

# Class Actions

A Canadian leader in class actions, Lenczner Slaght is one of the only firms in the country to have repeatedly litigated on behalf of defendants at the trial level. Our lawyers' class actions expertise has been sharpened through hands-on experience in a wide range of complex and technically demanding proceedings.

Our firm has defended many of Canada's most closely watched class action lawsuits over the past three decades. For example, we successfully represented *Danier in Kerr v Danier Leather Inc* – from the outset of the action through to the groundbreaking decision at the Supreme Court of Canada. We also acted for Inco in a mass tort class proceeding, both in the original trial and on appeal.

It's that experience that has led to our lawyers being repeatedly recognized by various organizations as leaders in the class action bar.

## Class Action Litigation Areas

Our nationally ranked litigators have represented Canadian and international clients across the spectrum of class action proceedings, including:

- antitrust and competition act matters
- consumer claims
- deceptive and unfair trade practices
- employment disputes
- environmental issues
- financial services
- health and medical malpractice
- insurance matters
- mass torts
- misleading advertising
- negligence claims
- pensions and employee benefits
- product liability
- securities and shareholder rights

## Our Class Action Clients

The clients we've represented as defendants in class action litigation include:

- accounting firms
- banks
- financial advisors
- insurance companies
- investment banks
- management consultants
- manufacturers
- mining companies
- pension fund managers
- pharmaceutical companies
- retailers

## Extensive International Experience

Lenczner Slaght's class action work often spans international boundaries as a growing number of claims are launched in multiple jurisdictions. We advise clients based in the US, Europe, Asia and elsewhere on Canadian class action law as it pertains to international proceedings. We focus particularly on cross-border litigation between Canada and the US, whether handling Canadian aspects of actions initiated south of the border or pursuing related actions in Canada that involve identical or similar claims.

## Expert Strategy

At Lenczner Slaght, we help clients respond to the daunting challenges of class actions with rigorous legal groundwork, innovative thinking and carefully planned litigation strategy. Our lawyers are accomplished courtroom litigators, admired by their peers for the knowledge and skills they bring to complex commercial cases.

Class action litigation can be expensive and time-consuming for all parties – particularly the companies and individuals against whom actions are brought. To reduce the burden of litigation and minimize long-term costs, we focus our efforts on defeating an action at an early stage, primarily by challenging attempts to certify it as a class proceeding. At this key

certification stage, there are many opportunities to narrow the parties and issues raised in the litigation and, in some cases, bring it to a conclusion. Lenczner Slaght's reputation and courtroom skills enable us to make the most of these opportunities – to the benefit of our clients.

If a class action is certified, we have the experience to skillfully guide clients through the next steps. Our lawyers have litigated some of the leading common issues trials and appeals.

Whatever path the litigation takes, our team has the experience and judgment to find the best solutions for our clients.

## RECOGNITION

- **Best Lawyers in Canada (2023-2024)**  
Ones to Watch – Corporate & Commercial Litigation, Class Action Litigation, Health Care Law, Labour & Employment Law
- **Chambers Canada (2021-2024)**  
Dispute Resolution: Class Action (Defence) (Nationwide); Healthcare: Contentious (Nationwide – Canada)
- **Best Lawyers in Canada (2019-2024)**  
Alternative Dispute Resolution, Class Action Litigation, Corporate & Commercial Litigation
- **Canadian Legal Lexpert® Directory (2018-2024)**  
Class Actions, Competition Law, Litigation - Corporate Commercial, Litigation - Regulatory & Public Law, Medical Negligence, Professional Liability
- **Benchmark Canada (2018-2024)**  
Litigation Star – Class Action, Commercial, Public Law, Intellectual Property
- **Chambers Canada (2016-2024)**  
Dispute Resolution: Class Action (Defence) (Nationwide – Canada); Litigation: General Commercial (Ontario); Litigation: Securities (Ontario)
- **Chambers Canada (2016-2024)**  
Dispute Resolution: Class Action (Defence) (Nationwide – Canada); Healthcare: Contentious (Nationwide – Canada); Litigation: General Commercial (Ontario)
- **Best Lawyers in Canada (2018-2024)**  
Administrative & Public Law, Class Action Litigation, Competition / Antitrust Law, Corporate and Commercial Litigation, Health Care Law, Medical Negligence
- **Benchmark Canada (2012-2024)**  
Litigation Star – Arbitration, Class Action, Commercial, Insolvency, Securities, Tax
- **Benchmark Canada (2012-2024)**  
Litigation Star – Arbitration, Class Action, Commercial, Intellectual Property, Professional Liability
- **Benchmark Canada (2013)**  
Class Action Law Firm of the Year
- **Benchmark Canada (2013-2024)**  
Litigation Star – Class Action, Commercial, Securities
- **Benchmark Canada (2017-2024)**  
Litigation Star – Class Action, Commercial, Insolvency, Securities; Top 100 Women in Litigation; Top 50 Trial Lawyer in Canada (2021)
- **Best Lawyers in Canada (2006-2020)**  
Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director & Officer Liability, International Arbitration, Legal Malpractice, Securities
- **Best Lawyers in Canada (2006-2021)**  
Alternative Dispute Resolution, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director & Officer

Liability, Intellectual Property, Legal Malpractice, Personal Injury Litigation, Product Liability, Securities

- **Best Lawyers in Canada (2006-2024)**  
Alternative Dispute Resolution, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director & Officer Liability, Health Care Law, Insolvency & Financial Restructuring, Legal Malpractice, Medical Negligence, Securities
- **Best Lawyers in Canada (2006-2024)**  
Administrative & Public Law, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director and Officer Liability Practice, Health Care Law, Intellectual Property, Legal Malpractice, Medical Negligence, Personal Injury Litigation, Product Liability, Securities
- **Best Lawyers in Canada (2013-2024)**  
Administrative & Public Law, Class Action Litigation, Corporate & Commercial Litigation, Defamation & Media, Health Care Law, Legal Malpractice Law
- **Canadian Legal Lexpert® Directory (2012-2019)**  
Class Actions (2018), Commercial Arbitration, Litigation - Corporate Commercial, Litigation - Directors' & Officers' Liability, Litigation - Securities, Professional Liability
- **Canadian Legal Lexpert® Directory (2012-2020)**  
Class Actions, Commercial Arbitration, Litigation - Corporate Commercial, Litigation - Directors' & Officers' Liability, Litigation - Product Liability, Litigation - Public Law, Litigation - Securities, Medical Negligence (2019), Professional Liability
- **Canadian Legal Lexpert® Directory (2012-2024)**  
Class Actions, Commercial Arbitration, Litigation - Corporate Commercial, Litigation - Directors' & Officers' Liability, Litigation - Regulatory & Public Law, Litigation - Securities, Medical Negligence, Personal Injury, Professional Liability, Litigation - Public Law (2023)
- **Canadian Legal Lexpert® Directory (2012-2024)**  
Class Actions, Commercial Arbitration, Insolvency & Financial Restructuring, Litigation - Corporate Commercial, Litigation - Directors' & Officers' Liability, Litigation - Securities, Medical Negligence, Professional Liability
- **Canadian Legal Lexpert® Directory (2014-2024)**  
Class Actions, Insolvency & Financial Restructuring, Litigation - Corporate Commercial, Litigation - Directors' & Officers' Liability, Litigation - Securities
- **Chambers Global (2012-2024)**  
Dispute Resolution: Litigation (Canada); Dispute Resolution: Class Actions - Defence (Canada) (2017)
- **Chambers Global (2013)**  
Dispute Resolution: Class Action (Defence): Canada (Band 2)
- **Lexpert Guide to the Leading US/Canada Cross-Border Lawyers in Canada (2013-2019)**  
Dispute Resolution, Insolvency & Financial Restructuring, Corporate Commercial Litigation, Class Actions, Securities Litigation
- **Lexpert Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada (2013-2018)**  
Commercial Arbitration, Class Actions, Corporate Commercial Litigation
- **Lexpert Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada (2013-2019)**  
Dispute Resolution, Corporate Commercial Litigation, Class Actions, Securities Litigation
- **Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada (2012-2015)**  
Corporate Commercial Litigation, Directors' & Officers' Liability, Securities Litigation, Class Actions

- **Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada (2016-2024)**  
Class Actions; Corporate Commercial Litigation; Directors' & Officers' Liability Litigation; Securities Litigation
- **Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada (2016-2024)**  
Class Actions; Corporate Commercial Litigation; Directors' & Officers' Liability Litigation; Securities Litigation
- **The Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada (2006-2015)**  
Class Actions, Corporate Commercial Litigation, Director & Officer Liability, Insolvency & Financial Restructuring, Securities Litigation, 100 Most Creative Lawyers in Canada

## SELECT CASES

- **Julius Di Filippo and David Caron v The Bank of Nova Scotia et al** – Counsel to a financial institution in a class action pertaining to allegations of price fixing in the precious metals market.
- **Larsen v ZF TRW Automotive Holdings Corp** – Counsel to an automotive parts manufacturer in a proposed class action relating to allegedly defective airbag control units. Certification was dismissed.
- **Waldron v His Majesty the King in Right of Canada et al** – Counsel to the Claims Administrator in a motion and appeal arising from a dispute over the interpretation of the Indian Day School Settlement Agreement.
- **Li et al v Barber et al** – Agent for class counsel in a class proceeding by residents, employees, and businesses in Ottawa against the Freedom Convoy organizers. Successfully obtained an *ex parte Mareva* order freezing donations made to Freedom Convoy organizers and preserving the funds for the benefit of Ottawa residents, employees, and businesses.
- **Davidson v Stableview Asset Management Inc et al** – Counsel for the Individual Defendant in the dismissal of a class action brought by investors against their portfolio manager after it was demonstrated that the putative class suffered no damages.
- **Muelenaere v Great Gulf Homes Limited** – Counsel to the defendants in a proposed class action relating to alleged deficiencies in a condominium building.
- **Bonnick v Crown Crest Capital** – Counsel to an officer and director in connection with a proposed class proceeding relating to sales of HVAC equipment.
- **Difederico v Amazon.com Inc** – Served as *amicus curiae* in a class action settlement approval motion decision.
- **Barry Lacroix and Vincent Campbell v Walmart Canada Corporation et al and Gary Dussiaume v Walmart Canada Corporation et al** – Counsel to Walmart in two proposed class actions (Ontario and British Columbia) relating to the manufacturing, supply and sale of Zantac Ranitidine.
- **GC v Jugenburg** – Counsel to a plastic surgeon in a proposed class action relating to alleged privacy breaches.
- **Wintercorn v Global Learning Group Inc** – Counsel to a defendant law firm in a proposed class proceeding in Ontario relating to a tax donation program alleging professional negligence.
- **Cappelli v Nobilis Health Corp** – Counsel to the successful defendant in resisting a motion for leave to pursue a claim or secondary market

misrepresentation under the *Ontario Securities Act* and certification of a class action under the *Class Proceedings Act, 1992*.

