

A Brief Introduction to Class Proceedings in Ontario
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The Ontario class proceedings regime is generally consistent with its American counterpart although the Act provides a more comprehensive statutory code than U.S. Federal Rule 23. (The Act and accompanying regulations comprise almost 60 detailed paragraphs). Where the Act departs from the American approach, it is thought to be more liberal or amenable to certification. (For example, there is no predomination test.)

The introduction of the *Class Proceedings Act, 1992*¹ in Ontario was the result of more than a decade of study. The Ontario Law Reform Commission began a comprehensive study on class actions in 1976.² In 1982 the Commission, published the *Report on Class Actions*.³ This report recommended legislative reform to facilitate class proceedings in Ontario. The report listed the three major goals and benefits of class actions as: Judicial Economy, Increased access to the courts, and Behaviour Modification.⁴

In 1990, the Attorney General's Advisory Committee on Class Action Reform published a report and draft Bill.⁵ The report strongly relied upon the Ontario Law Reform Commission's 1982 report⁶ and incorporated the three benefits and goals of class proceedings as mentioned above: judicial economy, access to the courts and behaviour modification.

The *Class Proceedings Act, 1992*⁷ was based on the Committee's draft Bill and was proclaimed in force on January 1, 1993.

CERTIFICATION

In order for an action to advance as a class proceeding, it must be certified by the court. Certification is procedural in nature⁸ and does not address the merits of the case.⁹ Section 5(1) of the Act¹⁰ provides the certification test:

5. (1) The court shall certify a class proceeding on a motion under section 2, 3 or 4 if,

- (a) the pleadings or the notice of application discloses a cause of action;

- (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;
- (c) the claims or defences of the class members raise common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff or defendant who,
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

The first class proceeding to be certified in Ontario was a product liability action whereby damages for personal injuries were claimed. In *Bendall v. McGhan*¹¹ the plaintiffs were recipients of silicone gel breast implants manufactured by the Defendant. They brought an action as a class proceeding seeking damages for negligence, breach of contract, breach of warranty and negligent misrepresentation. In certifying the action Montgomery J. held: "[c]ertification is the only way a large number of women can access a legal system that would otherwise be denied to them. The court maintains a supervisory role under the Act to ensure a fair and expeditious determination."

Pleadings Disclose a Cause of Action

Although many aspects of class proceedings are novel, the underlying claims carried forward by way of class proceedings will stand or fall on the basis of traditional litigation

principles found in legislation, the Rules of Court and at common law.

In *Peppiatt v. Nicol*, Chilcot J. stated that the court could obtain some guidance in determining whether there was a cause of action by considering the test found in Rule 21 of the Ontario Rules of Civil Procedure (determination of an issue on a point of law):

It has not been shown to the court beyond doubt that the Plaintiffs could not succeed in the present action.

The allegations of fact here are not ridiculous or incapable of proof and are capable of establishing, if proven, that there was negligent misrepresentation made by (Nicol) to the class, also that there was a breach of the fiduciary duty owed by Nicol to the class.¹²

Identifiable Class

While the class as a whole must be identifiable, not all class members need be identified at the certification stage.¹³ Care should be taken when defining the class so as not to set the parameters too broadly or too narrowly. Winkler J. has noted that:

The purpose of the class definition is threefold: a) it identifies those persons who have a potential claim for relief against the defendant; b) it defines the parameters of the lawsuit so as to identify those persons who are bound by its result; and lastly, c) it describes who is entitled to notice pursuant to the Act. Thus for the mutual benefit of the plaintiff and the defendant the class definition ought not to be unduly narrow nor unduly broad.¹⁴

Membership in the defined class should not be dependent on the merits of the case.¹⁵

Winkler J. has also noted that the threshold for establishing the existence and size of the class may depend on whether the cause of action is objective or substantive.¹⁶

An objective cause of action is determinable without reference to personal characteristics of the plaintiff. For example, in a mass disaster or product liability case,

