

# National Conference on Class Actions 2023

**Day 1: Wednesday, November 22, 2023 - 8:30 a.m. to 12:15 p.m.**

**8:30 a.m. - 8:40 a.m.: Welcome and opening remarks**

- Anne Merminod, Partner, Borden Ladner Gervais, Montréal, QC

**8:40 a.m. - 9:50 a.m.: Annual review of the Québec case law**

In keeping with tradition, our speakers will kick off the conference with a presentation of key decisions from Québec class action case law issued in recent months.

**Moderator**

- Jean-Philippe Lincourt, Belleau Lapointe, Montréal, QC

**Panel**

- Faiz Lalani, Daviwa Ward Phillips & Vineberg, Montréal, QC
- Jean-Marc Lacourcière, Trudel Johnston & Lespérance, Montréal, QC

**9:50 a.m. - 10 a.m.: Break**

**10 a.m. - 11:10 a.m.: Annual review of case law in common law provinces**

This presentation will focus on recent developments in class actions in the common law provinces. A selection of interesting judgments and highlights from the past year will be discussed.

**Moderator**

- Eliot N. Kolers, Stikeman Elliott, Toronto, ON

**Panel**

- Luciana Brasil, Branch MacMaster LLP, Vancouver, B.C.
- Cheryl M. Woodin, Bennett Jones, Toronto, ON

### **11:10 a.m. - 12:15 p.m.: The concept of reliance in the context of securities class actions - a comparative approach**

This panel focuses on the concept of reliance and its application in the context of securities class actions in both Canada and the United States. Topics include: (i) the distinction between loss causation and transaction causation as applied in U.S. litigation; (ii) the fraud-on-the-market theory and its application in the U.S. and Canada; and (iii) the application of the concept of reliance in the context of an action under section 1457 of the C.C.Q.

#### **Moderator**

- Michel Gagné, McCarthy Tétrault, Montréal, QC

#### **Panel**

- Michael J. Miarmi, Lieff Cabraser Heimann & Bernstein, New York, U.S.
- Emilie B. Kokmanian, Scott + Scott, New York, U.S.
- Caroline Larouche, Norton Rose Fulbright Canada, Montréal, QC
- Jonathan S. Carter, Sullivan & Cromwell, New York, U.S.

## **Day 1: Wednesday, November 22, 2023 - 12:15 p.m. to 5 p.m.**

**12:15 p.m. - 1:30 p.m.: Lunch (included if you registered to attend in person)**

### **1:30 p.m. - 2:45 p.m.: Burden of proof in cases tried on the merits involving allegations of misrepresentation**

This panel will address the complex issue of the burden of proof in the context of cases tried on the merits involving allegations of misrepresentation. The focus will be on the legal and conceptual challenges faced by the parties involved, whether plaintiffs or defendants. Speakers will analyze the various approaches used to establish the proof required in such cases, and discuss recent judgments on the matter.

#### **Moderator**

- Vincent de l'Étoile, Langlois, Montréal, QC

#### **Panel**

- Mathieu Charest Beaudry, Trudel Johnston & Lespérance, Montréal, QC
- Stéphane Pitre, Borden Ladner Gervais, Montréal, QC
- Jonatan Foreman, Foreman & Co, London, ON

**2:45 p.m. - 3 p.m.: Break**

**3 p.m. - 4 p.m.: Preliminary exceptions (arbitration, declinatory exception and dismissal) in class actions**

The preliminary exceptions that can be presented at the authorization stage are limited. How can we be more creative? Our speakers will review the case law on the most frequently invoked exceptions and provide some practical tips on how to articulate and present them. Join us for an insightful and interactive discussion led by seasoned professionals who will shed valuable light on the sometimes significant impact of preliminary exceptions in the course of class action proceedings.

**Moderator**

- Myriam Bixi, Lavery, Montréal, QC

**Panel**

- Jeff Orenstein, Consumer Law Group, Montréal, QC
- Claude Marseille, Ad. E., Blakes, Montréal, QC
- Timothy Pinos, Cassels, Toronto, ON

**4 p.m. - 4:45 p.m.: State immunity at the authorization stage: state of the law in 2023 and avenues for reflection**

This talk will provide an overview of the various types of immunity from civil liability at the authorization stage of a class action. We will discuss the nature of these immunities, **their underlying principles and the way Québec courts have dealt with immunity** arguments at the authorization stage. The speakers will give us food for thought regarding the current state of the law, the interaction between class actions as procedural mechanisms and the various concepts of public law that impact the liability of state entities.

**Moderator**

- Audrey Boctor, IMK, Montréal, QC

**Panel**

- Alexandra Hodder, Bernard, Roy (Justice Québec), Montréal, QC
- Gabriel Lavigne, Bernard, Roy (Justice Québec), Montréal, QC
- Caroline Laverdière, Department of Justice Canada, Montréal, QC

**4:45 p.m.: End of day 1.**

**Day 2: Thursday, November 23, 2023 - 8:30 a.m. to 12:15 p.m.**

### **8:30 a.m. - 8:40 a.m.: Welcome and opening remarks**

- Anne Merminod, Partner, Borden Ladner Gervais, Montréal, QC

### **8:30 a.m. - 9:45 a.m.: First Nations class actions**

Our speakers will offer an overview of class actions undertaken on behalf of Indigenous peoples in recent years, highlight the main challenges that define them and the outcomes of these cases.