- **Re The Cash Store Financial Services Inc** – Counsel in the successful mediation and settlement of multiple Canadian and US class proceedings in the context of an Ontario CCAA proceeding, leading to US recognition and enforcement of a settlement.
- **Joyce v MtGox Inc** – Counsel to the CEO of MtGox Inc, a defendant in a proposed Ontario class proceeding, concerning the failure of the Japanese BitCoin exchange.
- **Andersson v Aquino** – Counsel to the plaintiff in oppression proceedings concerning the alleged fraudulent execution of a share transfer agreement. Successfully obtained an order setting aside a finding of contempt of court.
- **Bourque v Cineflix** – Counsel to Cineflix and related entities in a proposed class action relating to the alleged misclassification of independent contractors in the television production industry.
- **Jeffery v London Life Insurance Company** – Counsel to the Law Foundation of Ontario successfully responding to an appeal regarding the payment of its levy in a class action.
- **Bernstein v Peoples Trust Company** – Counsel to the Defendants in a class proceeding alleging that various brands of network-branded payment cards were subject to activation, dormancy, and other fees that constitute misrepresentations, breach of contract, and breaches of various provincial consumer protection legislation and related regulations.
- **Piett v Global Learning Group Inc** – Counsel to a defendant law firm in a proposed class proceeding in Saskatchewan relating to a tax donation program alleging professional negligence.
- **Baldwin v Imperial Metals Corporation** – Counsel to the defendant Imperial Metals Corporation in a class action relating to alleged breaches of the *Securities Act* in connection with a breach of the tailings storage facility at the Mount Polley Mine.
- **MacDonald v BMO Trust Company** – Counsel to the defendants in a class action alleging failure to disclose foreign exchange fees in registered accounts.
- **Cygnus Electronics Corporation v Hitachi AIC Inc** – Counsel to a defendant electronics company in a proposed Ontario class action relating to allegations of price-fixing in the market for electrolytic capacitors.
- **De Muelenaere v Great Gulf Homes Limited** – Counsel to the defendant developer in a class action alleging breach of contract and negligence relating to the installation of plumbing fixtures.
- **Dennis v Her Majesty the Queen in Right of Canada** – Counsel to the Canadian Wheat Board in a proposed class proceeding in the Federal Court and the Manitoba Court of Queen's Bench by former grain producers.
- **Locking v McCowan** – Counsel to the defendants in a class proceeding by unit holders of Partners REIT.
- **Trillium Motor World Ltd v General Motors of Canada Ltd** – Counsel to defendant, Cassels Brock and Blackwell LLP, in an eight week trial commenced on behalf of a group of General Motors of Canada Limited dealers whose dealerships were terminated by GMCL as a result of the financial crisis and "auto bailout" in the summer of 2009.

- **Re Sino-Forest Corporation** – Counsel for the defendant auditors of Sino-Forest Corporation in connection with a shareholder class action claiming damages in order of \$9 billion on behalf of primary and secondary market purchasers and debt-holders. Successfully resolved proceeding and coordinated precedent setting settlement approval of a Canadian class action within the context of an ongoing CCAA proceeding. Counsel in appeals from settlement approval to the Court of Appeal and Supreme Court of Canada, both of which were dismissed.
- **Berglund v BCE Inc** – Counsel to a defendant cell phone manufacturer in a proposed class proceeding alleging that cellular phones designed, manufactured, and sold by various defendants emit excessive amounts of radiation that allegedly causes adverse health effects.
- **Rosen v BMO Nesbitt Burns Inc** – Counsel to BMO Nesbitt Burns Inc. in an overtime class action brought by a former investment advisor on behalf of all BMO NBI investment advisors in Ontario.
- **Charette v Trinity Capital Corporation** – Counsel to two defendants in a class action brought on behalf of taxpayers who participated in a charitable donation program.
- **Sheridan Chevrolet Cadillac Ltd v Kyungshin-Lear Sales and Engineering** – Counsel to a defendant in a multi-jurisdictional class action involving alleged price-fixing among automotive parts manufacturers.
- **Tucci v Smart Technologies Inc** – Counsel to two defendants in a securities class action alleging prospectus misrepresentation by the issuer, selling shareholders and others. Class definition under section 130 of the *Securities Act* successfully restricted to purchasers under the prospectus and not secondary market purchasers during the period of distribution.
- **Ali Holdco Inc v Archer Daniels Midland Company** – Counsel to the defendant Corn Products International Inc. in a class proceeding alleging conspiracy to fix prices and restrain competition in the market for high fructose corn syrup.
- **Kerr v Danier Leather Inc** – Counsel to Danier Leather Inc. in a shareholder class action asserting a statutory cause of action for prospectus misrepresentation pursuant to the Ontario *Securities Act*. Judgment for the plaintiffs at trial successfully overturned on appeal to the Ontario Court of Appeal and upheld by the Supreme Court of Canada.
- **Smith v Inco Ltd** – Counsel to Inco Ltd. in a mass tort class proceeding alleging nuisance and a reduction in property values resulting from emissions of copper, cobalt, nickel, lead and other industrial waste. The trial judge had found for the class and gave judgment for \$36 million in property damages. On appeal, the plaintiffs' class action claims in the amount of \$36 million were dismissed.
- **Dow v 407 ETR Concession Company Limited** – Counsel to the defendant 407 ETR in a class action relating to the use of the statutory licence plate denial remedy in relation to insolvent individuals.
- **Ramsay v Panasonic Corporation** – Counsel to a defendant electronics company in a proposed British Columbia class action relating to allegations of price-fixing in the market for capacitors.
- **Filson v Canadian Wheat Board** – Counsel to the defendant Canadian Wheat Board in a class proceeding by former producers seeking \$15 billion in the Saskatchewan Court of Queen's Bench. Successfully moved to strike allegation made by the plaintiffs.
- **McLaren v LG Electronics Canada Inc** – Counsel to LG Canada Inc. in



a products liability claim alleging negligence in the manufacture and sale of refrigerators.

- **Eppich v Boiron Canada Inc** – Counsel to Boiron, a Quebec based company, in a class action alleging misrepresentations in the marketing of a homeopathic medicine product.
- **Windsor Glass Company Limited v Asahi Glass Company Limited** – Counsel to one of the defendants in a class proceeding against numerous flat glass manufacturers alleging a price fixing conspiracy and breach of the *Competition Act* in the Canadian flat glass market.
- **Sorenson v easyhome Ltd** – Counsel to defendants in securities class action relating to misstatements in financial results.
- **Zaniewicz and Clarke v Zungui Haixi Corporation** – Counsel for one of the defendants in a shareholder class action alleging that the defendant company's public offering prospectus and other disclosure documents contained untrue representations on a motion for an order certifying the action as a class proceeding for settlement purposes.
- **Lipson v Cassels Brock & Blackwell LLP** – Counsel to defendant law firm in a class action in connection with a charitable tax program. The Court of Appeal rendered a seminal decision on the commonality of the defence of a limitation period on a certification motion. In 2023, the Court approved the successful resolution of the action.
- **Weninger Farms Ltd v Canada (Minister of National Revenue)** – Counsel to the Government of Canada in a class proceeding brought by tobacco quota farmers against the Minister of National Revenue. Successfully moved to strike the Statement of Claim without leave to amend on the basis that it disclosed no reasonable cause of action.
- **McKenna v Gammon Gold Inc** – Counsel to the underwriters in a shareholder class action alleging prospectus misrepresentation and stock option manipulation. Successful dismissal of a motion for certification of common law claims for misrepresentation. Leave to appeal denied, with result that only statutory claims for misrepresentation in secondary market disclosure documents and unjust enrichment remained.
- **Turner v York University** – Counsel to defendant York University in a proposed class action by students arising out of an instructors' strike. Successful in resisting certification of the action as a class proceeding.
- **Herskovits v BMO Bank of Montreal** – Counsel to the defendant obtaining a successful dismissal at certification of a class action alleging improper holds on deposited funds in client accounts of the Bank.
- **McCarthy v Canadian Red Cross Society** – Counsel to the Trustee of the settlement fund created following the settlement of a class action brought against the Red Cross Society surrounding tainted blood.
- **Czamanske v Canadian Royalties Inc** – Counsel to underwriters in a class proceeding alleging prospectus misrepresentations.
- **Laneville v Allen-Vanguard Corporation; Love v Canaccord Financial Ltd** – Counsel to officers and directors in two class proceedings alleging misrepresentations in a prospectus and disclosure documents, including a statutory cause of action pursuant to s. 138 of the Ontario *Securities Act*.
- **Carom v Bre-X Minerals Ltd** – Counsel to the Chief Executive Officer and certain directors in a shareholder class action alleging fraud and misrepresentation through press releases, prospectus statements and accounting relating to gold reserves in a large property in Busang,



Indonesia.

