

# Class Actions – Plaintiff

## RECENT DEVELOPMENTS OF IMPORTANCE

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Although no longer in its infancy, class actions practice continues to evolve across Canada. With class action legislation now in place in every Canadian province, developments are occurring with more frequency and from different judicial perspectives. This year has seen several significant developments, including important decisions involving third party funding for representative plaintiffs and the approval of class counsel fees. Some issues thought to have been long settled have been revisited, including the timing of the delivery of the Statement of Defense in Ontario and the ability to pursue price-fixing class actions on behalf of indirect purchasers in British Columbia. These developments will no doubt meaningfully impact the practice going forward.

### Third Party Funding

Most class actions are now prosecuted on a contingency-fee basis. The retainer agreement and the fee to be paid to class counsel must be approved by the Court. Because class actions generally are very complex, may involve the retainer of expensive experts and may take years to resolve, a contingency retainer is inherently burdensome for class counsel. To insure against this burden, counsel have turned to outside funding sources.

Courts have historically resisted private third party funding of litigation on the grounds that such arrangements may constitute champerty and maintenance; as recently as 2009 third party funding of a class action was rejected on this basis.<sup>1</sup> In theory, cost rules harness normal aversion to risk in order to deter frivolous or unmeritorious lawsuits and enhance judicial economy. However, the effect of such cost rules in the context of class proceedings is amplified considerably, where representative plaintiffs, absent

indemnification, could be on the hook for millions of dollars in adverse costs in the event of failure. As Justice Strathy recognized in a recent funding decision, “no person in their right mind would accept the role of representative plaintiff if he or she were at risk of losing everything they own.”<sup>2</sup>

In practice, the burden of indemnification often shifts to class counsel, who finance the expenses of pursuing complex litigation involving years of work and are faced with the potential of crippling adverse cost awards. The threat of significant adverse costs awards in increasingly complex cases not only create barriers to entry into the practice (potentially preventing meritorious cases from being pursued) but may also make for an uneven playing field between the plaintiffs and the defendants. The recent approvals of third party funding agreements reflect a growing concern for the impact that a potential adverse costs award might have on a putative representative plaintiff’s willingness to pursue a class action.

Until very recently, the Class Proceedings Fund (“CPF”) was the sole option available to representative plaintiffs in Ontario seeking financial support for a class proceeding where that support was tied to recovery. The CPF provides disbursement funding and costs indemnification in return for payment of a non-negotiable 10 per cent fee from any recovery.<sup>3</sup> Applicants to the CPF must go through an approval process. The fund is maintained by reinvestment of the 10 per cent levy charged to successful applicants. This option is not available in other jurisdictions such as Alberta and Nova Scotia, which are also “loser-pays” regimes.

As the volume and value of class actions grow and as cases are increasingly litigated well beyond certification through to trial, plaintiffs have sought alternate methods for funding disbursements and addressing the serious risk of adverse costs awards. Third party funding agreements provide

assistance by alleviating some risk and allow flexibility in setting a reasonable repayment rate that reflects the risk assumed.<sup>4</sup> A number of companies offering such services have appeared on the Canadian scene, many with years of experience in other jurisdictions such as the US, Australia and the UK, where such arrangements are more common, and from other industries, including private banks.

This evolving landscape has resulted in several courts in at least three provinces approving third party funding agreements for class action plaintiffs. Third party disbursement funding and indemnification agreements were first approved by the Courts in Alberta<sup>5</sup> and in Nova Scotia.<sup>6</sup> In these cases, argument was made by way of an *ex parte* application and no reasons were given by the Court. Most recently, Justice Strathy approved a third party funding agreement in Ontario in *Dugal v. Manulife Financial Corp.*<sup>7</sup> after a hearing in open court including argument from both parties. As third party funding arrangements gain increasing acceptance, Courts must address the appropriate approach to the hearing of the approval motion and to the protection of confidential information with respect to both the terms of the financing and the conduct of the litigation.

