan LLP (Halifax)

- Anticipating "hot" areas for litigation:
 - Where are we seeing new causes of action and what are they?
 - U.S. trends and impacts within Canada
- Getting up-to-date on legislative and case law developments:
 - Principal differences between key jurisdictions
 - Benefits or challenges of bringing proceedings in one province over another
- Analyzing the impact of Saskatchewan's national class action amendment
- Considering the ins and outs of Nova's Scotia's class actions legislation: key differences from other jurisdictions
- Bad doctor or bad system? The *Mirimichi* and *Eastern Health* class actions

10:15 NETWORKING AND REFRESHMENT BREAK ☞

10:30 **NAVIGATING MULTIJURISDICTIONAL HURDLES: KEY ISSUES AND UPDATE ON NATIONAL CLASS ACTIONS**

Moderator:

Peter Cavanagh

Partner, Fraser Milner Casgrain LLP

Panelists:

Joel S. Feldman

Partner, Sidley Austin LLP (Chicago)

Tony Merchant, Q.C.

Partner, Merchant Law Group LLP (Regina)

Jean Saint-Onge

Partner, Lavery, de Billy (Montreal)

Glenn M. Zakaib

Partner, Cassels Brock & Blackwell LLP

- Determining which jurisdictions are most attractive to Plaintiff's counsel and why:
 - Differences in certification thresholds across Canada
 - Determining cost implications
 - Do some jurisdictions offer superior remedies?
- Understanding carriage disputes:
 - How do courts determine carriage issues?
 - Being the first to commence an action: do courts attach significance to this? Implications for your practice
- Assessing the ability of an action to become national out of Quebec
- Enforcing national class actions created in one jurisdiction in another?
- Assessing deference: *Mignacca v. Merck Frosst Canada Ltd*
- Determining the future of carriage and national classes:
 - The Supreme Court of Canada's decisions in *VIOXX* and *Canada Post v. Lépine*
 - The pros and cons of using a multidisciplinary panel of judges to determine carriage
 - Current state of play in the development of a national registry
- Resolving disputes between counsel in different provinces
- Canada-U.S. jurisdictional issues:
 - Interaction of jurisdictional rules in Canada and the U.S.
 - Managing class actions on a North American scale
 - Do U.S. in parallel suits drive Canadian proceedings?

12:00 NETWORKING LUNCHEON FOR DELEGATES AND SPEAKERS 

1:15 **PERSPECTIVES ON KEY QUESTIONS: WAIVER OF TORT, CERTIFICATION, AND OTHER CHALLENGES**

Moderator:

Peter J. Pliszka

Partner, Fasken Martineau DuMoulin LLP

John A. Campion

Partner, Fasken Martineau DuMoulin LLP

R. Douglas Elliott

Partner, Roy Elliott O'Connor LLP

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

- How is the law on class actions evolving in Canada?
 - Perspectives on competing national class actions and advice on how to proceed
- Defeating an action before certification
- Expert evidence in certification hearings:
 - What goes to the merits?
 - What would the judiciary like to see?
- Views on waiver of tort:
 - Trends and comparisons between provinces
 - Is waiver of tort a remedy or a cause of action?

2:15 **SECURITIES CLASS ACTIONS: STRATEGIC CONSIDERATIONS FOR SPECIAL CIRCUMSTANCES**

Peter Jervis
Partner, Davis LLP

Jeffrey Leon
Partner, Bennett Jones LLP

- Implications of the financial market meltdown on securities class actions
- Preliminary strategic considerations for both plaintiffs and defendants
- Evidence to prove factors other than corrective disclosure
- Getting up-to-date on recent significant securities class actions: *CIBC, IMAX, AIG*
- Strategies for determining appropriate representative plaintiffs
- Defining the class in cross-listed cases: The decision in *CP Ships*
- Disclosure obligations:
 - What are the implications of Ontario's evidence-based merits test?
 - Parallel suits in the U.S. and impact on Canadian actions
- Key jurisdictional differences across Canada