- **Barbiero v Pollack** – Counsel to a physician in a class action relating to the use of an injectable treatment.
- **Nutech Brands Inc v Air Canada** – Counsel for a defendant in a class action relating to an alleged price-fixing conspiracy in the market for air freight shipping services.
- **Robinson v Rochester Financial Limited** – Counsel to the defendant law firm in a class action for solicitor's negligence involving a tax shelter based on charitable donations using in part borrowed money for tax deductions.
- **Frohlinger v Nortel Networks Corporation** – Counsel to Nortel Networks Corporation in several Canadian and US class action proceedings relating to alleged misrepresentations, accounting negligence and violation of securities law.
- **Parsons v McDonald's Restaurants of Canada Ltd** – Counsel to McDonald's Restaurants of Canada Ltd. in a class proceeding alleging misrepresentation arising out of a marketing and promotion campaign.
- **Prendiville v 407 International Inc** – Counsel to the defendant 407 ETR in a class action dealing with the payment of late payment fees alleged to have violated the *Criminal Code*.
- **CC&L Dedicated Enterprise Fund (Trustee of) v Fisherman** – Counsel to a law firm and one of its partners in shareholder class proceedings alleging fraud and misrepresentation in a prospectus and financial statements, and defence of related Ontario Securities Commission proceeding.
- **Dugal v Manulife Financial Corporation** – Counsel to one of the defendants in a class proceeding alleging misrepresentations in secondary market disclosure documents and prospectuses. Both common law and statutory cause of action are asserted. Successful motion to bar assertion of statutory cause of action for prospectus misrepresentation due to expiry of the limitation period.
- **Lawrence v Atlas Cold Storage Income Trust** – Counsel to the defendant accounting firm in a class action proceeding against Atlas Cold Storage Holdings Inc. alleging prospectus misrepresentations, accounting and underwriting negligence in the preparation of financial statements and the issuance of annual reports.
- **Currie v McDonald's Restaurants of Canada Ltd** – Counsel to defendant, McDonald's Restaurants of Canada Ltd., in a class action alleging misrepresentation arising out of a marketing and promotion campaign.
- **Gould v FMF** – Counsel to underwriters in class proceeding alleging misrepresentations in a prospectus issued by a subprime lending broker, and related Ontario Securities Commission proceeding.
- **Denis v Bertrand & Frère Construction Co.** – Counsel to defendant Lafarge Canada Inc. in a class action by homeowners alleging defective concrete products manufactured in use in house foundations.
- **Fantl v Transamerica Life Canada** – Counsel to plaintiff in a class action alleging defective segregated investment fund products issued by insurance company.
- **Pet Valu Canada Inc. Class Action** – Counsel to defendant Pet Valu Canada Inc. in a class action alleging negligent manufacture, distribution and sale of allegedly defective pet foods

- **Transformer Explosion** – Counsel to an electrical utility in defence of a class action and property damage claim following an explosion of a transformer at a large apartment building. (*Prior to joining Lenczner Slaght.*)
- **Anti-Vibration Rubber Parts Class Actions** – Counsel to Bridgestone Corporation in the defense of class actions related to anti-vibration rubber parts. (*Prior to joining Lenczner Slaght*)
- **Valeant Pharmaceuticals Class Actions** – Counsel to the former Chief Financial Officer of Valeant Pharmaceuticals International Inc. in defense of securities class actions commenced in the Ontario and Quebec courts. (*Prior to joining Lenczner Slaght*)

## SELECT PUBLICATIONS AND PRESENTATIONS

- **20th Annual National Class Actions Symposium** – Paul-Erik Veel was invited to share his expertise on complex class action procedural challenges at Osgoode Professional Development's *20th Annual National Class Actions Symposium*. Paul-Erik was a panelist on "Procedural Grab-Bag".
- **Métis Rights** – Paul-Erik Veel was invited to present at the Pacific Business & Law Institute program on *Métis Rights in 2024*. Paul-Erik discussed Métis and Class Action Proceedings, including the unique issues and challenges, an overview of related certification decisions, the Ile a la Crosse residential school class action proceedings, and the Sixties Scoop class action proceedings.
- **A 2023 Snapshot: Through the Lens of Lenczner Slaght** – Lenczner Slaght launches *A 2023 Snapshot*, a look at the most significant developments, decisions, business takeaways, and trends in litigation from the last year, across 15 practice areas. Revisit 2023 and look ahead to 2024 through the lens of our expert litigators.
- **Managing Class Actions Affecting Canadian Advertising and Marketing** – Paul-Erik Veel was invited to share his expertise at the Canadian Institute's 30th Annual Advertising and Marketing Law Conference. Paul-Erik discussed *Rebuck v Ford*, one of Canada's most groundbreaking advertising cases, and *Drynan v Bausch Health Companies Inc.* In addition, Paul-Erik provided insights into defining deceptive advertising, how it can develop into a class-action lawsuit, as well as requirements for certifying an advertising and marketing class-action lawsuit.
- **Class Actions Advocacy** – Jonathan Chen co-chaired The Advocates' Society's annual program on Class Actions Advocacy. The program provided valuable insights into recent developments, comparative legislation, and multijurisdictional challenges in class actions.
- **14th Annual Class Actions Colloquium** – Paul-Erik Veel was invited to speak at the OBA's 14th Annual Class Actions Colloquium. Paul-Erik will share his expertise on the panel "*Managing Stakeholders in Class Actions*".
- **CBA Competition Law Fall Conference** – Paul-Erik Veel was invited to share his expertise at the CBA's Competition Law Fall Conference. Paul-Erik shared his expert insights on the panel "*The Evolution of Competition Class Actions*".

- **Remedies in Class Actions: Aggregate Damages** – Jonathan Chen shared his expertise at the OBA's upcoming program titled *Remedies in Class Actions: Aggregate Damages*.
- **13th Annual Class Actions Colloquium** – Jonathan Chen shared his expertise at the OBA's 13th Annual Class Actions Colloquium. Jonathan led a panel discussion on the *Latest Developments in Damages*.
- **Fireside Chat with Class Actions Bench and Bar** – Adil Abdulla co-chaired the OBA's Class Actions and Young Lawyers Division program titled *Fireside Chat with Class Actions Bench and Bar*. The program faculty discussed how this legal arena is evolving due to recent legislative changes, the realities of practicing in this area, interesting cases, and the future of class actions law.
- **The Canadian Class Action Review** – Paul-Erik Veel, Adil Abdulla, and Angela Hou co-authored the article *The Limits of Case Management: A Review and Principled Approach to the Court's General Management Powers*, which was published in Volume 16, No. 2 of The Canadian Class Action Review.
- **Mastering Summary Judgment Motions** – Monique Jilesen shared her expertise at the OBA's Civil Litigation program *Mastering Summary Judgment Motions*. Monique shared her expert insights on the panel "Practice Perspectives: Commercial, Class Actions, Negligence, and Employment Law".
- **Certified: Class Actions in Ontario & Beyond** – Paul-Erik Veel was interviewed in the *Certified: Class Actions in Ontario & Beyond* podcast on Class Actions Theory. Paul-Erik discussed the theory and purposes of class actions.
- **Supreme Court of Canada Deals Blow to Uber, Declares Arbitration Clauses Invalid as a Result of 'Surge Pricing'** – Published in the Kluwer Arbitration Blog, Chris Kinnear Hunter authors an article on the legacy of the Supreme Court of Canada's highly anticipated decision in *Uber Technologies Inc v Heller*. Chris discusses how the decision has significant implications for international businesses by placing significant limits on the application of arbitration clauses.
- **Pandemic-Related Class Actions - What Are They and How Will They Change the Law and Landscape** – Nina Bombier spoke at the OBA's program *Pandemic-Related Class Actions*. Nina shared expertise on what the new landscape of class actions law will look like, and how insurance and long-term care home actions will help to change this landscape as the number of new claims rise.
- **Keeping Up With The Case Law** – Jonathan Chen led the May 2020 edition of the OBA Class Actions Law monthly call-in series. Jonathan provided his expert insight on key class action decisions from the past month.
- **Let it Rain** – Paul-Erik Veel's article *Let it Rain* was published in the October 2019 Issue of Lexpert Magazine. In this article, Paul-Erik discusses the Supreme Court's long-awaited decision in *Pioneer Corp v Godfrey*.
- **Recognition of 'umbrella purchasers' will increase size of class actions** – Paul-Erik Veel and Chris Kinnear Hunter co-authored the article "Recognition of 'umbrella purchasers' will increase size of class actions" which appeared on The Lawyer's Daily. In this article, they provide further comment on the Supreme Court of Canada's recently

released decision in *Pioneer Corp. v Godfrey*.

- **Applying Foreign Law in Canadian Class Actions** – Paul-Erik Veel's blog post *Applying Foreign Law in Canadian Class Actions* was reprinted in Lexpert Magazine's January 2019 issue. In the article, he discusses the key take-aways from the Court of Appeal's recent decision in *Das v George Weston Limited*.
- **Time to expand analysis of the merits in all class actions** – Paul-Erik's article *Time to expand analysis of the merits in all class actions* was published by Lawyer's Daily. Paul-Erik discusses the Ontario Court of Appeal's decision in *Fehr v Sun Life Assurance Company of Canada* which provides a clear example of an appellate court setting aside the motion judge's decision on certification because the motion judge improperly considered the merits of the case.
- **Ontario Court of Appeal Rules in Heller v Uber Technologies Inc: A Sensible Result with Challenging Implications** – Paul-Erik's article *Ontario Court of Appeal Rules in Heller v Uber Technologies Inc: A Sensible Result with Challenging Implications* appeared in the Class Actions Law section of the Ontario Bar Association.
- **Eighth Annual Securities Symposium** – Brian Kolenda presented at the 8th Annual Securities Symposium. Discussions included emerging issues in the securities industry such as Class Actions, Cryptocurrencies, Corruption, and Cannabis.
- **15th Annual Symposium on Class Actions** – As one of the leading experts in Class Actions, Peter Griffin spoke at Osgoode PD's 15th Annual Symposium on Class Actions on the panel "What Goes Around Comes Around: Lawyers Under Class Action Attack".
- **How a certified class action affects post-Uber regulatory environment** – Margaret Robbin's article *How a certified class action affects post-Uber regulatory environment* was published by the Lawyer's Daily on February 13, 2018. Margaret shares her expert analysis on the potential legal implications of the decision in *Metro Taxi Ltd. v. City of Ottawa* and how it affects municipalities who regulate disruptive technology.
- **Class Actions and the Problem with Probabilistic Causation** – Sarah Bittman authored the article *Class Actions and the Problem with Probabilistic Causation* that appeared in the The Canadian Class Action Review: Volume 13, Issue 1.
- **Absent Foreign Claimants in Canadian Class Actions: Where to After Airia Brands?** – Paul-Erik Veel and Graham Henry co-authored the article *Absent Foreign Claimants in Canadian Class Actions: Where to After Airia Brands?* that appeared in the The Canadian Class Action Review: Volume 13, Issue 1.
- **The Advocates' Society: Securities Law Update** – Eli Lederman presented a *Class Actions and Securities Litigation Update* at The Advocates' Society's *Securities Law Update* event on November 17, 2016.
- **Osgoode's 13th National Symposium on Class Actions** – Monique Jilesen chaired a session at Osgoode's 13th National Symposium on Class Actions on April 21 & 22, 2016.
- **Class Action Preparedness Brief - Document Management** – Sarah Millar led the webinar *Class Action Preparedness Brief – Document Management*. Sarah shared her expert insight on controlling risks and proactively anticipating and preparing for the class actions process.
- **2015 Northwind Class Actions Invitational Forum** – Tom Curry

presented on Expert Witnesses: Recent Developments and Best Practices on June 10, 2015.