As discussed above, *Hobshawm* and *MacQueen* proceeded on an *ex parte* basis, thereby ensuring the key terms of the financing, including the amount of financing, remained confidential. In contrast, on agreement of the parties, the defendants in *Metzler Investment* and in *Dugal* were given standing on the approval motion, were advised of the key terms, and had the opportunity to make submissions regarding the proposed agreement. Third party funding is intended to even the playing field between plaintiffs and defendants. A very real concern exists on the part of plaintiffs that, if defendants are given details about the specific amount of the financing and the terms of the arrangement, all of the salutary benefits of

# Class Actions – Plaintiff

## RECENT DEVELOPMENTS OF IMPORTANCE

the financing will disappear. It is anticipated that the Courts will proceed with the approval of such arrangements on an *ex parte* basis in most cases, or that key terms of the agreement will be sealed at the plaintiffs' request.

The relationship between the funder, the plaintiffs and plaintiffs' counsel is an important consideration. In approving the funding agreement in *Dugal*, the Court acknowledged the importance of ensuring the implementation of reasonable controls on the provision of information to the third party funder.<sup>8</sup> While the funder would require information regarding the merits and risks of the action to allow it to make an informed decision and to negotiate an appropriate interest rate, maintenance of solicitor-client privilege must be paramount. The Court recognized that it is reasonable to provide information to the funder concerning settlement offers, provided that full control of the litigation, including the decision whether to accept any offer, remain with the representative plaintiffs.<sup>9</sup>

### Timing for Delivery of the Statement of Defense

A recent decision of Justice Perell of the Ontario Superior Court in *Pennyfeather v. Timminco Ltd.* has revisited what was thought to be a well settled issue regarding the timing of the delivery of a Statement of Defense in a class action.<sup>10</sup> Ruling on a motion for particulars by some of the defendants, Justice Perell ordered that particulars be given, and that a Statement of Defense be delivered thereafter, prior to certification.

It has long been the practice in class proceedings that a Statement of Defense is delivered following the determination of the certification motion.<sup>11</sup> This approach reflects the test on certification and allows defendants to challenge the plaintiffs' claim as disclosing no cause of action.

Prior to Justice Perell's decision in *Pennyfeather v. Timminco*, the normal practice in Ontario was for defendants to

file a Statement of Defense following the determination of the certification motion. This issue was first addressed in 1996 in *Mangan v. Inco Ltd.*, where the defendant sought to delay the delivery of the Statement of Defense.<sup>12</sup> The court accepted the defendant's submission that the Statement of Defense may have to be entirely reformulated in response to the outcome of the certification hearing, and noted "the Statement of Defence would serve no useful purpose in the interim."<sup>13</sup> The court also indicated that, even though there was no explicit statutory provision permitting the late filing of a Statement of Defense, it was within the purview of s.12 of the *Class Proceedings Act*, (which gives the case management judge the discretion to control the process in a class proceeding), for the Court to dispense with the requirement that a defense be filed in advance of the certification motion.<sup>14</sup> *Mangan* has been followed and cited in numerous Ontario cases since that time<sup>15</sup> and it is now common practice for defendants to file statements of defense after certification.<sup>16</sup>

The practice appears to vary, however, in other jurisdictions. Over a decade ago, the BC Supreme Court in *Scott v. TD Waterhouse Investor Services (Canada) Ltd.*<sup>17</sup> refused the defendant's request to postpone the deadline for filing a Statement of Defense until after the certification motion. The Court held that "certification is simply a management vehicle. It does not change the underlying elements of the cause of action that a representative plaintiff must establish, as determined by the pleadings. Nor does it change the underlying elements of any defences that the defendants might raise, also determined by the pleadings. At some point, all issues raised by plaintiffs and defendants still have to be resolved."<sup>18</sup>

Subsequent British Columbia Courts have declined to follow the reasoning in *Scott*. In the 2005 case of *Maclean v. Telus Corp.*, the BC Court of Appeal overturned a decision refusing to delay the filing of the

