

# 15TH NATIONAL SYMPOSIUM ON CLASS ACTIONS

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

- Procedural trends in class proceedings: the coordination of multi-province cases
- How much scrutiny should the courts give to third-party funding agreements?
- Why are costs in Ontario on the rise again?
- Is there value to post-settlement litigation? Should courts be encouraged to maintain an active post-settlement role?
- The long arm of the law: should Canadian courts hold Canadian defendants liable for foreign wrongs to foreign plaintiffs?

Register today at:

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

## Program Chairs

**Celeste Poltak**  
Koskie Minsky LLP

**Marie Audren**  
Audren Rolland LLP

## Program Details

### DATES AND TIMES:

Day 1: April 26, 2018

9:00 a.m. - 5:15 p.m. EDT

Day 2: April 27, 2018

9:00 a.m. - 1:00 p.m. EDT

In Person Only

### ONLINE REPLAY:

May 28-29, 2018

### LOCATION

Osgoode Professional

Development

1 Dundas St. West, 26th Floor

Toronto, ON



# 15th National Symposium on Class Actions

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

Canada's **premier forum** for class actions debate is in a class of its own. This truly **national program**, now in its 15th year, assembles leading experts who will take you through the most critical issues in this constantly evolving field.

## Over two intensive days you will:

- Get key updates on the most current and emerging issues in class actions from across the country
- Connect with and learn from experienced litigators and judges as they share their experience and insights
- Learn effective strategies to employ and learn the minefields to avoid

## Who Should Attend?

- Plaintiff and Defence Counsel practicing in class actions
- In-house counsel
- Government litigators
- Liability insurers
- Notice and settlement specialists

## Agenda Day One

Thursday, April 26, 2018

8:30 a.m.

### Registration and Continental Breakfast

9:00 a.m.

### Welcome and Introduction

**Celeste Poltak**, Koskie Minsky LLP

9:05 a.m.

### Procedural Trends in Class Proceedings

**Moderator:**

**Frank McLaughlin**, McCarthy Tétrault LLP

**Panelists:**

**Matthew D. Baer**, McKenzie Lake Lawyers LLP

**Amanda M. Quayle**, McDougall Gauley LLP

- Current trends in coordination of multi-province cases. (*Romeo v Ford Motor; Babin v. Bayer*)
- Are cases getting to the merits earlier and how is that working?
- Are the merits being fought up front when there is a test?
- Is *Hryniak* starting a trend of doing more motions for judgment up front?
- Are certification motions changing? Best practices developing? Are more certifications in contested cases unopposed or on consent?
- Are pleadings, proposed class definitions or common issues changing?
- What's happening with decertification? Are the standards different from certification? (*Plaut v. Renfrew Power Generation Inc.*)

10:00 a.m.

### Third-party funding

**André Lespérance**, Trudel Johnston Lespérance

**Margaret L. Waddell**, Waddell Phillips Professional Corporation

**Caroline Zayid**, McCarthy Tétrault LLP

- How much scrutiny should the courts give to third-party funding agreements?
- Who controls the litigation?
- Must the plaintiff have received independent legal advice prior to signing the funding agreements?
- What role, if any, does the defendant have?
- When is a third-party funder overcompensated?

10:30 a.m.

### Refreshment Break

10:45 a.m.

### Global/Jurisdictional Class Actions

**Moderator:**

**Celeste Poltak**, Koskie Minsky LLP

**Panelists:**

**Mark Gelowitz**, Osler, Hoskin & Harcourt LLP

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

**Paul Bates**, Barrister, Counsel to Siskinds LLP

The past year has seen a flurry of decisions that address Canada's place in the global class action landscape. What do they mean and where are we headed?

- Marshaling a global class: are Canadian courts becoming emboldened or are they losing their nerve? What is the latest on jurisdiction and *forum non conveniens*? (*Airia Brands v. Air Canada* and *Yip v. HSBC Holdings plc.*)
- The long arm of the law: should Canadian courts hold Canadian defendants liable for foreign wrongs to foreign plaintiffs? (*Das v. George Weston Limited* and *Araya v. Nevsun Resources*)
- Are Canadian courts protecting our own or setting a dangerous precedent by ignoring forum selection? (*Douez v. Facebook Inc.*)
- When should jurisdictional issues be raised and how do they interact with the proposed common issues?

11:30 a.m.

## Offers to Settle – Merits and Certification

Moderator:

**The Hon. Justice Russell M. Raikes**, Ontario Superior Court of Justice

Panelists:

**Daniel M. Boone**, Stewart McKelvey

**Douglas Lennox**, Klein Lawyers LLP

- What are the rules across the country on making offers to settle to class members pre and post certification?
- Can offers be effectively made to a subset of the class post certification?
- Are the representative plaintiff and class counsel the sole gatekeepers?
- Can the court be asked to intervene and when?
- Can an offer to the class be structured to engage higher costs consequences (e.g. rule 49.10)?
- Can offers to settle be used effectively for procedural motions in class actions – class certification motions? (e.g. *Hayes v City of Saint John et al*)
- Will this encourage the parties to put the real case on the table at certification?
- What obligations are on counsel when an offer is received that would compensate some but not all class members?