- **12th National Symposium on Class Actions** – Peter Griffin participated in a panel discussion at Osgoode's 12th National Symposium on Class Actions on April 23, 2015. This panel discussion on "The Class Action Trials of the Year" will touch on topics including the challenges of lengthy common issues trials, evidentiary management in common issues trials, the role of public nuisance as a tenable cause of action and the role of public opinion.
- **Fight or Flight: Summary Judgment or Settlement in Class Actions** – Monique Jilesen co-authored an article in the March 2015 issue of the Class Actions Defence Quarterly.
- **Don't pin your hopes on claims bar expiry** – Monique Jilesen's article appears in the October 3, 2014 issue of Lawyers Weekly published by LexisNexis Canada Inc.
- **Class Actions - A Bootcamp for Litigators** – Monique Jilesen spoke at the Law Society of Upper Canada's program *Class Actions - A Bootcamp for Litigators* on October 2, 2014.
- **Ethical Issues in Class Actions – Defence Perspective** – Monique Jilesen co-authored a paper presented at the Law Society of Upper Canada's program *Class Actions - A Bootcamp for Litigators* which took place on October 2, 2014.  
  
"Much of the commentary in Canada on the ethical issues which arise in the class action context relate specifically to plaintiff's counsel. Defence counsel should nevertheless be aware of the unique issues which can and do arise for defence counsel in this practice. In addition to the ethical issues which can arise in any litigation, class actions give rise to unique ethical issues for defence counsel to consider. This paper addresses two issues from the defence perspective..."
- **Mitigating Class Action Risks with Effective Arbitration Clauses and Class Action Waivers: A Guide for Canadian Corporations** – Lawrence Thacker and Mark Veneziano co-authored an article in the September, 2014 issue of the Class Actions Defence Quarterly.
- **Securities class actions** – Peter Griffin discusses securities class actions at the 8th National Symposium on Class Actions.
- **Practicalities of managing class actions litigation and conducting e-discovery** – Glenn Smith speaks at Canadian Institute's 10th Annual National Forum on Class Actions Litigation.
- **Emerging Issues in Class Action Pension Law Suits** – Nina Bombier presented a paper *Emerging Issues in Class Action Pension Law Suits* at the CCA National Spring Conference.
- **New Evidentiary Requirements for Certification: The Future of Price-Fixing Class Proceedings in Ontario** – Ronald Slaght co-authored the article *New Evidentiary Requirements for Certification: The Future of Price Fixing Class Proceedings in Ontario* for the 2004 Canadian Class Action Review. ((2004) 1 Canadian Class Action Review 159)

## BLOG POSTS

- **On the Horizon: Legal Complexities Intersecting Generative AI, Class Actions, and IP Law** – The multifaceted nature of generative AI is bound to create legal complexities at the intersection of intellectual property law and class actions, as this emerging technology disrupts not

only the tech landscape but the legal one too.

- **No Harm, No Remedy: The Availability of Non-Compensatory Remedies under the Consumer Protection Act** – By playing their essential gatekeeping role, class action judges have in numerous decisions clarified the necessary elements of various causes of action and the availability of specific remedies in a particular case. What constitutes harm that is compensable, for example, has featured in numerous product liability class actions and the failure to show harm has put an end to many of them. For strategic and practical reasons, some class actions do not seek compensation for losses that the class members suffered. Instead, the strategy is to pursue remedies that do not correspond with personal losses such as disgorgement, nominal damages and punitive damages. *Hoy v Expedia Group Inc* is a recent example.
- **Is the Bar for Class Action Certification Now Higher in Ontario? Two Judges Say “Yes, but Probably Not Much”** – In 2020, following a series of recommendations released by the Law Commission of Ontario, the Ontario legislature passed substantial amendments to the *Class Proceedings Act*. Many of those amendments were drawn straight from the Law Commission’s report and were generally supported by most stakeholders.
- **On the Docket: Cases to Watch (Q4 2023)** – Lynne McArdle provides a summary of our Cases to Watch from Q4 2023. On the Docket: Cases to Watch features a collection of cases, identified by our Research team, that move the law forward in some meaningful way. The cases in this edition are diverse in that they arise in different areas of the law: fraudulent conveyances, securities law, class actions, employment law, discovery, and Crown law.
- **The Devil is (Apparently, Not Always) in the Details: Court of Appeal Comments on Pleadings Requirement in Product Liability Actions** – Pleadings continue to be a popular battleground in the product liability context. Over the years, a body of law has developed respecting motions to strike for negligent design, negligent manufacture and failure to warn claims. Nevertheless, there continues to be debate as to the specificity needed for pleading these types of claims. That debate is fuelled in part by jurisprudence demonstrating a high tolerance for claims that are arguably vague and lacking in material facts. Even where a claim is struck, plaintiffs are routinely permitted to amend their pleading.
- **Consultants’ Liability for Bad Advice: Just to Their Clients, or Does It Go Further?** – Commercial disputes between professionals and their clients are routine. However, what is comparatively rare are disputes between the consultants (or other professionals) who advise a client and the client’s customers who may be harmed in some way by that client’s conduct. In those circumstances, there is generally no contractual relationship between the consultant and the client’s customer, and most cases have held that there is no duty of care between a professional and a person injured by the professionals’ client’s conduct. Lawyers, for example, have been held to potentially owe duties of care to non-clients in only the most exceptional circumstances. However, the recent decision of the British Columbia Supreme Court in *British Columbia v McKinsey* has the potential to substantially expand the scope of claims brought against professionals by persons allegedly harmed by those professionals’ clients’ conduct.
- **Challenges in Spotting Material Changes** – The philosopher Heraclitus observed that “the only constant in life is change”, a maxim as true for the business world as the natural world. Publicly traded companies operate in a dynamic environment, where commodity prices



swing, new laws are passed, and scientific breakthroughs are made. So long as those companies wish to maintain their access to public markets, they must carefully consider how day-to-day happenings (and their own reactions to those events) affect their continuous disclosure obligations. These disclosure judgements are fact-specific and often fast-paced, yet they carry potentially significant consequences.

- **Intrusion Upon Seclusion Without Being the Intruder? The Ontario Court of Appeal Limits Claims Against Database Holders** – Last Friday, the Ontario Court of Appeal released decisions in *Owsianik v Equifax Canada Co*, *Obodo v Trans Union of Canada, Inc*, and *Winder v Marriott International, Inc*—a trilogy of decisions clarifying whether the tort of intrusion upon seclusion applies to the owners of databases when there are data breaches caused by third party hackers. Thankfully for database owners, the Court of Appeal concluded that intrusion upon seclusion cannot apply in those circumstances.
- **The Ontario Court of Appeal Provides Clarity on Late Opt Outs from Class Proceedings** – Class actions are strange creatures, even to other lawyers.
- **Recall Remedy Once Again Preferable to Class Action** – History has shown that recalls for product defects are often followed by a proposed class action lawsuit. While many products cases in that context have been certified, we have now seen certification of proposed class actions being denied on the basis that there is already an effective recall campaign in place. We have seen this in *Maginnis and Magnaye v FCA Canada et al* and *Richardson v Samsung*.
- **Dismissal for Delay in Class Actions: How Low is the Bar for Avoiding Dismissal?** – It has been just under a year since the new dismissal for delay provision in s. 29.1 of the *Class Proceedings Act* started resulting in dismissals for delay. In essentially all of the decisions rendered to date, judges have strictly construed those provisions to require the dismissal of matters where the statutory criteria for avoiding a dismissal are not present. The recent decision of the Ontario Superior Court in *Lubus v Wayland Group Corp* is now an outlier that takes a different approach.
- **Same Titles, Different Jobs: The Challenges of Misclassification Class Actions** – Employment law misclassification class actions are becoming increasingly common. In those cases, the plaintiff says that employees have been misclassified by their employer in such a way as to render them ineligible for certain benefits under applicable provincial employment standards legislation which the employee claims that they should have been eligible for. The two most common categories of alleged misclassification are employees being allegedly misclassified as independent contractors, and ordinary employees being misclassified as managers. While some misclassification cases have been certified, courts have refused to certify many others due to a lack of sufficient commonality. The recent decision of the Ontario Superior Court of Justice in *Le Feuvre v Enterprise Rent-A-Car Canada Company* is an example of a case that falls into the latter category and was not certified.
- **Rebuck v Ford Provides More Fuel for Defending False Advertising Class Actions** – Historically, many class actions practitioners considered certification the primary fight in a case. It was common that cases would settle not long after certification, so the whole ballgame was perceived to be in the certification motion. Yet with the courts consistently reaffirming the low bar for certification, we are seeing a greater number of class actions determined on their merits *after* certification. And as the recent case of *Rebuck v Ford Motor Company* shows, success on certification is by no means a guarantee of success



on the merits.