Statement of Defense until after certification. The Court of Appeal held that the Court in *Scott* adopted "an unduly strict and narrow approach to the interpretation of the Act and Rules of Court in concluding that a Statement of Defence is invariably required to be filed prior to a certification hearing."<sup>19</sup> The Court of Appeal, however, declined to comment generally on whether a Statement of Defense should be filed before the certification hearing and, ultimately, sent the application back for reconsideration.<sup>20</sup> As recently as 2009, the BC Supreme Court, in an application for particulars not unlike the motion in *Timminco*, noted that "the defendants have elected to wait until after the certification hearing to file their statements of defence."<sup>21</sup> However, unlike Justice Perell in *Timminco*, the BC Court dismissed the defendants' application for particulars and did not proceed to order that a Statement of Defense be filed before certification.

In Saskatchewan, a slightly different approach was tested and ultimately rejected. In *Hoffman v. Monsanto Canada Inc.* the motion judge decided on a bifurcated solution to the issue: the judge ordered that the defendants file a defense to the claims of the representative plaintiffs, and reserve their defense to the proposed class of plaintiffs set out in the Statement of Claim until after the certification hearing.<sup>22</sup> The Saskatchewan Court of Appeal overturned the decision and extended the time for filing a Statement of Defense by each defendant until after certification, citing the need for "a timely determination of the certification application ... without generating unnecessary motions and applications."<sup>23</sup>

In Alberta, in a 2007 decision in *Murray v. Alberta (Minister of Health)*,<sup>24</sup> the Court refused the defendants' application for an extension of time to file a Statement of Defense until after certification. The Court acknowledged the Saskatchewan Court of Appeal's reasoning in *Monsanto* that the modern class action is designed to



# Class Actions – Plaintiff

## RECENT DEVELOPMENTS OF IMPORTANCE

avoid the unnecessary delay caused by the filing of numerous pre-certification motions, but noted that this was only one factor to consider in the overall balance.<sup>25</sup> Ultimately, the Court was not satisfied that filing the defense would require undue time and effort and did not accept the defendants' argument that an extensive reformulation of the defense would be necessary if certification were granted.<sup>26</sup>

In *Timminco*, Justice Perell decided to "revisit the convention that defendants do not deliver a Statement of Defence before the certification motion."<sup>27</sup> In reaching the decision to ultimately compel the defendants to file their Statements of Defense prior to the certification hearing, Justice Perell observed that "all the causes of action that are pleaded have the potential to be tried, not just the ones that are certified for the common issues trial."<sup>28</sup> Furthermore, according to Justice Perell, "the rule that non-certified issues are not tried at the common issues trial is not an absolute rule."<sup>29</sup>

The potential implications of the *Timminco* decision are significant and may result in increased pre-certification motions challenging the Statement of Claim. Justice Perell recognized that such motions would allow for the refinement of the issues to be dealt with at certification and could effectively determine the certification criteria of existence of a cause of action prior to the certification hearing, thereby reducing some of the enormous cost involved.<sup>30</sup> Whether this procedural shift has its intended effect of reducing the time and expense of certification motions or whether it merely shifts the resource burden to pre-certification motions remains to be seen.

### Approval of Class Counsel Fees

#### a) *Smith Estate v. National Money Mart Co.*

The recent Ontario Court of Appeal decision in *Smith Estate v. National Money*

*Mart Co.*<sup>31</sup> has important future implications for the approval of class counsel fees and for the division of those fees among plaintiffs' counsel who are not class counsel.

The settlement in *Smith* included debt forgiveness, transaction credits and a cash payment. Class counsel sought approval of fees in the amount of C\$27,500,000, which was the full cash amount of the settlement. In fixing counsel's fees at C\$14,500,000 on an all-inclusive basis, the motion judge found that the settlement value put forward by class counsel far exceeded the settlement's true value. The Court of Appeal upheld the decision.