[t]he harm alleged is not dependent on the plaintiff having certain characteristics but rather arises from the existence of a state of affairs outside the norm, the facts of which are sufficient to establish on the 'plain and obvious' test that a cause of action exists. Hence, the evidence of the class, to adopt the words of Sharpe J. in *Taub*, may be 'inherent in the claim itself'.¹⁷

A subjective claim, however, will require more extensive evidence to establish the existence and size of the proposed class. "A subjective claim is characterized by allegations of the plaintiff's injury from a reaction to a situation that is neither inherently harmful nor apparently wrongful."¹⁸

The Act recognises that subclasses may be necessary in situations where common issues are not shared by all members of the class.¹⁹

Common Issues

Common issues are defined in the Act as:²⁰

- (a) common but not necessarily identical issues of fact, or
- (b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;

As a matter of procedure, common issues are generally presented to the court in question format.

Although resolution of the common issues need not be dispositive of liability (individual issues may yet need to be determined) it must advance the proceedings, in order to meet the objectives of efficiency and access to the justice system.²¹

In *Anderson v. Wilson*, the class consisted of individuals who alleged to have been infected with Hepatitis B as a result of undergoing electroencephalogram ("EEG") tests at five different clinics operated by the Defendants.²² On the common issues test, Campbell J. stated:

It is not necessary, in order to proceed with a class action, to demonstrate that the common issues will in themselves determine liability. The common issues need only be issues of fact or law that move the litigation forward[.]

It would defeat the purpose of the class proceedings legislation, having regard to the strong and potentially determinative common features of the claims

of those infected with Hepatitis B in this mass outbreak associated with the defendants' clinics, to deny class certification to those actually infected.²³

The court further stated that,

The mere fact that it might be necessary to determine a number of individual issues does not necessarily destroy the advantage of a class action.

...
[T]he common issues are so central that a class action, for reasons of judicial economy and increased access to the courts, is superior to other available methods for the fair and efficient resolution of the controversy. Although individual tests and limited discovery might be necessary the advantage of trying the common issues together, in order to achieve judicial economy and greater access to justice, outweigh any potential problems caused by the individual issues.²⁴

So long as common issues exist, the presence of individual issues should not be a bar to certification.

The financial burden associated with pursuing complex litigation can often dwarf the amount of damages pursued by any individual plaintiff. Not only are class proceedings preferable in such circumstances, they are the only procedure by which the large majority of plaintiffs will have access to the courts.²⁵

In *Rumley v. British Columbia*,²⁶ an action was commenced on behalf of former students of a residential school for the deaf and blind who alleged that they were sexually abused while they attended the school. The lower court refused to certify the action as a class proceeding. Kirkpatrick J. found that the standard of care owed by the defendant was subject to change during the 42 year period in question. The court acknowledged that the problem of establishing a standard of care might be resolved by determining a standard applicable to the entire period with a minimum threshold that must be met regardless of the shifting standard of care. It was determined, however, that such an approach would not advance the litigation as the question of the suitability of the threshold to each particular case may require examination.

Kirkpatrick J. listed a number of considerations that led to her honour to the conclusion that the action lacked sufficient commonality among the proposed class members in relation to the standard of care imposed on the defendant:²⁷

- (i) the time period spanned by the claims;
- (ii) the dramatic and relatively recent evolution of societal understanding of sexual, physical and emotional abuse and the means by which to counter and prevent it. Thus, for instance, preventative measures which might have been reasonable and sufficient in 1955 might have been unreasonable and insufficient in 1985;
- (iii) the status of perpetrators (i.e.: is the government subject to the same standard of care in relation to abuse perpetrated by a government employee as it is in relation to abuse perpetrated by a ward?);
- (iv) the number of perpetrators;
- (v) the state of the defendants' knowledge as to the occurrence of abuse at the school at a given point in time; and
- (vi) the vulnerability of particular plaintiffs.

The British Columbia Court of Appeal overturned the lower court and held that the claims of class memos who were sexually abused raised common issues. The court found that issues related to sexual abuse at the school are standard of care issues relating to systemic negligence.