- **The Act (Mostly) Means What it Says: The First Judicial Insights into Dismissal for Delay under the Class Proceedings Act** – On October 1, 2020, section 29.1 of the *Class Proceedings Act* (“CPA”) took effect. This provision, designed to address the phenomenon of class actions being started and then languishing in the system without advancement, provides for a mandatory dismissal of an action where, by the one year anniversary of the claim, the plaintiffs certification record has not been filed or there is no established timetable (by consent or Court order). This was a significant improvement to a class actions system that previously had no real tool for dealing with class actions that were languishing.
- **Barrick Gold Corporation: A golden opportunity to publicly correct s 138.1 of the Securities Act, or a significant change in the law?** – Securities law class actions are now common in Ontario. However, courts are still addressing some of the core elements of the conceptual approach to such issues. The recent decision in the Ontario Court of Appeal in *Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund v Barrick Gold Corporation* (“Barrick Gold”) is a highly significant decision in this area, particularly in its treatment of the “public correction” requirement for securities class actions.
- **I wish we were better strangers: Parliament’s proposed statutory cause of action for privacy breaches may attract class plaintiffs** – Referring to living “in an era in which data is constantly flowing across borders”, Canada recently introduced Bill C-11. If enacted, it will radically alter the Canadian privacy litigation landscape. Bill C-11 contains the *Consumer Privacy Protection Act* (“CPPA” or the “Act”), and the *Personal Information and Data Protection Tribunal Act* (“PIDPTA”), and makes a number of consequential amendments to existing legislation. Bill C-11 would bring Canada closer to the European Union’s *General Data Protection Regulation*, which set the standard for data protection in the developed world.
- **Mr. Sub franchisees order a large class action, but the Supreme Court is fresh out of duty of care** – The concept of a duty of care is foundational to the common law concept of negligence. Whether a duty of care exists and, if so, the scope of that duty of care are hotly contested issues that have made their way to the Supreme Court of Canada many times over the last few decades. Today, the Supreme Court of Canada released its long-anticipated decision in 1688782 *Ontario Inc v Maple Leaf Foods Inc*, in which a narrow majority of the Supreme Court found that Maple Leaf Foods owed no duty of care to Mr. Sub franchisees in connection with a listeria outbreak and product recall. While the principles set out in *Maple Leaf Foods* are not fundamentally new, the majority’s decision provides insight into the application of the duty of care analysis in cases involving pure economic loss.
- **Waiver of tort is dead, long live waiver of tort!** – Waiver of tort has long been a contentious subject in Canadian law. Many, many courts have permitted waiver of tort claims to proceed in class actions. Yet no court had definitively ruled as to whether waiver of tort in fact existed. It was for this reason that the Supreme Court of Canada’s decision in *Atlantic Lottery Corporation v Babstock* has been so highly anticipated. Most expected that the Supreme Court would finally answer whether a waiver of tort existed as an independent cause of action under Canadian law. This in turn would have significant consequences for many types of cases, including many types of class actions.
- **Supreme Court Sides with Drivers in Uber Case; Deals Blow to Arbitration Clauses** – The Supreme Court of Canada has released its

highly anticipated decision in *Uber Technologies Inc v Heller*.

- **Navigating Duplicate Proceedings: What Happens When Courts Certify Parallel Pharmaceutical National Class Actions?** – It is not uncommon in the Canadian class action landscape for competing class actions to be commenced in multiple jurisdictions, each procedurally vying in the horse race of who will be named the nation's choice as national class action. Competitors who lose that race are stopped in their tracks, having to sit along the side lines as the blue-ribbon action proceeds to trial.
- **Can an “Episodic” Price-Fixing Conspiracy be Certified as a Class Action?** – Many price-fixing class actions allege a reasonably uniform conspiracy. The stereotypical scenario alleged is that executives from different companies meet in a dark, smoke-filled room and agree to raise prices or restrain output in some uniform fashion. While that is an oversimplification, and reality is always much more complex, the basic core of most price-fixing allegations is that there was a uniform conspiracy that impacted all, or at least most, consumers in a broadly similar way. This is what has made so many price-fixing class actions amenable to certification.
- **Strict Requirements for Employers’ Overtime Policies in New Employment Law Class Action Decision** – Is an employer obligated to pay overtime if they don't specifically direct an employee to work overtime? And can an employer's requirement that employees obtain pre-approval for any overtime they work shield them from the obligation to pay overtime if pre-approval isn't obtained? These are important issues for any employer.
- **Bill 161: Much Needed Modernization for Class Actions in Ontario** – On December 9, 2019, the Attorney General of Ontario introduced Bill 161, the *Smarter and Stronger Justice Act, 2019*. The new bill is omnibus legislation that proposes broad reforms to the legal system in Ontario. While the draft legislation will keep commentators busy for weeks or months, I focus here on one set of proposed reforms: those to the class actions regime in Ontario.
- **No risk, no appeal: Ontario Court of Appeal rules that class members cannot appeal settlement approvals** – On October 17, 2019, a five-judge panel of the Ontario Court of Appeal released its unanimous decision in *Bancroft-Snell v Visa Canada Corporation*. The Court's decision has significant implications for the procedural rights of class members involved in settlement discussions and approval under the *Class Proceedings Act, 1992*.
- **Let it Rain: Supreme Court Green Lights Umbrella Purchaser Class Actions** – On September 20, 2019, the Supreme Court released its long-awaited decision in *Pioneer Corp v Godfrey*. *Godfrey* is the Supreme Court's latest decision involving price-fixing class actions, and expands on and clarifies the basic approach to these cases that the Court laid out six years ago in *Pro-Sys Consultants Limited v Microsoft Corporation*.
- **The LCO's Class Actions Final Report: The Defence Perspective** – As has now been widely reported, the Law Commission of Ontario has released its final report on class actions which makes recommendations to improve the system of class actions in Ontario. Our colleagues, Brian Kolenda and Derek Knoke, commented on those that will be of interest to plaintiffs in their blog post here. We provide the defence counsel perspective here.
- **LCO recommendations point to meaningful change in class actions** – The July 17, 2019 final report of the Law Commission of Ontario into class actions has the potential to impact significantly on the prosecution

and defence of class actions in Ontario.

- **Class actions against investment advisors? Don't bet on it** – Class actions are common in the financial services sector. The relatively low bar for certification of such claims as class proceedings means that many such claims are certified. Yet certification is by no means automatic: where the litigation will not be significantly advanced through the resolution of common issues, courts will typically be reluctant to certify an action as a class proceeding.
- **Confusion over “some basis in fact” rolls on in British Columbia Court of Appeal’s RoRo decision** – Certification is a vital step in every class action. In order for a class action to be certified, the proposed representative plaintiff must show “some basis in fact” to believe that the certification requirements are met. These requirements include that there are common issues of fact or law and that a class action would be the preferable procedure for resolving those common issues. The Supreme Court of Canada was clear in its decision in *Pro-Sys Consultants Ltd v Microsoft Corporation* that the some basis in fact standard is less onerous than a balance of probabilities standard. However, how that standard is to be applied remains a source of great difficulty for courts.
- **Once more unto the breach: the Supreme Court of Canada weighs in again on arbitration clauses and class actions** – The question of whether and when arbitration clauses will preclude a class proceeding is seemingly continually litigated. In some circumstances—such as in the consumer protection context—legislatures have clarified that certain claims cannot be subject to arbitration. In other cases, however, it is up to courts to craft the appropriate rules. The recent decision of *TELUS Communications Inc v Wellman* shows that the question of what rules are appropriate can attract significant disagreement. In a 5-4 split decision, the majority of the Supreme Court of Canada held that valid arbitration clauses in contracts should generally be given effect and that persons with such contracts should not be included in class proceedings.
- **Class Actions: Settling at the court’s discretion** – Parties to class action settlements often settle, at least in part, to avoid the ordinary uncertainty of litigation. Courts have long emphasized that while they retain discretion to supervise payments of lawyers’ fees as part of a settlement, the settlement approval process will not entail the Court re-writing a settlement that it is not prepared to approve.
- **Applying Foreign Law in Canadian Class Actions: A Novel Application of Old Principles in *Das v George Weston Limited*** – On December 28, 2018, the Ontario Court of Appeal released its decision in the case of *Das v George Weston Limited*. At 114 pages, the Court’s decision is thoroughly reasoned and substantive. It also deals with important issues that are significant to all class action practitioners. For those who don’t want to wade through the full sets of reasons—and there’s a lot there—here’s our summary of the key take-aways from the Court of Appeal’s decision.

- **Court of Appeal rates arbitration clause one star in proposed employment class action against Uber** – A frequently litigated issue in Canadian class actions is the extent to which parties can agree in advance to opt out of class actions in favour of private arbitration. In the context of consumer protection claims, provincial legislatures have generally eliminated the ability of defendants to defeat class actions through arbitrations by declaring clauses requiring the parties to submit such disputes to private arbitrations to be void. However, it has remained an open question as to whether and when courts would enforce arbitration clauses in other contexts, where the effect of such enforcement would be to defeat a proposed class proceeding.
- **Proactively managing class action risk: the virtue of voluntary compensation** – Product liability cases are routinely certified as class proceedings. Indeed, allegations that a product was negligently manufactured, or that a manufacturer failed to warn consumers of a particular risk, seem particularly amenable to resolution on a class-wide basis. However, not every such case is certified as a class proceeding. The recent decision of the Ontario Superior Court of Justice in *Richardson v Samsung Electronics Canada Inc* is one example of a case that was not certified. More importantly, it shows what steps defendants can proactively take to avoid certification of class actions against them.
- **Recent decision in pharmaceutical class action highlights importance of scrutinizing common issues in proposed class proceedings** – While class actions can be a useful tool for access to justice, there are limits to the types of claims that can be appropriately advanced through class proceedings. Indeed, the requirements for certification that appear in similar form in virtually every class action statute across Canada are meant to ensure that only those actions that can meaningfully proceed as class actions are in fact certified. Many cases, including certain types of pharmaceutical product liability claims, will simply be unsuitable for certification as a class action. The recent decision of the Ontario Superior Court in *Price v H Lundbeck A/S* provides an example of such a case.
- **Pre-certification motions in class actions: are courts setting the bar too high for early and efficient disposition?** – As I have observed before, class actions are expensive for defendants and resource-intensive for the justice system. In order to try and minimize that expense, defendants typically want to dispose of class actions they face as early as possible. This has given rise to a body of case law that addresses the question of when defendants will be allowed to bring pre-certification motions. As the recent decision of the Ontario Superior Court of Justice in *Austin v Bell Canada* shows, defendants face a high threshold in persuading the court to allow such motions to precede certification.
- **A tale of two forums: consumer class actions and the CRTC in telecommunications cases** – Given Quebec's unique civil law regime, we seldom blog about legal developments in Quebec. However, sometimes decisions of Quebec courts have broader relevance outside of Quebec; this is often the case where Quebec courts rule on federalism issues. The Quebec Court of Appeal's recent decision in *Bell Canada v Aka-Trudell* falls into that category. In that case, the Quebec Court of Appeal refused to dismiss a class action against Bell Canada, rejected the argument that the Quebec Superior Court had no jurisdiction and that the matter ought to have instead been considered by the Canadian Radio-television and Telecommunications Commission (the "CRTC").
- **Foreign Discovery in Advance of Certification in a Class Action? Not So Fast, says Divisional Court** – Given the expansive discovery rights available under US law, plaintiffs may be tempted to try to use

those rights in pursuit of proceedings under Canadian law. In its recent decision in *Mancinelli v RBC*, the Divisional Court placed an important limit on the ability of parties to do so. The Divisional Court upheld an order requiring plaintiffs in a proposed class action to obtain Court approval before taking any steps in furtherance of a subpoena issued by an American court.