Class counsel retained several professionals, including legal counsel, a law professor, financial analysts, and a consulting firm to assist in preparing the action for trial. Class counsel did not seek prior Court approval for any of these professionals' involvement. The professionals were all retained on a contingency basis and sought a premium on their time as part of the fee approval motion. In denying the requested premium, both the motion judge and the Court of Appeal determined that non-lawyer experts retained by counsel ought to have their fees treated as disbursements, since neither the representative plaintiff nor the Court had approved them as counsel.

Class actions are increasingly pursued on a coalition basis across both provincial and national borders. The Court's decision in *Money Mart* should serve as important guidance to plaintiffs' counsel seeking to form coalitions to prepare cases for trial. Class counsel is appointed during the course of the certification motion; should additional counsel join the legal team post-certification, it will be incumbent on them to be both retained by the representative plaintiffs and to seek Court approval if they wish to seek payment other than on a disbursement basis once the action is resolved.

The second important issue raised by the Court of Appeal in *Money Mart* was

the role of class counsel in the approval of counsel fees. The usual practice is for class counsel to put forward the retainer and the fees for Court approval. In some cases, individual class members have come forward to make submissions concerning the fees. Defendants do not normally have standing to make submissions on the appropriate quantum of class counsel's fees. The Court of Appeal expressed frustration and concern about the non-traditional role assumed by the Court and the perceived conflict between class counsel's self-interest in the quantum of fees and their obligations to the class. The Court recognized the adversarial void in the fee approval process, which lies in stark contrast to the rest of the litigation process. The Court presented four potential remedies to this issue, all of which would involve the participation of independent third parties to represent the interests of the class, including (i) *amicus curiae*, (ii) monitors, (iii) guardians *ad litem*, and (iv) independent counsel.<sup>32</sup> Of the four options, the Court clearly favored the appointment of *amicus curiae*; however, the Court also made it clear that "appointment of *amicus* or a guardian is neither necessary nor desirable in every case."<sup>33</sup>

The potential involvement of third parties at the fee approval stage gives rise to practical considerations that remain to be determined. The Court of Appeal's decision is silent on the issue of who will appoint the third party, what the criteria for the appointment will be and how the third party will be remunerated. The involvement of a third party at the fee approval stage also presupposes that class counsel and the case management judge are unable to assess and determine an appropriate quantum of fees, a supposition not grounded in fee approval decisions to date.

#### b) Cases since *Money Mart*

While *Money Mart* raised the specter of third party involvement in the approval of class counsel fees, decisions since *Money*

# Class Actions – Plaintiff

## RECENT DEVELOPMENTS OF IMPORTANCE

*Mart* have followed the traditional approach to fee approval motions.

The Courts in several British Columbia actions involving payday loan businesses<sup>34</sup> approved class counsel fees without the involvement of an *amicus curiae* or other independent counsel. In contrast to *Money Mart*, the settlements in the BC cases included a substantial cash award for class members in addition to vouchers.

A different approach was taken on the settlement approval in a recent Ontario case. In *Boulanger v. Johnson and Johnson Corp.*, Justice Strathy deferred the final fee award for class counsel to ensure that an adequate fund remained to pay the claims of class members. In reasoning reminiscent of Justice Perell in *Money Mart*, Justice Strathy remarked that “it would be unacceptable to pay a very substantial fee to class counsel, only to find that there are insufficient funds remaining to pay claims in full.”<sup>35</sup> However, Justice Strathy awarded an interim fee and left the door open for counsel to apply for an increased award once the administrator could predict the anticipated number and value of eligible claims. Justice Strathy even suggested that class counsel may be entitled to interest on their fees as compensation for deferred payment.<sup>36</sup>

### BC Court of Appeal Closes the Door on Indirect Purchasers

In two decisions released together on April 15, 2011, *Pro-Sys Consultants Ltd. v. Microsoft*<sup>37</sup> and *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*,<sup>38</sup> the British Columbia Court of Appeal overturned two lower Court decisions and effectively closed the door on price-fixing class actions on behalf of indirect purchasers. The same panel of the Court heard both appeals consecutively and released the decisions together.