It was held that the lower court failed to adequately recognize the limited grounds on which the class claims were to be advanced. If the plaintiffs succeeded on a common issue, each class member would be required to prove on a balance of probabilities that he or she was sexually abused at the school. The Court found that issues related to sexual abuse were standard of care issues. Mackenzie J.A. was of the view that the duty of the school to reasonably protect its students from sexual abuse was "clear and immutable" throughout the 42 year period that the school was in operation.²⁸

Furthermore, it was held that determination of the status and number of individual perpetrators was not essential to the issues of liability as the plaintiffs were not relying on vicarious liability. "In essence the claims will be based on systemic negligence, the failure to have in place management and operations procedures that would reasonably have prevented the abuse."²⁹ The Court of Appeal found that the plaintiffs were entitled to restrict the grounds of negligence they wished to

advance in order to make the action more amendable to a class proceeding.

The Court of Appeal was of the view that limiting the ground of liability to systemic negligence did not eliminate all difference among class members, however, the differences were not insurmountable. If the breach of the standard of care during the period relevant to a particular student was established and the class member succeeded in proving that he or she suffered sexual abuse, proof of causation between the breach and the harm should not present many individual issues. The causation issue was whether the harm would reasonably have been prevented if the school had maintained reasonable measures to prevent sexual abuse.

Preferable Procedure

Certification has most often been denied based on a failure to satisfy this part of the test. The court must be satisfied that a class proceeding would be the preferable procedure for the resolution of the common issues.³⁰ Factors to consider when determining whether a class proceeding is the preferable procedure are: the economics of the litigation (both quantum and expense), the presence of numerous individual issues, the potential for third party claims and alternatives to a class proceeding.

The critical features of the preferable procedure analysis were captured by the Court in *Carom v. Bre-X*:

A class proceeding is the preferable procedure where it presents a fair, efficient and manageable method of determining the common issues which arise from the claims of multiple plaintiffs and where such determination will advance the proceeding in accordance with the goals of judicial economy, access to justice and the modification of the behaviour of wrongdoers.³¹

In *Nantais v. Telectronics*,³² a class of plaintiffs brought an action against the manufacturers of defective pacemaker leads. Although the leads implanted in the majority of the class members had not yet failed, medical experts predicted that the leads would eventually fail. The plaintiffs claimed damages as a result of the alleged negligence in the design, manufacture and distribution of the leads. With respect to preferable procedure, Zuber J. held the following:

In my respectful view this is the kind of case for which the *Class Proceedings Act 1992* was designed. The stupendous financial burden of a case such as this would consume all or almost all of the proceeds of the judgment of any single plaintiff. The defendants (if responsible) would likely therefore be insulated from any of these claims because of financial consequences alone. It is only by spreading our the cost that the members of the class have any chance of success. Not only is the class proceeding preferable, it is the only procedure whereby the members of the class will have any real access to the courts.³³

This action was certified as a class proceeding and ultimately a settlement was reached and approved by the court.

Consistently the courts have displayed flexibility and have favoured "practical and workable" solutions.³⁴

Adequacy of the Representative Plaintiff

The role of representative plaintiff may be demanding. The representative plaintiff must be someone who is committed to the case and to advancing not only her own interests, but also those of the class as a whole. She must be available to satisfy the time commitment required in complex litigation cases and must be prepared to provide evidence and be subjected to cross-examination and accordingly must understand the issues sufficiently in order to instruct counsel. In addition, the representative may be subject to adverse costs awards. The adequacy of the representative plaintiff will be evaluated in order to ensure that she will fairly and adequately represent the interest of the class.³⁵

In most cases, the experiences and characteristics of each class members' case varies somewhat from person to person. The representative plaintiff need not be someone who shares every characteristic of every class member. The representative plaintiff need not even be typical of the class so long as she would fairly and adequately represent the interests of the class and does not, on the common issues, have an interest in conflict with the class.³⁶

A representative plaintiff is not expected to have detailed knowledge of the civil litigation process or the issues involved in the action. A demonstrated ability to retain an instruct competent counsel will provide for adequate representation of the class.³⁷

In cases with multiple defendants, courts have sometimes held that it is necessary to have representative plaintiffs who have claims against each named defendant.³⁸

The Act also requires that a representative plaintiff produce a plan for proceeding that sets out a workable method of advancing the proceeding and providing the class members with notice.³⁹ In his reasons in *Carom v. Bre-X*,⁴⁰ Winkler J. outline the court's view of the plan of proceeding:

The production of a workable litigation plan serves a twofold purpose: it assists the court in determining whether the class proceeding is indeed the preferable procedure; and, it allows the court to determine whether the litigation itself is manageable in its constituted form. The manageability must be assessed in the context of the entirety of the litigation not just a common issue trial.