3:00 **NETWORKING AND REFRESHMENT BREAK** ☞

3:15 **STRATEGIES TO AVOID OR MITIGATE CLASS ACTIONS LITIGATION**

Norman J. Emblem
Partner, Fraser Milner Casgrain LLP

Ian F. Leach
Partner, Lerner LLP

- Determining appropriate alternatives to class actions litigation: What are the options?
- Prescriptive steps to avoid or mitigate class actions exposure risk
- To what extent can a defendant mitigate through arbitration?
 - Impact of amendments to the *Consumer Protection Act*
 - Considering the *KPMG* overtime litigation
- Using alternative compensation schemes to maintain controls over class actions exposure

4:15 **PRACTICALITIES OF MANAGING CLASS ACTIONS LITIGATION AND CONDUCTING E-DISCOVERY**

Moderator and Speaker:

Brian Reny
VP, National Director of Electronic Discovery, KPMG LLP

Panelists:

Kelly Friedman
Partner, Ogilvy Renault LLP

Glenn Smith
Partner, Lenczner Slaght Royce Smith Griffin LLP

Carla Swansburg
Senior Counsel, Royal Bank of Canada

Susan Wortzman
Founder, Wortzman Nickle Professional Corporation

- Using third party administrators to streamline litigation and save time and expense:
 - What can they do for you?
 - When should you get them involved?

- Practical approaches to working effectively with third party experts
- Administering a class for compensation: Technology, cost, service providers, steps involved
- Top tips for considering opposing experts' reports
- Unraveling the mysteries of quantification of damages:
 - What is involved? At what stage? Why is this useful?
- Production of documents: Expectations of the courts
- What is the court's role in defining the parameters of e-discovery and in interpreting the Sedona principles?
- Best practices for document management and e-discovery:
 - How far back should you go?
 - Anticipating the real financial cost of e-discovery: Minimizing time and expense
 - Using electronic documents in court
- Impact of changes to Ontario's Rules of Civil Procedure
- Maximizing efficiency in coordinating document management with opposing counsel and in cross-border actions

5:30 **CONFERENCE ADJOURNS**

DAY 2: THURSDAY, SEPTEMBER 24, 2009

8:15 **COFFEE SERVED** ☞

8:45 **OPENING REMARKS FROM THE CHAIR**

9:00 **MAPLE LEAF CASE STUDY: AN EXAMPLE OF CRISIS MANAGEMENT**

Moderator and Speaker:

Steven Stieber (Defence Counsel)
Partner, Stieber Berlach LLP

Panelists:

Laura Bruneau (Third Party Administrator)
President, The Bruneau Group Inc.

Mark G. Lichty (Insurance Coverage Counsel)
Partner, Blaney McMurtry LLP

Tony Merchant Q.C. (Plaintiffs' Counsel)
Partner, Merchant Law Group LLP

Colin P. Stevenson (Plaintiffs' Counsel)
Partner, Stevensons LLP

- Exploring Maple Leaf's strategies to manage financial exposure and minimize business and reputational damage
- Gaining the insurance perspective in class actions litigation
- Examining the pros and cons of acknowledging responsibility:
 - The effect of Ontario's new *Apology Act* on class actions litigation
 - Should government defendants adopt this approach?
- Managing the media: What effect did Maple Leaf's handling of the class actions litigation have in the media?
- Working effectively with multiple legal teams

10:30 **ACCESSING SOURCES OF FUNDING AND CONTROLLING COSTS**

Joel Rochon
Partner, Rochon Genova LLP

John Rossos
Principal, BridgePoint Financial Services Inc.