In both cases, the plaintiffs alleged that the manufacturers conspired to fix prices. The classes included indirect purchasers, who purchased the products from third parties, and not directly from the manufacturer.

The majority of the Court found that indirect purchasers have no cause of action as a matter of law. There was a dissenting judgment in each case. These decisions are in conflict with the leading decision of the Ontario Court of Appeal in *Chadha v. Bayer*<sup>39</sup> and the decisions following *Chadha*.<sup>40</sup>

The *Microsoft* case involved retail purchasers of computers installed with Microsoft operating systems and applications software. The plaintiffs alleged that Microsoft conspired with the computer manufacturers to remove competition and increase prices, and that these increases were passed on to the plaintiffs when they purchased their computers.<sup>41</sup>

The *Sun-Rype* case involved direct and indirect purchasers of high fructose corn syrup or products containing high fructose corn syrup. The plaintiffs alleged that the manufacturers conspired to fix the prices of the high fructose corn syrup resulting in an overcharge to the direct purchasers of high fructose corn syrup and an overcharge being passed on to the indirect purchasers of products containing high fructose corn syrup.<sup>42</sup>

The majority relied on *Kingsstreet Investment Ltd. v. New Brunswick (Finance)*,<sup>43</sup> a 2007 decision of the Supreme Court of Canada, in which the Court rejected the “passing on” defense. In that case the plaintiff, the owner of a nightclub, sought to recover a user charge tax on the purchase of alcohol on the basis that the tax was unconstitutional. The government claimed that the plaintiff suffered no damages, as it had passed on the taxes to its customers. The Supreme Court rejected the passing on defense in its entirety.

In *Microsoft* and *Sun-Rype*, the majority found that while direct purchasers are entitled to recover the whole of the amount of any overcharge, regardless of how much of it had been passed on, indirect purchasers “are effectively claiming a loss that in law is not recognized”.<sup>44</sup>

The Court referred to the 1977 US Supreme Court decision in *Illinois Brick*

*Co. v. Illinois*, which reached a similar result.<sup>45</sup> The concern is that a double recovery would result if the defendants were forced to pay the same loss to both the direct and the indirect purchasers, and that the law would not permit a double recovery.<sup>46</sup> Several US jurisdictions have enacted legislation to permit indirect purchaser lawsuits despite the decision in *Illinois Brick*, and the decision has been widely criticized.<sup>47</sup>

In dissenting reasons, Donald J.A. agreed with the majority that “the pass-through defence is dead”.<sup>48</sup> But, Donald J.A. disagreed that this automatically led to the conclusion that there was no cause of action for a pass-through claim. “Here, the remedies sought are either aggregate damages or a constructive trust in restitution — one amount for the entire class. There is no realistic possibility of double recovery with a single all-encompassing assessment. Furthermore, class proceedings are flexible enough to create ways and means of avoiding overrecovery.”<sup>49</sup>

The *Microsoft* action, which involved only indirect purchasers, was dismissed in its entirety.<sup>50</sup> The *Sun-Rype* action, which involved direct and indirect purchasers, was remitted back to the chambers judge for further consideration.<sup>51</sup>

The impact of these decisions is expected to be significant. There are currently several certified indirect purchaser class actions underway in jurisdictions across Canada. Although the decision is not binding outside of British Columbia, it will likely be influential in other jurisdictions and may lead to motions for decertification.

In Ontario, it is commonly held that indirect purchasers may plead price fixing based on the 2003 decision of the Court of Appeal for Ontario in *Chadha v. Bayer*. The Court decided in *Chadha* that indirect purchaser class actions could be certified in appropriate cases; the question was not whether indirect purchasers had a valid cause of action, but whether a



# Class Actions – Plaintiff

## RECENT DEVELOPMENTS OF IMPORTANCE

methodology existed by which their damages could be assessed.<sup>52</sup>

It is expected that the *Microsoft* and *Sun-Rype*<sup>53</sup> cases will be appealed to the Supreme Court of Canada, which will ultimately be asked to decide whether or not indirect purchasers may bring claims for price-fixing in Canada.