A workable plan must be comprehensive and provide sufficient detail which corresponds to the complexity of the litigation proposed for certification.

The production of a well developed plan for proceeding at the certification hearing will assist the court in assessing the manageability of the action as a class proceeding and also provides class counsel with an opportunity to establish that a class proceeding is the preferable procedure for the resolution of the common issues.

Satisfaction of each of the five tests results in mandatory certification pursuant to the language of s. 5(1) of the Act. Furthermore, the Act further provides grounds that shall not be a bar to certification:

6. The court shall not refuse to certify a proceeding as a class proceeding solely on any of the following grounds:

1. The relief claimed includes a claim for damages that would require individual assessment after determination of the common issues.
2. The relief claimed relates to separate contracts involving different class members.
3. Different remedies are sought for different class members.

4. The number of class members or the identity of each class member is not known.

5. The class includes a subclass whose members have claims or defences that raise common issues not shared by all class members.

INDIVIDUAL ISSUES & DAMAGES

In the event that certification is granted, a Notice will be provided to the class to provide class members with information about the lawsuit to advise them of their right to opt out of the class proceeding.⁴¹ Class members who opt out will neither be bound by the results of the class action nor will they receive any of its benefits. In light of the fact that individual class members are not responsible for costs awards in a class proceeding, it would appear that the only reason to opt out would be a class member's desire to pursue an individual lawsuit.

The scheme of the Act envisions that following determination of the common issues, individual issues may remain to be determined. Again, the Court has a broad discretion to direct that such issues be determined by way of further hearing, a reference under the rules of court or with the consent of the parties, by any other manner.⁴²

The existence of individual issues which remain to be resolved following the determination of the common issue is not a bar to certification. *The Class Proceedings Act, 1992* provides for broad latitude in the management of individual issues in order to satisfy all three objectives of the Act namely access to justice, judicial economy and behaviour modification.⁴³

In personal injury class proceedings, damages may vary from person to person. Section 6 of the Act specifically provides that the need for individual damages assessments shall not be a bar to certification. As stated by Campbell J. in *Anderson v. Wilson*, "The need for some separate assessment of damages is inherent in many class actions and the statute provides machinery to provide separate assessments to the extent they are necessary".⁴⁴

As Sharpe J. (as he then was) stated in the case of *Delgrosso v. Paul*:

I accept the argument that if the plaintiff is successful on the common issues, it will be necessary to have individual assessments of damages. However, it

is well established that the need to resolve certain aspects of the case on an individual basis is not a bar to a class proceeding and does not preclude finding of common issues: *Anderson v. Wilson*, supra.⁴⁵

These damages could be proven on an individual basis at trial after determination of the common issues. Section 25(1) of the Act provides:

(1) When the court determines common issues in favour of a class and considers that the participation of individual class members is required to determine individual issues, other than those that may be determined under section 24, the court may,

(a) determine the issues in further hearings presided over by the judge who determined the common issues or by another judge of the court;

(b) appoint one or more persons to conduct a reference under the rules of court and report back to the court; and

(c) with the consent of the parties, direct that the issues be determined in any other manner.

Settlement agreements can also be structured to allow class members to make a claim for damages to a settlement fund. Claims would be accepted if certain criteria are met as set out in the settlement agreement. Where there are a large number of claimants, an independent third party is often appointed to process claims.

Several breast implant settlements have involved individual assessment of damages of some sort as part of the claims procedure. In *Jones v. Baxter Healthcare*,⁴⁶ claims were assessed according to three main criteria: level of disability, disease category and age of onset of symptoms.