#### **Moderator**

- Joséane Chrétien, McMillan, Montréal, QC

#### **Panel**

- Catharine Moore, Department of Justice Canada, Ottawa, ON
- David Sterns, Sotos, Toronto, ON
- David Schulze, Dionne Schulze, Montréal, QC

### **9:50 a.m. - 10 a.m.: Break**

### **10 a.m. - 11 a.m.: A panel of Superior Court judges**

Judges from various Canadian jurisdictions will comment on class actions and the challenges they pose in terms of saving judicial resources and access to justice.

#### **Moderator**

- Sylvie Rodrigue, Ad.E., Torys, Montréal, QC

#### **Panel**

- Donald Bisson, Judge, Superior Court of Québec, Montréal, QC
- Paul Crampton, Judge, Federal Court, Ottawa, ON
- Paul Perrell, Ontario Superior Court of Justice, Toronto, ON
- Sharon Mathews, Supreme Court of British Columbia, Vancouver, B.C.

### **11 a.m. - 11:15 a.m.: Break**

### **11:15 a.m. - 12:15 p.m.: Drawing the line between collective and individual recovery - A practical guide**

As class actions increasingly proceed on the merits, this panel will address two issues: (a) how to prove common prejudice for class recovery, and (b) how to approach "mini-trials" related to individual recovery from a practical point of view. The panellists will discuss the key criteria, strategies and practical considerations behind this delicate distinction.

## Moderator

- Kristian Brabander, Osler, Montréal, QC

## Panel

- Jacques R. Fournier, Borden Ladner Gervais, Montréal, QC
- Marie-Pier Nadeau, Fasken, Montréal, QC
- Pierre Boivin, Kugler Kandestin, Montréal, QC

## **Day 2: Thursday, November 23, 2023 - 12:15 p.m. to 5 p.m.**

**12:15 p.m. - 1:45 p.m.: Lunch - Keynote - The artificial intelligence revolution**

**1:45 p.m. - 2:40 p.m.: ESG (Environmental, Social and Governance) class actions: A new wave ahead?**

Increased community involvement around ESG issues, along with a growing number of mandatory reporting requirements for certain types of public companies, have increased the likelihood of ESG-related litigation. This panel will provide an overview of class actions filed in several jurisdictions around the world, as well as an analysis of the **current and anticipated situation in Québec and Canada in regards to environmental matters**, including greenwashing, and securities, labour, diversity, health and safety issues.

## Moderator

- Josée Cavallancia, Æquo Shareholder Engagement Services and INF LLP, Montréal, QC

## Panel

- Julie Girard, Davies Ward Phillips & Vineberg, Montréal, QC
- Gerald L. Maatman, Duane Morris LLP, Chicago, U.S.
- Céline Barnwell, Pogust Goodhead, London, U.K.

**2:50 p.m. - 3 p.m.: Break**

**3 p.m. - 4 p.m.: Recent developments in multi-jurisdictional class actions**

National class actions are an integral part of the Canadian legal landscape, and have given rise to a wealth of case law. Whether suspending or settling a class action, our **courts have endorsed - or rejected - this type of action for many practical reasons**, including economy and the principle of judicial comity.

As nationwide class actions make their way to trial for the first time, important substantive law concerns arise. For example, does the filing of a class action in a given

province on behalf of non-residents suspend the statute of limitations on their actions in opt-out jurisdictions? How will a judge in a given jurisdiction assess the differences **between provincial legal systems? Is the Québec legal system compatible with the concept of national class actions**, or does it require a special approach?

These are just a few of the questions that will be addressed in this lively debate on national class actions.

#### **Moderator**

- Sylvain Lussier, judge, Superior Court of Québec, Montréal, QC

#### **Panel**

- Maxime Nasr, Belleau Lapointe, Montréal, QC
- Emmanuelle Rolland, Audren Rolland, Montréal, QC
- Michelle Segal, Camp Fiorante Matthews Mogerman, Vancouver, BC

#### **4 p.m. - 5 p.m.: The right representative plaintiff - who is that really?**

How can we assess the quality of a representative plaintiff? To what extent must they be personally committed to the successful outcome of the class action? In addition to the absence of conflict of interest and a personal cause of action, what are the prerequisites and inherent qualities that the court is entitled to expect from a representative plaintiff? Our panellists will address all of that and more.

#### **Moderator**

- Yves Martineau, Stikeman Elliott, Montréal, QC

#### **Panel**

- Laurence Bich-Carrière, Lavery, Montréal, QC
- David Bourgoin, BGA Avocats, Québec, QC
- Jean Samoisette (representative plaintiff in *Samoisette c. IBM Canada Ltée*)

#### **5 p.m.: Closing of the conference**

Expertise

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