- **Justice Perell Stays Proposed Class Proceeding against Uber, in Favour of Arbitration in the Netherlands - *Heller v Uber Technologies Inc.*** – A long-standing issue in Canadian class actions law relates to the ability of parties to contract out of class actions and instead require that any disputes be submitted to arbitration. For class counsel and class members, such clauses are anathema, representing an attempt by sophisticated organizations to thwart class actions by requiring individual claims to proceed to arbitration. For businesses, such clauses have significant value; they can result in individual cases being resolved quickly and efficiently, without the complications and attendant costs of a class action.
- **The regulated conduct defence: we'll drink to that** – It says something about Canada that many famous cases throughout Canadian legal history relate to the regulation of alcohol. Through the early 20th century, the regulation of alcohol was a fertile domain for disputes about Canadian federalism. Now, in the 21st century, the complicated regulatory scheme of governing alcohol sales in Ontario is once again making new law. This time, however, the dispute is not over arcane principles of federalism, but rather over the scope of the regulated conduct defence to conspiracies under the *Competition Act*. While early 20th century federalism cases may be of interest to only a select few, the decision of the Ontario Superior Court of Justice in *Hughes v Liquor Control Board of Ontario* is likely to attract significantly broader interest, particularly among companies operating in regulated industries.
- **Disrupting the Taxi Industry On a Class Wide Basis: The Certification Decision in *Metro Taxi v City of Ottawa* Raises Questions for Municipalities** – Since the introduction of ride sharing technology such as Uber, a legal dust-up with traditional taxi drivers and brokers seemed inevitable. Perhaps less predictable was the form that dispute would take. In *Metro Taxi Ltd. v. City of Ottawa*, the Court considered a certification motion for a class action brought by taxi license plate holders and brokers against the City of Ottawa for their regulatory handling of the introduction of Uber, claiming both negligence and discrimination.
- **Voluntary Gift Cards: An Effective Strategy for Reducing Liability?** – The recent admissions by supermarket chain Loblaws and a related group of companies that they engaged in conduct to fix the retail price of bread products have drawn significant public attention to price-fixing. And Loblaws' response to those revelations of price-fixing—including giving consumers gift cards to be used at Loblaws—has also attracted significant interest, not just from the public, but also from businesses and the antitrust and class actions bar. For organizations that have engaged in misconduct looking to make a public response, Loblaws' actions highlight both the potential benefits and risks of such voluntary remediation.
- **Absent foreign claimants at the gates of Canadian class actions** – Class actions are almost invariably complicated and expensive matters for businesses to deal with. Such class actions only become more complicated and expensive the bigger the classes are. Now, in *Airia Brands Inc v Air Canada*, the Ontario Court of Appeal has given the green light to a class action that includes class members all around the world. This decision has significant implications for virtually all

multinational businesses.

- **Compelling disclosure from the Competition Bureau for use in class actions: where are we now?** – A recurring source of challenging legal problems in the price-fixing class actions, and in class actions more generally, is the issue of what information and evidence the Courts can compel government investigators to provide to private litigants for use in those class actions.
- **A risky rule of thumb for estimating damages in competition class actions** – Using rules of thumb to generate estimates can be very useful in a variety of circumstances: for example, when the detailed information necessary to generate a precise answer is unavailable, or when it's too difficult to analyze that detailed information. Lawyers use such rules of thumb in a number of circumstances, sometimes as an initial rough estimate, and sometimes to confirm the results of more detailed analysis.
- **Copy and Paste: Avoiding Duplicative Procedures in National Class Actions** – The proliferation of parallel class proceedings in multiple Canadian provinces often defeats the very purpose of class proceedings: the avoidance of a multiplicity of actions. In order to streamline procedures, ensure consistent results, and encourage judicial economy, judges in several provinces have started demanding greater co-ordination among both class counsel and the courts. In *McKay v Air Canada*, Chief Justice Hinkson took this trend even farther in approving a settlement distribution plan by simply reproducing the reasons of the Ontario Court in *Airia Brands v Air Canada*.
- **Breaking down the Economic Barrier: Negligent Misrepresentation and Class Actions** – Over the 25 years that Ontario's *Class Proceedings Act* has been in force, there have been fewer than 20 common issue trials. While class actions have the potential to remove access to justice barriers and improve judicial economy and efficiency, in Ontario their scope has been limited.
- **Less is Not Always More: Evaluating Causes of Action in Carriage Motions** – Barrick Gold Corporation's disclosure, on April 10, 2013, that a Chilean court had issued an interlocutory order suspending the construction of its Pascua-Lama mine led to a substantial drop in its share price. This was further exacerbated the following month, when Chilean environmental regulators found serious environmental violations and shut down the project. Both Rochon Genova LLP ("Rochon") and Koskie Minsky LLP ("Koskie") initiated class proceedings against Barrick Gold Corporation ("Barrick") on behalf of disgruntled shareholders, with billions of dollars of damages claimed.

It is well-known that there cannot more than one certified class action in the same jurisdiction representing the same class in relation to the same claim, and the Ontario Court of Appeal's recent decision in *Mancinelli v Barrick Gold Corporation* confirmed that it was Rochon who would have carriage of this shareholder class action.

The basic test for carriage motions is well-established, and was not disputed by the parties.

In this case, the primary issues were the nature and scope of the causes of action advanced by Rochon and Koskie. Rochon's claims on behalf of class members were broad, alleging misrepresentations in Barrick's environmental compliance, its capital expenditure budget, and its financial statements. It also included claims of conspiracy and fraudulent concealment.

Koskie, on the other hand, opted for a more "streamlined" approach to the pleadings, focusing only on alleged misrepresentations about



environmental compliance.

Koskie argued that their streamlined approach ought to be preferred. Putting what the Ontario Court of Appeal called a “novel spin” on the cause of action factor, Koskie submitted that the focus of the factor is “workability”, and that it should be given priority over other factors. In general, they argued that “less is more” when it comes to the scope of the action. Time-consuming and unwieldy causes of action should be avoided.

In spite of these submissions, the Ontario Court of Appeal affirmed the lower courts’ decisions to grant carriage of the action to Rochon. The Court of Appeal confirmed that the ultimate question before a court in a carriage motion is whether counsel’s proposed strategy is reasonable and defensible. Without delving too deeply into the merits of the case, the motions judge concluded that both the conspiracy claim and the fraudulent concealment claim advanced by Rochon had a strong rationale and were genuinely viable. On that basis, the Court of Appeal found it was reasonable for the motions judge to conclude that a more comprehensive litigation strategy was in the best interests of the class.

Importantly, at least for those dealing with these issues at first instance, the Court of Appeal did not close the door to those plaintiffs’ counsel who took a similar “less is more” strategy. Rather, referring to the broad discretion of a judge on a carriage motion, the Court underlined merely that “this was a call [the motions judge] was entitled to make”. It thus seems that a future motions judge would be entitled to come to the opposite conclusion, in an appropriate case.

*With notes from Sarah Bittman*

- **Are substantial interlocutory costs awards an access to justice tool?** – Costs awards are a key element to the litigation process, rewarding successful parties and dissuading underserving would-be litigants. The goals of costs awards are relatively static in Ontario and should reflect the fair and reasonable expectations of the unsuccessful party, and be consistent with comparable cases. In class proceedings, the goal of access to justice is an additional criterion.

In *Green v Canadian Imperial Bank of Commerce*, the Ontario Superior Court of Justice took a robust view of the latter element, awarding the plaintiffs in a class proceeding the full amount of the costs they claimed. In doing so, the Court observed that “[a] failure to award fair costs to the plaintiffs will encourage and reward a defence strategy of wearing down the plaintiffs by wearing down their lawyers.”

The Court’s decision on the issue of costs follows the Court of Appeal’s reversal of its decision dismissing the action as time-barred and holding that the statutory cause of action could not be certified. The Supreme Court of Canada upheld the Court of Appeal’s decision, with the result that the plaintiffs were permitted to pursue the action as a certified class proceeding.

In their costs submissions, the successful plaintiffs requested a total of \$2,679,277.82, representing partial indemnity rates and reflecting four years of legal work. The defendants countered with \$800,000, arguing that the plaintiffs’ costs claim was well beyond what they could have reasonably expected to pay in the circumstances.

The Court took the view that compensating successful plaintiffs in the class proceedings context is an access to justice question. It accepted the plaintiffs’ claim for \$2,679,277.82 in costs. In doing so, the Court rejected the arguments and positions raised by the defendants, including that much of the work carried out by the plaintiffs will be useful for trial.



The size, stage, and justification of the costs award are notable.

The decision demonstrates the Court's willingness to provide substantial costs awards in class proceedings—even prior to trial. An award of \$2,679,277.82 on a partial indemnity scale, and where opposing counsel made significant arguments to the contrary, is a clear sign that the Court is willing to acknowledge the realities of funding class proceedings. The Court noted that plaintiffs' counsel in class proceedings takes a risk that defence counsel does not. It highlighted that plaintiffs' counsel assumes "substantial personal liability for costs and the risk of receiving no compensation for the time and disbursements invested in the case", whereas defence counsel are paid regardless of the outcome.

The specifics and importance of class proceedings were also considered by the Court, which commented: "I also recognize the public interest in ensuring that parties pursuing secondary market misrepresentation claims" have their claims "fairly compensated by realistic costs awards".

Despite the seemingly unequivocal message, would-be class claimants should remain cautious. The Court characterized this case as "an extraordinary case by any standard". In particular, it highlighted a series of factors that made this case unique, including the size of the class (over 100,000 Canadian shareholders), the size of the claim (\$2-4 billion), the fact that it was a landmark case under the *Securities Act*, the complexity of the facts, which required sophisticated expert evidence, the massive size of the record, the skill and experience of counsel, and the substantial success of the plaintiffs. The Court also emphasized the fact that the proceeding was "vigorously" contested by the defendants. As a result, the overarching costs principle of consistency with comparable cases may make such an award difficult to replicate in the future.

While this decision may encourage plaintiffs to advance significant costs claims following successful certification and leave motions, it remains to be seen whether it truly offers plaintiffs any precedential value. With that said, one thing is clear: the Court has made a strong statement that access to justice is an important consideration and, where successful, the plaintiffs are entitled to be fairly compensated by realistic costs awards. As stated by the Court: "The ability of the class to pursue these claims depends on the willingness of class counsel to accept the very substantial risks in exchange for the potential rewards."