12:00 p.m.

Luncheon

1:00 p.m.

## Managing a Class Action: Plaintiff Perspective

Moderator:

**Marie Audren**, Audren Rolland LLP

Panelists:

**Linda Rothstein**, Paliare Roland Barristers

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

**Dennis Manuge**, Representative Plaintiff in Veterans Pension case (*Manuge v. Conada*, 2013 FC 341)

- Case selection – mistakes that will haunt the life of the action
- Framing the action at the outset
- Dysfunctional families – consortium arrangements or carriage?
- The common issues trial – no need to be afraid

- Sequencing – where everything can go off the rails
- Fatal mistakes post certification

1:45 p.m.

## Managing a Class Action: Defense Perspective

Moderator:

**Luciana Brasil**, Branch MacMaster LLP

Panelists:

**J. Kenneth McEwan, QC**, McEwan Partners

**Michael Eizenga**, Bennett Jones LLP

**Peter Aumonier**, VP Claims, Northbridge Insurance

**Catherine Moore**, General Counsel, Civil Litigation Section, Department of Justice Canada

- How do in-house counsel decide who to hire?
- How do in-house counsel balance the public relations and business concerns with the best legal strategy?
- How do insurers manage these claims?
- How do insurers manage the insureds' interests with the interest in the best and most logical defence?
- Working with competitors in joint defence arrangements
- How do you decide when to open the door to settlement talks?
- How do you ensure that privilege is maintained?

2:30 p.m.

Break

2:45 p.m.

## Fees & Costs

Moderator:

**The Hon. Justice Ward K. Branch**, Supreme Court of British Columbia

Panelists:

**Charles M. Wright**, Siskinds LLP

**Cheryl M. Woodin**, Bennett Jones LLP

- Is the "public interest" dead in the wake of *Das*?
- Why are the costs in Ontario on the rise again?
- Presumptive validity – how does the percentage approach operate in the mega fund cases?
- How to get what you ask for on a fee approval motion

3:30 p.m.

## What Goes Around Comes Around: Lawyers Under Class Action Attack

Moderator:

**Michael Rosenberg**, McCarthy Tétrault LLP

Panelists:

**David L. Sterns**, Sotos LLP

**Peter Griffin**, Lenczner Slaght Royce Smith Griffin LLP

**Marie-Andrée Vermette**, Weir Foulds LLP

Lawyers have recently found themselves on the receiving end of class action litigation.

- What unique issues do these claims raise? How can lawyers protect themselves from being drawn into the fray?
- When a client sues a lawyer, what duties are owed to the client? Should anything be done to protect privilege? (*Cannan v. Funds for Canada Foundation*)
- What elements of legal practice give rise to common issues? What statutory causes of action can arise? (*Hodge v. Neinstein*)
- Reliance on independent legal advice: will it defeat certification? Should third party claims be severed? (*Trillium Matar World Inc. v. General Motors of Canada Ltd.*)
- How does the retainer differ when acting for or against lawyers?

4:15 p.m.

## Mock Argument – Mega Fund Fees Approval Motion

Counsel:

**Patricia D.S. Jackson**, Torys LLP

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

Judge:

**The Hon. Justice Pierre-C. Gagnon**, Superior Court of Québec

Witness 2 senior members of the class actions bar argue a fee approval motion on a mega fund case, where the fees are coming over and above the settlement and straight from the defendant. Hear what the judge has to say.

This is certain to be a lively mock argument.

5:15 p.m.

Day One Concludes

WINE & CHEESE RECEPTION

Immediately following the program

# Agenda Day Two

Friday, April 27, 2018

8:30 a.m.

## Registration and Continental Breakfast

9:00 a.m.

## Welcome from Chair

Marie Audren, Audren Rolland LLP

9:05 a.m.

## Revisiting the Trilogy

This session will look at what has happened since the Supreme Court released its landmark trilogy of decisions in 2013 that addressed the evidentiary threshold of certification in the common law provinces and Quebec, the relative standards for class certification in Canada, the test for jurisdiction over foreign defendants.

9:30 a.m.