- Getting up-to-date on funding trends on the plaintiff side:
 - Determining the legal issues associated with third party financial agreements
 - What funding services are provided?
 - Properly evaluating an application for financing
 - Accessing funding: How does the process work?
- Cost control:
 - Methods to save on costs?
 - Strategies for working with opposing counsel to reduce costs
- Costs awards:
 - What are the courts doing?
 - Impact of no-cost regimes on choice of forum

11:30 NETWORKING AND REFRESHMENT BREAK 

11:45 **WRAPPING UP THE LITIGATION: REMEDIES AND SETTLEMENTS**

Joel Rochon

Partner, Rochon Genova LLP

R. Paul Steep

Partner, McCarthy Tétrault LLP

Paul B. Vickery

Director and Senior General Counsel, Justice Canada

- Understanding the benefits and use of aggregate damages:
 - Exploring trends in the use of aggregate damages
 - How are aggregate damages calculated?
 - Effects of aggregate damages on certification motions
 - What kind of evidence is acceptable to courts to support an aggregate award?
 - Tactics for defendants in responding to aggregate damages
- Administering compensation: How do you justify the costs?
- Capturing as many class members as possible: Procedural tips
- Determining counsel's fees upon settlement?
- Structuring settlements to maximize chances of approval:
 - How do the courts view settlement proposals by defendants before certification?
 - Advantages in settling before certification or after
 - What evidence do courts look for to be satisfied that a settlement is in the best interests of the class?
- Trends in the form of settlements: Alternatives to monetary settlements
- Developing settlements that can be easily administered
 - Ensuring that the right people are involved
 - How do you justify the costs?
- Government perspective on remedies and settlements

1:00 NETWORKING LUNCHEON FOR DELEGATES AND SPEAKERS 

2:15 **THE RISE OF EMPLOYEE OVERTIME CLAIMS: TRENDS AND STRATEGIES FOR RISK MANAGEMENT**

Henry Juroviesky

Managing Partner, Juroviesky and Ricci LLP

Jonathan L. Dye

Partner, Heenan Blaikie LLP

Louis Sokolov

Partner, Sack Goldblatt Mitchell LLP

- Understanding trends in Canada and implications of U.S. wage and hour legislation

- What industries and sectors are most at risk?
- Top tips on developing risk management strategies to avoid or mitigate litigation exposure
 - Overtime policies and voluntary compensation schemes
- Determining key jurisdictional differences
 - Which limitation period is applicable?
- Achieving or defeating class certification in overtime class actions:
 - Categorizing employees
 - Determining who fits within overtime exemptions
- Evaluating the impact of key cases to anticipate the future:
 - How were the certification criteria met in *CIBC*?
 - Other cases: *KPMG*, *CN Rail*

3:15 NETWORKING AND REFRESHMENT BREAK 

3:30 **CLASS ACTIONS UNDER THE COMPETITION ACT AND IMPACT OF NEW LEGISLATIVE AMENDMENTS**

Laura F. Cooper

Partner, Fasken Martineau DuMoulin LLP

Andrea DeKay

Partner, Siskinds LLP

Chris Hersh

Partner, Cassels Brock & Blackwell LLP

- Overview of key amendments to the *Competition Act*
 - Implications for class actions litigation: why companies will be more vulnerable to class actions
- Practical advice and strategies for litigating competition law class actions
- Proving injury: the decision in *Pro-Sys Consultants v. Infineon*
- To what extent are indirect purchasers able to pursue antitrust claims in Canada for conspiratorial conduct?
- Getting around indirect purchaser claims: *Steele v. Toyota*
- Using expert evidence on certification motions: How far does your expert have to go?
- Role of the Commissioner of Competition and criminal penalties: *Janine Bedard v. Kellogg*

4:30 CLOSING REMARKS FROM THE CHAIR
CONFERENCE CONCLUDES

PRE-CONFERENCE WORKSHOP

TUESDAY, SEPTEMBER 22, 2009 | 1:30 p.m. – 4:30 p.m.

The Nuts and Bolts of Class Actions Litigation

Workshop Leaders:

Norman J. Emblem

Partner, Fraser Milner Casgrain LLP

Colin P. Stevenson

Partner, Stevensons LLP

- Understanding the nature of class actions: key differences from other actions
- Determining the procedural steps involved
- Distinguishing between class actions regimes across Canada:
 - Key differences: costs, certification, discovery, remedies
 - Quebec's approach to class actions litigation
 - Trends in case law: implications for your practice
- Strategies and tactics: for plaintiffs and defence counsel
- Managing the process and working with broader teams

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