*With Notes from Sean Lewis*

- **Novel action, settled law** – Any action described by the Judge as novelty on steroids provides an opportunity for the Court to balance the opportunity to develop new law, with the importance of rigorously applying existing law. This duality arose in a motion in the class action *Fisher v IG Investment Management Ltd* (2015 ONSC 3525), recently decided by the Ontario Superior Court.
- **Access to Justice a Key Concern in Certification Decisions** – The Ontario Divisional Court has recently affirmed the importance of access to justice as a factor in determining whether to certify a proposed class action.
- **Court Certifies Sino-Forest Class Action** – The Sino-Forest class action has been certified, and leave was granted to bring a claim under the *Securities Act* for secondary market misrepresentations.
- **Courts pave the way for damages in consumer class actions** – Defendants in consumer class actions should be on notice, following two recent decisions that used consumer protection legislation as a basis to award damages.
- **Court of Appeal makes certification of class actions for overtime pay more difficult** –

Canadian Courts have been faced in recent years with a number of class actions in which employees allege that their employer improperly misclassified them as ineligible for overtime pay. The Ontario Court of Appeal's recent decision in *Brown v. Canadian Imperial Bank of Commerce* makes it more difficult for such claims to proceed as class actions.

## SELECT NEWS ARTICLES

- **SCC to Hear Case Clarifying What Constitutes Material Change in Securities Law** – Paul-Erik Veel was interviewed by Canadian Lawyer Magazine, where he comments further on *Lundin Mining Corporation v. Dov Markowich*. Paul-Erik emphasized the importance of clarifying the definition of "material change" in securities law. He also highlighted potential burdens on publicly traded companies with overly broad interpretations, impacting both business operations and meaningful investor information.
- **The 2024 Lexpert Directory Recognizes Lenczner Slaght's Litigation Excellence** – Lenczner Slaght's litigators continue to be recognized by their peers as the foremost practitioners in their fields.
- **Chambers Canada Recognizes Lenczner Slaght as a Top-Tier Litigation Firm** – Canada's leading litigation firm and its expert litigators continue to be recognized by world-renowned directory, Chambers & Partners.
- **Lenczner Slaght's Litigation Excellence Recognized in 2023 Lexpert Directory** – Following comprehensive peer review surveys and interviews with senior members in the legal profession, the 2023 *Canadian Legal Lexpert Directory* has recognized 31 of the firm's expert litigators for their experience, knowledge, and precision, with 108 rankings spanning 17 practice areas.
- **Decision on Costs in Class Action Engaging Public Interest 'furthers Access to Justice': Counsel** – Paul-Erik Veel and Drew Black, successfully represented the Law Foundation of Ontario in a recent Court of Appeal decision which confirms a broad interpretation as to what kinds of class actions count as public interest cases. The Lawyer's Daily wrote a feature on the decision.
- **The Class Actions Certification Pendulum Is Swinging Back, Say Lawyers** – In the latest Lexpert Special Edition on Litigation, Paul-Erik Veel shared his expert insights on class actions certification.
- **Monique Jilesen joins Class Proceedings Committee** – Monique Jilesen will bring her extensive and formidable experience to the Law Foundation of Ontario's Class Proceedings Committee.
- **Lenczner Slaght Ranked Band 1 in Chambers Canada for 5th Consecutive Year** – Canada's leading litigation firm and its expert litigators continue to be recognized in the latest edition of world-renowned directory, Chambers & Partners.
- **Lenczner Slaght Litigators Recognized Among the Best Lawyers in Canada** – In the latest edition of *Best Lawyers in Canada*, 39 of our expert litigators are recognized by their peers for their expertise across 24 practice areas.
- **Lenczner Slaght Litigators Elected to The Advocates' Society's Leadership** – We are pleased to announce that Brendan Morrison, Christopher Yung, Paul-Erik Veel, Andrew Parley, Nina Bombier, and Anne Posno will be serving prominent executive positions at The Advocates' Society, a preeminent organization dedicated to promoting

effective advocacy and access to justice.

- **The 2022 Lexpert Directory Recognizes Lenczner Slaght's Litigation Excellence** – 31 of our expert litigators are recognized by their peers as the foremost practitioners across 18 fields.
- **Lenczner Slaght's 21st Year at the Centre of the Lexpert Bull's Eye** – Lenczner Slaght continues to be recognized as the #1 firm in Toronto for Litigation and Commercial Litigation by the 2022 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada.
- **Mercedes-Benz Settles Canadian Diesel Emissions Class Action** – Daimler AG and its Canadian and American Mercedes-Benz subsidiaries have agreed to settle a class proceeding concerning approximately 83,000 "BlueTEC" diesel vehicles in Canada. The proposed settlement provides for cash payments and other benefits to current and former owners and lessees.
- **Chambers Canada Recognizes Lenczner Slaght's Litigation Excellence** – Canada's leading litigation firm and its expert litigators continue to advance their position in the latest edition of world-renowned directory, Chambers & Partners.
- **Benchmark Canada Recognizes Lenczner Slaght as a "Powerhouse"** – Canada's leading litigation firm continues to be recognized with the top tier ranking of "Highly Recommended in Ontario" for its Dispute Resolution practice.
- **The 2021 Lexpert Directory Recognizes 30 Lenczner Slaght Lawyers** – An increasing number of our expert litigators are recognized by their peers as the foremost practitioners in their fields.
- **Lenczner Slaght Achieves 20 Years at the Centre of the Lexpert Bull's-Eye** – The 2021 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada continues to recognize Lenczner Slaght as the #1 firm in Toronto for Litigation and Commercial Litigation.
- **Lenczner Slaght Recognized as a Top-Tier Litigation Firm by Chambers Canada** – Canada's leading litigation firm and its expert litigators continue to be recognized by world-renowned directory, Chambers & Partners.
- **Proposed Sinopec lawsuit highlights risk of underpaying workers on overtime** – Monique Jilesen was interviewed by the Globe & Mail in their article "Proposed Sinopec lawsuit highlights risk of underpaying workers on overtime". In this article, Monique discusses the class action lawsuits that could arise from the COVID-19 pandemic.
- **Best Lawyers in Canada Recognizes Lenczner Slaght's Litigation Expertise** – Lenczner Slaght is proud to announce that 33 of our expert litigators are recognized in *Best Lawyers in Canada 2021*. Our lawyers received a total of 128 rankings, up from 100 in 2020.
- **Lexpert Highlights Lenczner Slaght's Professional Excellence** – Lenczner Slaght's litigators continue to be recognized by their peers as the foremost practitioners in their fields.
- **More uncertainty for Canadian cannabis as class-action suits filed in U.S.** – Paul-Erik Veel was interviewed by CTV News for the Your Morning Show on February 10. Paul-Erik commented on the proposed Class Actions brought against Canadian cannabis companies in the U.S. and their implications on the cannabis industry in Canada.
- **Ontario would take a step backward with proposed class action changes, critics say** – In this Law Times article, Paul-Erik Veel shares his expert opinion on the proposed changes to class action certification

tests in Bill 161, the *Smarter and Stronger Justice Act, 2019*.

- **Lenczner Slaght's 19th Year at the Centre of the Lexpert Bull's-Eye** – Canada's leading litigation firm continues to be recognized as the #1 firm in Toronto for Litigation and Commercial Litigation by the 2020 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada.
- **SCC rules that class actions in lawsuits against tech giants can proceed** – Paul-Erik Veel was quoted in the Canadian Lawyer article *SCC rules that class actions in lawsuits against tech giants can proceed*.
- **Chambers Canada Recognizes Lenczner Slaght as a Top-Tier Litigation Firm** – Canada's leading litigation firm and its expert litigators continue to advance their position in the latest edition of world-renowned directory, Chambers Canada, with nine new rankings.
- **Best Lawyers in Canada Recognizes Lenczner Slaght with 100 Rankings** – In the latest edition of *Best Lawyers in Canada*, 28 Lenczner Slaght lawyers earned a total of 100 rankings, up from 86 in 2019.
- **Class Proceedings Fund to get money from class action** – Alan Lenczner is quoted in the Law Times article *Class Proceedings Fund to get money from class action* on August 6, 2019. This article discusses a recent decision that approves a *cy près* distribution to the Class Proceedings Fund.
- ...
- **Pre-certification motion can be efficient** – Paul-Erik Veel was mentioned in the Law Times article *"Pre-certification motion can be efficient"* on October 28, 2018. This article discusses why the launch of a pre-certification motion in a proposed class action may be worthwhile.
- **Lenczner Slaght Litigators Ranked in Best Lawyers in Canada** – Canada's leading litigation firm is proud to announce that 25 of the firm's 58 lawyers have been recognized in the *Best Lawyers in Canada 2019* publication across multiple categories.
- **Lenczner Slaght Welcomes Jessica Starck** – Lenczner Slaght strengthens its legal research expertise with the addition of another talented associate.
- **Crown must pay costs after being 'overly enthusiastic'** – Monique Jilesen was mentioned in the Law Times article *"Crown must pay costs after being 'overly enthusiastic'"* on July 30, 2018.

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Monique Jilesen, a partner at Lenczner Slaght Royce Smith Griffin LLP, says lawyers must tread carefully when they get into the merits of a proposed class action, even as early as certification, as parties try to get as much information as possible.

That's especially the case with expert witnesses, since Canadian procedure doesn't usually have discovery of expert witnesses in advance of trial.

"It was just a disproportionate request to what was being asked," Jilesen says, who was not involved in the case.

- **Viability of umbrella purchaser claims in question** – Paul-Erik Veel is quoted in the Law Times article *Viability of umbrella purchaser claims in question* on April 23, 2018. This article discusses the intensifying debate over the viability of umbrella purchaser claims.
- **Lexpert Recognizes Lenczner Slaght's Professional Excellence** – An increasing number of the firm's lawyers have been ranked by their peers

as leading practitioners in their field.