In *Godí v. Toronto Transit Commission*,⁴⁷ an action was brought on behalf of passengers and their family members who were on subway trains that collided. The Defendants admitted liability for the cause of the accident and certification was granted and a settlement agreement was approved by the court. Pursuant to the settlement, class members could claim damages for physical injuries, psychological injuries, property damages and expenses caused by the accident. Claims for damages proceeded through a mediation process, failing which the parties would proceed to arbitration employing the Small Claims Court rules of evidence.

SETTLEMENT AGREEMENT APPROVAL

Court approval is required of any settlement of a class proceeding. In considering whether to approve a class settlement, a court must balance the need to scrutinize the proposed settlement closely to ensure that it does not sell short the potential rights of the class against the recognition that:

" . . . all settlements are the product of compromise and the process of give and take in settlements rarely gives all parties exactly what they want. Fairness is not a standard of perfection. Reasonableness allows for a range of possible resolutions. A less than perfect settlement may be in the best interests of those affected by it when compared to the alternative of the risks and costs of litigation.⁴⁸

The basic test for court approval is that, "the court must find that in all the circumstances the settlement is fair, reasonable and in the best interests of those affected by it."⁴⁹

The burden of proving that the settlement ought to be approved by the court rests on the parties proposing the settlement.

The role of the court is not to rewrite or modify the terms of the settlement but only to approve or reject it.⁵⁰ However, as a practical matter, a court may indicate areas of concern and offer the parties the opportunity to answer and address the concerns through amendments to the settlement.⁵¹

The following criteria articulated by Newberg on Class Actions⁵² has been considered useful by Canadian courts in the approval hearing context:

- i. Likelihood of recovery, or likelihood of success;
- ii. Amount and nature of discovery evidence;
- iii. Settlement terms and conditions;
- iv. Recommendation and experience of counsel;
- v. Future expense and likely duration of litigation;
- vi. Recommendation of neutral parties if any;
- vii. Number of objections and nature of objections;
- ii The presence of good faith and the absence of collusion.

In practise, this requirement begins with a rough outline and evolves into a plan with the input of class counsel, the judge and defence counsel.

In *Parsons v. The Canadian Red Cross Society*, Winkler J., added two other factors which might be considered in the settlement approval process: i) the degree and nature of communications by counsel and the representative plaintiff with class members during the litigation; and ii) information conveying to the court the dynamics of, and the positions taken by the parties during the negotiation.⁵³ In that case, the court approved an agreement which was the largest settlement in a personal injury in Canadian history. The settlement was Pan-Canadian in scope, affected thousands of people and is to be administered over 80 years.

In Ontario, the court has also held that a recommendation by experienced class counsel is a factor in favour of the settlement. It is, however, only one criterion which must be considered:

The recommendation of class counsel is clearly not dispositive as it is obvious that class counsel have a significant financial interest in having the settlement approved. Still, the recommendation of counsel of high repute is significant. While class counsel have a financial interest at stake, their reputation for integrity and diligent effort on behalf of their clients is also on the line.⁵⁴

FEES

In class proceedings, financial barriers to litigation are reduced for class members. Class counsel, however, assume a substantial economic risk. In Ontario, the *Class Proceedings Act, 1992* is unique in that class counsel are permitted to enter into a contingency fee agreement with a representative plaintiff,⁵⁵

33(1) Despite the Solicitors Act and An Act Respecting Champerty, being chapter 327 of Revised Statutes of Ontario, 1897, a solicitor and a representative party may enter into a written agreement providing for payment of fees and disbursements only in the event of success in a class proceeding.

Such agreements may also permit the lawyer to make a motion to the court to have his or her fees increased by a multiplier.⁵⁶ As an alternative to multipliers, courts have also approved retainer

agreements based on percentages and block fees.⁵⁷ The fees of class counsel are subject to approval by the Court.

CONCLUSION

The class proceedings device is a procedural vehicle only. The Act creates no new cause of action and potential class lawsuits should be evaluated by practitioners first on the basis of the merit of the substantive claim. However, the Act clearly has opened the door to a new kind of litigation which is reflective of the realities of the modern market place in which identical or similar product of services are used by hundreds of consumers.