### Conclusion

It is too soon to determine how these developments will be followed in future cases, and what impact they will have on

class actions practice. Class actions have long been recognized as the “sport of kings”; the availability of third party funding has the potential to even the playing field, and earlier delivery of the Statement of Defenses may allow for better evaluation of cases by funders.

If, following *Timminco*, defendants are required to file a Statement of Defense before certification, funders will have an earlier opportunity to evaluate the merits of the action, which may assist class counsel seeking third party funding. While more

experienced counsel may not face the same hurdles in obtaining funding, a Statement of Defense may provide prospective funders with the information they need when dealing with less experienced counsel or novel issues in a class action. The prospect of obtaining funding may significantly decrease the risk and hence the barriers to entry to class actions for counsel and plaintiffs, which has the potential to increase accessibility to the Courts, and in the right measure, have a positive impact on promoting access to justice. ■

1. *Metzler Investment GMBH v. Gildan Activewear Inc.*, [2009] O.J. No. 3315 (S.C.J.) at paras. 36-43 & 72-73.
2. *Dugal v. Manulife Financial Corp.*, [2011] O.J. No. 1239 (S.C.J.) at para. 28.
3. *Ibid.* at para. 32.
4. *Ibid.* at para. 33.
5. *Hobshawn v. Atco Gas and Pipelines Ltd.* (May 14, 2009), Action 0101-04999 (Alta Q.B.), cited in *Dugal v. Manulife Financial Corp.*, [2011] O.J. No. 1239 (S.C.J.) at para. 21.
6. *MacQueen v. Sydney Steel Corporation* (October 19, 2010), Action 218010 (N.S.S.C.), cited in *Dugal v. Manulife Financial Corp.*, [2011] O.J. No. 1239 (S.C.J.) at para.22.
7. *Dugal v. Manulife Financial Corp.*, [2011] O.J. No. 1239 (S.C.J.), supp. reasons [2011] O.J. No. 3493 (S.C.J.).
8. *Ibid.* at para. 36.
9. *Ibid.* at paras. 33 & 36.
10. *Pennyfeather v. Timminco Limited.*, [2011] O.J. No. 3286 (S.C.J.).
11. *Ibid.* at para. 37.
12. *Mangan v. Inco Ltd.*, 30 O.R. (3d) 90, [1996] O.J. No. 2655 (Gen. Div.).
13. *Ibid.* at para. 13.
14. *Ibid.* at para. 12.
15. See *Stone Paradise Inc. v. Bayer Inc.*, [2005] O.J. No. 5657 (S.C.J.) at para. 7 [*Stone Paradise*]; *Glover v. Toronto (City)*, [2008] O.J. No. 604 (S.C.J.) at para. 8; *Pyssznji v. Orsu Metals Corp.*, [2009] O.J. No. 6295 (S.C.J.) at para. 10.
16. *Stone Paradise, ibid.*
17. *Scott v. TF Waterhouse Investor Services (Canada) Inc.*, [2000] B.C.J. No. 2524 (B.C.S.C.).
18. *Ibid.* at para. 41.
19. *Maclean v. Telus Corp.*, [2005] B.C.J. No. 1633 (C.A.) at para. 10.
20. *Ibid.* at paras. 12-13.
21. *Wakelam v. Johnson & Johnson*, [2009] B.C.J. No. 1255 (S.C.) at para. 2.
22. *Hoffman v. Monsanto Canada Inc.*, [2002] S.J. No. 281 (Q.B.) at para. 29.
23. *Monsanto v. Hoffman*, [2002] S.J. No. 607 (C.A.) at para. 28.
24. *Murray v. Alberta (Minister of Health)*, [2007] A.J. No. 428 (Q.B.).
25. *Ibid.* at para. 26.
26. *Ibid.* at paras. 28-29.
27. *Pennyfeather supra* note 10 at para. 9.
28. *Ibid.* at para. 30.
29. *Ibid.* at para. 35.
30. *Ibid.* at paras. 88-89.
31. *Smith Estate v. National Money mart Co.*, [2011] O.J. No. 1321 (C.A.).