- **Gift cards—a new way to reduce liability** – Paul-Erik Veel is quoted in the Canadian Underwriter article *Gift cards—a new way to reduce liability* on January 26, 2018. This article discusses Loblaw's response to the revelations of bread price-fixing.
- **Lenczner Slaght Litigators Lead in the 2018 Lexpert/ALM 500 Rankings** – Canada's leading litigation firm is one of two firms with the highest number of lawyers ranked in Corporate Commercial Litigation in the 2018 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada.
- **Monique Jilesen Appears on the Cover of Lexpert as one of Canada's Leading Litigation Lawyers** – Monique Jilesen appears on the cover of the 2017 issue of Lexpert/ROB Special Edition: Canada's Leading Litigation Lawyers. She is also quoted in the article *The Anonymous Representative* where she discusses anonymous representative plaintiffs in Canadian class action law suits.
- **Lenczner Slaght and Koskie Minsky Commence Class Action Against Nissan Canada Inc.** – The two firms have combined forces and launched a class proceeding against Nissan, and other defendants, alleging that certain Nissan models contain a dangerous engine defect.
- **Lenczner Slaght Recognized in Chambers Canada 2018** – Canada's leading litigation firm and its expert lawyers are ranked once again by Chambers & Partners for their exceptional litigation work.
- **Lenczner Slaght Ranked Among the Best** – Almost half of the leading litigation firm's lawyers are recognized in the *Best Lawyers in Canada*.
- **Lenczner Slaght Shines in 2017 Lexpert Rankings** – Lenczner Slaght's litigators continue to be recognized by their peers as leading practitioners in their fields according to the 2017 Canadian Legal Lexpert Directory.
- **Jonathan Chen Joins Lenczner Slaght** – Canada's leading litigation firm continues to attract top talent.
- **Lenczner Slaght is the Unrivaled Litigation Boutique in Chambers Global 2017** – The firm's litigators earned the top rankings alongside full-service, national and international counterparts in the litigation categories.
- **Lenczner Slaght lawyers recognized in Lexpert ALM 500 Guide** – Canada's leading litigation boutique leads all firms with 10 lawyers ranked in litigation practice areas in the 2017 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada ("ALM 500")
- **Peers Recognize Lenczner Slaght's Expertise in Cross-border Litigation** – Fifteen Lenczner Slaght lawyers have been ranked in the Lexpert 2016 Guide to the Leading U.S./Canada Cross-Border Litigation Lawyers in Canada
- **Lenczner Slaght Lawyers Ranked Best** – Nearly half of the firm's lawyers recognized among Canada's foremost practitioners
- **Lenczner Slaght and Koskie Minsky launch class action suit against Mercedes-Benz over diesel emissions** – Lenczner Slaght and Koskie Minsky have combined forces to launch a class proceeding against Mercedes-Benz Canada Inc., Daimler AG, and other defendants, alleging that Mercedes BlueTEC vehicles are non-compliant with Canadian emissions laws. The class action is brought on behalf of Yogesh Kalra, an owner of a 2009 Mercedes R320 BlueTEC, and all other Canadian owners and lessees of Mercedes BlueTEC vehicles.

In the wake of the Volkswagen 'Dieselgate' scandal, it has been reported that BlueTEC engines emit significantly higher levels of pollutants than are permissible under North American law. In addition, BlueTEC vehicles have been reported to emit toxic chemicals at much higher levels when it is colder than 10 degrees Celsius, which is common in Canada.

Peter Griffin, Lenczner Slaght's Managing Partner, has stated "We expect Mercedes to answer serious questions about whether its "clean diesels" really are clean, especially in the colder weather that is so common in Canada".

The new action is the first plaintiff-side class action for Lenczner Slaght, which has extensive experience defending class proceedings in a range of different subject areas, including automobile claims.

**For more information, please contact:**

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**Potential Class members:**

Learn more by going to [www.kmlaw.ca/mercedesclassaction](http://www.kmlaw.ca/mercedesclassaction) or calling Toll Free at 1-844-819-8524

- **Lenczner Slaght Remains Among Top in Chambers Global Rankings** – Canada's leading litigation practice recognized in tier one for 14 consecutive years.
- **Lenczner Slaght Scores Bull's Eye in Leading 500 Lawyers in Canada** – Canada's leading litigation practice once again tops the list of litigation firms in the 2016 Lexpert®/American Lawyer Guide to the Leading 500 Lawyers in Canada.
- **Three Lenczner Slaght cases featured in Lexpert's Top 10 Business Decisions of 2015** – Canada's leading litigation practice acted as counsel on the top case in Lexpert's annual ranking
- **Lenczner Slaght Leads in Cross-Border Litigation** – Recognition of Lenczner Slaght lawyers as Canada's Leading Cross-Border Litigators Endures
- **Lenczner Slaght Lawyers Repeatedly Ranked Among the Best** – Half of the firm's lawyers are ranked as leading practitioners and three named "Lawyer of the Year" in the latest Best Lawyers in Canada Directory.
- **20 Lenczner Slaght Lawyers Recognized in 2015 Lexpert Directory** – Recognized by Canadian Legal Lexpert® Directory as leading practitioners.
- **'Unprecedented' Nortel ruling spans Canadian and U.S. Courts** – Monique Jilesen was quoted on the decision in the Nortel Networks Corporation case both by the Lawyers Weekly on June 19, 2015 and the July issue of Bottom Line Newspaper published by Lexis Nexis Canada Inc.
- **Carriage decision fails to provide expected guidance: lawyers** – Lawrence Thacker was quoted in Law Times on June 1, 2015 in relation to the recent ruling granting carriage to a group of law firms in the Barrick Gold Corp. class action.
- **Class actions aren't the only game in town for product liability claims** – Lawrence Thacker was quoted in the Financial Post on May 27,



2015 in relation to the issue of mass tort litigation as an alternative to class actions.

- **Is summary judgment appropriate for class actions?** – Rebecca Jones is quoted in the April 20, 2015 issue of Law Times on summary judgements and class actions.
- **Privacy class actions taking off - Volume of information collected, breaches cited as key factors** – Anne Posno was quoted in the April 20, 2015 issue of Law Times on privacy class actions.
- **Lenczner Slaght Repeatedly Tops Chambers Global Ranking** – Canada's leading litigation practice remains highly regarded for 13 consecutive years.
- **Lenczner Slaght - "a fortress inhabited by litigation royalty"** – 13 Lenczner Slaght lawyers recognized in the 2015 Benchmark Litigation Directory.
- **Spillover into Canada** – Alan J. Lenczner and Brendan Morrison were featured in the Fall/Winter issue of the University of Toronto's UTLaw Alumni Magazine regarding the Yaiguaje et al. v. Chevron Corporation et al. case.
- **Lenczner Slaght Remains at the Centre of the Lexpert Bull's-Eye** – Canada's leading litigation practice is once again ranked #1 in The 2015 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada.
- **A Leader in Cross-Border Litigation** – 14 Lenczner Slaght litigators ranked in Lexpert 2014 Guide to the Leading U.S/Canada Cross-Border Litigation Lawyers in Canada.
- **'Co-operative federalism' is emphasized** – Lawrence Thacker was quoted in the October 3, issue of the Lawyers Weekly published by LexisNexis Canada Inc.
- **Supreme Court of Canada says provincial consumer protection laws apply to banks** – Lawrence Thacker was quoted in the Financial Post on September 19, 2014 in relation to a Supreme Court of Canada decision on whether provincial consumer protection legislation applies to federally regulated financial institutions.
- **Lenczner Slaght Welcomes Four New Associates** – Canada's leading litigation practice grows to 53 lawyers.
- **How will Fulawka affect overtime cases?** – Monique Jilesen was quoted in the September 1, 2014 issue of Law Times regarding overtime cases in Ontario.
- **Lawyer targets Chevron assets for Ecuadorian plaintiffs** – Alan J. Lenczner, Q.C. was quoted in the August, 2014 issue of EcoAmericas Magazine regarding Yaiguaje et al. v. Chevron Corporation et al.
- **23 Lenczner Slaght Lawyers Ranked Among the Best** – Nearly half of the firm's 49 lawyers are ranked as leading practitioners and two named "Lawyer of the Year" in the latest Best Lawyers in Canada Directory.
- **The Class Action Storm** – Mark Veneziano was quoted in the July, 2014 issue of Lexpert - the Business Magazine for Lawyers.
- **Lenczner Slaght Increases Rankings in 2014 Lexpert Directory** – Canada's leading litigation practice continues to add new names to the list.



- **If U.S. retreats on securities class actions, Canada stands ready to fill in the gaps** – Mark Veneziano was quoted in the Financial Post on May 28, 2014 following his interview with Drew Hasselback.
- **Plaintiffs counsel turn to 'mass tort' as class action alternative** – Lawrence E. Thacker was quoted in the Financial Post on May 28, 2014 following his interview with Julius Melnitzer.
- **Wiretaps at centre of gas price-fixing class action** – Lawrence Thacker was quoted in this Financial Post article on April 23, 2014.
- **Lenczner Slaght Tops Chambers Global Ranking** – Canada's leading litigation practice remains in Band 1 for 12<sup>th</sup> consecutive year.
- **Lenczner Slaght Welcomes Two New Partners** – Canada's leading litigation practice grows to 20 partners with newest additions.
- **Lenczner Slaght is at the Centre of the Lexpert Bull's-Eye** – Canada's leading litigation practice is once again ranked #1 in *The 2014 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada*.
- **Ontario court revives Chevron Amazon pollution case** – Alan J. Lenczner, Q.C. and Brendan F. Morrison act for villagers from Ecuador's rainforest which filed a lawsuit in Canada against Chevron to compel the company to comply with an \$18.3 billion (U.S.) court judgment obtained in Ecuador for oil pollution in the Amazon.
- **Lenczner Slaght in Top Tier and 11 Lawyers Ranked as Stars** – Canada's leading litigation practice also wins two national impact cases.
- **Judge dismisses tobacco farmers' \$500M lawsuit against governments over illegal cigarettes** – Ronald Slaght successfully represented the Department of National Revenue in a \$500-million class-action lawsuit by tobacco farmers.
- **The opt-out option controversy** – Lawrence E. Thacker comments in the National Post on the right of class members to opt-out in class action litigation.
- **Lenczner Slaght Lawyers Win Top Peer Ratings** – Recognized by Canadian Legal Lexpert Directory as leading practitioners.
- **Pollution Case Under Appeal: Port Colborne Action First to Go all the Way to Trial** – Alan J. Lenczner, Q.C. appeals first environmental class action trial decision, read article from the Financial Post.
- **The Trouble with Ponzi class actions** – Glenn Smith is quoted in the Financial Post regarding class actions as a means to recover lost money.
- **Managing risk to limit exposure** – While companies might not be able to prevent class action litigation, Ronald G. Slaght, Q.C. encourages a proactive approach to minimize liability.