1. *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
2. Ontario, Ministry of the Attorney General, Ontario Law Reform Commission, *Report on Class Actions* (Toronto: Queen's Printer, 1982).
3. Ontario, Ministry of the Attorney General, Ontario Law Reform Commission, *Report on Class Actions* (Toronto: Queen's Printer, 1982).

The Supreme Court of Canada also recognized the need to reform the traditional class action rules. The Supreme Court of Canada in *Naken v. General Motors* (1983), 144 D.L.R. (3d) 385 (S.C.C.) applied a restrictive approach to the former Rule 75 narrowly and suggested that legislative reform was needed to advance cases. In this case, an was sought on behalf of 4,000 purchasers of allegedly defective Firenza automobiles. The Supreme Court held that the Rule 75 could not support the procedural requirements of a large class of claimants and dismissed the action.
4. Ontario, Ministry of the Attorney General, Ontario Law Reform Commission, *Report on Class Actions* (Toronto: Queen's Printer, 1982), vol. I at 117.
5. Ontario, Ministry of the Attorney General, Policy Development Division, *Report of the Attorney General's Advisory Committee on Class Action Reform* (Toronto: Queen's Printer, February 1990).
6. Ontario, Ministry of the Attorney General, Ontario Law Reform Commission, *Report on Class Actions* (Toronto: Queen's Printer, 1982).
7. *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
8. *Bendall v. McGhan* (1993), 14 O.R. (3d) 734.
9. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 5(5).
10. *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
11. (1993), 14 O.R. (3d) 734.
12. *Peppiatt v. Nicol* (1993), 16 O.R. (3d) 133 at 140-141 (Gen. Div).
13. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s.6; *Bywater v. Toronto Transit Commission*, [1998] O.J. No. 4913 (General Division), online:Q.L. (ORP).

14. *Bywater v. Toronto Transit Commission*, [1998] O.J. No. 4913 at para 10 (Gen. Div.), online: QL (ORP).
15. *Bywater v. Toronto Transit Commission* [1998] O.J. No. 4913 at para. 11 (Ont. Ct. (Gen. Div.)).
16. *Lau v. Bayview Landmark Inc.* [1999] O.J. No. 4060 at para 27 (S.C.J.).
17. *Lau v. Bayview Landmark Inc.* [1999] O.J. No. 4060 at para 28 (S.C.J.). In the *Taub v. Manufacturers Life* (1998), 40 O.R. (3d) 379 (Ont. Ct. (Gen. Div.)) case, the plaintiff alleged that she had health problems related to exposure to mould in her apartment.
18. *Lau v. Bayview Landmark Inc.* [1999] O.J. No. 4060 at para 29. (S.C.J.).
19. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 5(2).
20. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 1.
21. Ontario, Ministry of the Attorney General, Ontario Law Reform Commission, *Report on Class Actions* (Toronto: Queen's Printer, 1982).

Campbell v. Flexwatt Corp., [1997] B.C.J. No. 2477 at para. 53 (B.C.C.A.).

Endean v. Canadian Red Cross Society (1997), 148 D.L.R. (4th) 158 at para. 35; rev'd in part on other grounds (1997), 157 D.L.R. (4th) 465 (B.C.C.A.).

Tampa Hall Limited v. C.I.B.C. (1998), 37 O.R. (3d) 150 at 159 (Gen. Div.).

Webb v. K-Mart Canada Ltd., [1999] O.J. No. 2268 at para. 21 (S.C.J.).
22. (1997), 32 O.R. (3d) 400 (Gen. Div.); amended in part (1998), 37 O.R. (3d) 235 (Div. Ct.).
23. 37 O.R. (3d) 235 at 243 (Div. Ct.).
24. 37 O.R. (3rd) 235 at 246-247 (Div. Ct.).
25. *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 at 434 (Gen. Div.), aff'd at (1998), 41 O.R. (3d) 87 (C.A.), leave to appeal to S.C.C. dismissed October 22, 1998.
26. *L.R. v. British Columbia* [1998] B.C.J. No. 2588 (S.C.); rev'd [1999] B.C.J. No. 2634 (B.C.C.A.).