## The Devil's in the Detail: Post-Settlement Litigation

### Moderator:

Michael Rosenberg, McCarthy Tétrault LLP

### Panelists:

Catherine A. Coughlan, General Counsel, Aboriginal Law services, Prairie Region, Department of Justice Canada

Kathryn Podrebarac, Podrebarac Barristers

Some of Canada's largest class action settlements continue to generate contentious litigation:

- Is this par for the course, or has something gone wrong?
- Years later, what continues to be litigated? [*Fontaine v. Canada* (Indian Residential Schools)] and [*Parsons v. Ontario/Endean v. British Columbia* (Hepatitis C)]
- How have the courts stayed involved? What is the extent of their jurisdiction to modify the settlement agreement?
- How do class counsel stay involved? Who pays for continued representation? Who gives instructions?
- If you could do it over again: how would you avoid the pitfalls? What are the drafting points?

- Is there value to post-settlement litigation? Should courts be encouraged to maintain an active post-settlement role, if only to monitor take-up and fees? (*Lavier v. MyTravel Canada Holidays Inc.*)

10:30 a.m.

## Break

10:45 a.m.

## Class Proceedings Reform

### Moderator:

Aneurin (Nye) Thomas, Executive Director, Law Commission of Ontario

### Panelists:

Reidar M. Mogerman, Camp Fiorante Mathews Mogerman

Brad W. Dixon, Borden Ladner Gervais LLP

Jeff W. Galway, Blake, Cassels & Graydon LLP

Craig E. Jones, QC, Associate Counsel, Branch MacMaster LLP, Professor of Law, Thompson Rivers University

In this highly interactive session, and using a live polling system, a series of questions around class proceedings reform will be posed to the audience for a vote. Each question will be followed by a lively debate between the presenters with Nye Thomas moderating. A second vote on the same issue will be taken. Has your opinion changed because of the debate?

12:00 p.m.

## Judicial Panel: A View from the Bench

### Moderator:

The Hon. Justice Ward K. Branch, Supreme Court of British Columbia

### Panelists:

The Hon. Justice Edward M. Morgan, Ontario Superior Court of Justice

Quebec Coordinating Class Action Chamber Judge

Always a highlight of the program—this panel of experienced class actions judges from across the country will enlighten us with tips and insights. This is certain to be a lively discussion and one not to miss!

1:00 p.m.

## Conference Concludes

Thank you  
to this year's sponsors



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

## Program Chairs



**Celeste Poltak**  
Koskie Minsky LLP



**Marie Audren**  
Audren Rolland LLP

## Program Faculty

**Marie Audren\***, Audren Rolland LLP

**Peter Aumonier**, VP Claims,  
Northbridge Insurance

**Matthew D. Baer**, McKenzie Lake  
Lawyers LLP

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

**Paul Bates**, Barrister, Counsel to  
Siskinds LLP

**Daniel M. Boone**, Stewart McKelvey

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Aboriginal Law services, Prairie Region,  
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Superior Court of Québec

**Jeff W. Galway**, Blake, Cassels &  
Graydon LLP

**Mark Gelowitz**, Osler, Hoskin &  
Harcourt LLP

**Peter Griffin**, Lenczner Slaght Royce Smith  
Griffin LLP

**Patricia D.S. Jackson**, Torys LLP

**Craig E. Jones, QC**, Associate Counsel,  
Branch MacMaster LLP, Professor of Law,  
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**Katherine L. Kay**, Stikeman Elliott LLP

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Mathews Mogerman

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Ontario Superior Court of Justice

**Catherine Moore**, General Counsel, Civil  
Litigation Section, Department of Justice  
Canada

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

**Kathryn Podrebarac**, Podrebarac Barristers

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Law Commission of Ontario

**Marie-Andrée Vermette**, Weir Foulds LLP

**Margaret L. Waddell**, Waddell Phillips  
Professional Corporation

**Charles M. Wright**, Siskinds LLP

**Cheryl M. Woodin**, Bennett Jones LLP

**Caroline Zayid**, McCarthy Tétrault LLP

**Quebec Coordinating Class Action  
Chamber Judge**

\*Planning Committee Members

Also includes: **Gordon McKee**, Blake,  
Cassels & Graydon LLP

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

*"A great opportunity to get a national overview of new developments and issues in one seminar with very knowledgeable speakers."*

*"The best thing about the program was the interplay between plaintiff and defense counsel."*

*"Very educational and informative. Good balance of plaintiff and defence perspectives."*

*"Breadth of and quality of speakers was top notch."*

*"Thought provoking discussion on panels. Good materials."*

## Registration Details

### Fee per Delegate

**\$1,695 plus HST**

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

### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



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#### Eligible CPD/MCLE hours:

Day 1 - LSUC (ON): 7h 15m CPD (4h 45m Substantive; 2h 30m Professionalism)

Day 2 - 4h CPD (3h 45m Substantive; 15m Professionalism)

Both Days: 11h 15m CPD (8h 30m Substantive; 2h 45m Professionalism)

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 [osgoodepd.ca](http://osgoodepd.ca)

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15th National  
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[osgoodepd.ca/class-actions](http://osgoodepd.ca/class-actions)