32. *Ibid.* at paras. 23-33.
33. *Ibid.* at para. 33.
34. See *Bartolome v. Nationwide Payday Advance Inc.*, [2010] B.C.J. No. 1994 (S.C.); *Bodnar v. Payroll Loans Ltd.*, [2010] B.C.J. No. 2038 (S.C.); *Bartolome v. Mr. Payday Easy Loan Inc.*, [2010] B.C.J. No. 1996 (S.C.); *Bodnar v. Cash Store Inc.*, [2010] B.C.J. No. 192 (S.C.); *Casavant v. Cash Money Cheque Cashing Inc.*, [2010] B.C.J. No. 190 (S.C.); and *Mackinnon v. National Money Mart Company*, [2010] B.C.J. No. 1436 (S.C.).
35. *Boulanger v. Johnson & Johnson Corp.*, [2010] O.J. No. 1913 (S.C.J.) at para. 14.
36. *Ibid.* at para. 16.
37. *Pro-Sys Consultants Ltd. v. Microsoft*, [2011] B.C.J. No. 688 (C.A.) [*Pro-Sys Consultants Ltd.*].
38. *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, [2011] B.C.J. No. 689 (C.A.) [*Sun-Rype Products Ltd.*].
39. *Chadha v. Bayer*, [2003] O.J. No. 27 (C.A.) [*Chadha*], leave to appeal to the S.C.C. refused, [2003] S.C.C.A. No. 106.
40. See for example: *Irving Paper Ltd. v. Atofina Chemicals Inc.*, [2010] O.J. No. 2472 (S.C.J.) at paras. 3, 65 [*Irving Paper Ltd.*]; *Fanshawe College of Applied Arts and Technology v. LG Philips LCD Co.*, [2011] O.J. No. 2337 (S.C.J.) at para. 57 [*Fanshawe*].
41. *Pro-Sys Consultants Ltd.*, *supra* note 37 at paras. 3-4.
42. *Sun-Rype Products Ltd.*, *supra* note 38 at para. 2.
43. *Kingstreet Investment Ltd. v. New Brunswick (Finance)*, [2007] 1 S.C.R. 3.
44. *Sun-Rype Products Ltd.*, *supra* note 38 at para. 80.
45. *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).
46. *Sun-Rype Products Ltd.*, *supra* note 38 at paras. 28-29.
47. *Ibid.* at para. 91.
48. *Ibid.* at para. 33.
49. *Ibid.* at para. 26.
50. *Ibid.* at paras. 74, 97, 98.
51. *Ibid.* at para. 98.
52. *Chadha, supra* note 39 at para. 52. See also *Irving Paper Ltd.*, *supra* note 40 at paras. 51, 65; *Fanshawe, supra* note 40 at para. 50.
53. *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, [2011] S.C.C.A. 236.

# Class Actions – Plaintiff

## RECENT DEVELOPMENTS OF IMPORTANCE



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Victoria Paris is one of the founding principals of Kim Orr Barristers. Her litigation practice is focused on the prosecution and defense of class actions, complex commercial litigation and regulatory proceedings. Victoria's broad range of experience includes acting for plaintiffs and defendants in securities, insurance, pension and pharmaceutical and medical devices class actions. Victoria has also appeared before administrative bodies on behalf of healthcare professionals and investment advisors. Victoria has acted as counsel to multinational public companies on litigation matters in Canada, the United States and Greece. Victoria is the liaison counsel between the US MDL and Canadian counsel groups across the country on a broad range of cases. Victoria is the co-editor of the Kim Orr Class Action Reporter to be distributed by Thomson West. In 2010, Victoria was named in *Lexpert*'s "Rising Stars: Leading Lawyers Under 40" and was most recently recognized as one of Canada's "Litigation Lawyers to Watch" in the December 2011 issue of the *Lexpert* Guide to the Leading US/Canada Cross-border Litigation Lawyers.



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