27. *L.R. v. British Columbia* [1998] B.C.J. No. 2588 at para 65 (S.C.).
28. [1999] B.C.J. No. 2634 at page 5 (B.C.C.A.).
29. [1999] B.C.J. No. 2634 at page 5 (B.C.C.A.).
30. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 5(d).
31. *Carom v. Bre-X Ltd.* (1999), 44 O.R. (3d) 173 at 239 (S.C.J.).
32. (1995), 25 O.R. (3d) 331 (Gen. Div.) leave to appeal denied (1995), 25 O.R. (3d) 247 (Gen. Div.).
33. (1995), 25 O.R. (3d) 247 (Gen. Div.).
34. *Webb v. K-Mart Canada Ltd.* (1999), 45 O.R. (3d) 638 at 640 (S.C.J.).
35. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 5(e).
36. *Anderson v. Wilson* (1998), 37 O.R. (3d) 235 at 251 (Ont. Div. Ct.).
37. *Maxwell v. MLG Ventures Ltd.*, [1995] O.J. No. 1136 at para. 10 (Gen. Div.).
Haney Iron Works v. Manufacturers Life Insurance Co. (1998), 169 D.L.R. (4th) 565 at para. 30 (B.C.S.C.).
38. *Bendall v. McGhan Medical Corp.* (1993), 14 O.R. (3d) 734 (Gen. Div.); *Harrington v. Dow Corning* (11 April 1996), Vancouver C9543339 (B.C.S.C.).
39. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 5(1)(e)(ii).
40. (1999), 44 O.R. (3d) 174 at 203 (S.C.J.).
41. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 8.
42. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 24.
43. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s.6
Peppiatt v. Nicol (1993), 16 O.R. (3d) 133 at 145 (Gen. Div.)
Scott v. Ontario Business College (1977) Limited and Greer, Endorsement of Shaughnessy, J. dated September 20, 1999 (Court File No. 100514/99).

44. (1998), 37 O.R. (3d) 235 at 248 (Div. Ct.).
45. *Delgrosso v. Paul* (1999), 45 O.R. (3d) 605 at 611 (Gen. Div.).
46. *Jones v. American Heyer-Schulte Corp.* (30 March 1998), Toronto 18169/94 (Ont. Ct. (Gen. Div.)) [unreported].
47. (20 September 1996), Toronto 95-CU-89529 (Ont. Ct. (Gen. Div.)) [unreported].
48. *Dabbs v. Sun Life Assurance Company of Canada* (24 February 1998), Toronto 96-CT-022862 (Ont. Ct. (Gen. Div.)).
49. *Dabbs v Sun Life Assurance Company of Canada* (24 February 1998), Toronto 96-CT-022862 (Ont. Ct. (Gen. Div.)).
50. *Dabbs v Sun Life Assurance Company of Canada* (24 February, 1998), Toronto 96-CT-022862 at p. 4, (Ont. Ct. (Gen. Div.)) at p.4.

Federal Judicial Centre, *Manual for Complex Litigation*, 3d ed, (St. Paul: West Publishing, 1995) at 30-42.
51. *Dabbs v Sun Life Assurance Company of Canada* (24 February 1998),/ Toronto 96-CT-022862 at p. 4, (Ont. Ct. (Gen. Div.)).
52. H. Newberg , A. Conte, *Newberg on Class Actions*, 3rd ed (Colorado: Shepard's/ McGraw-Hill, Inc., looseleaf).
53. (22 September 1999), Toronto 98-V-146405 (S.C.J.) [unreported] at para. 70.
54. *Dabbs v Sun Life Assurance Company of Canada* (3 July 1998), Toronto 96-CT-022862 at pp. 13,14, (Ont. Ct. (Gen. Div.)).
55. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 33.
56. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 33(4).
57. *Anderson v. Wilson* (11 September 1996), Whitby 73198/96 (Ont. Ct. (Gen. Div.)) [unreported]; *Nantais v. Telectronics Proprietary (Canada) Ltd.* (1996), 28 O.R. (3d) 523 (Gen. Div.).