

# 12TH NATIONAL SYMPOSIUM ON CLASS ACTIONS



An annual must attend program that features over 35 top experts. This year's program topics include:

- Settlement approvals: is the court becoming more aggressive in rejecting settlements?
- Competition class actions: how is the SCC trilogy playing out one year later?
- Will U.S. courts certify classes that include Canadians? When?
- Privacy claims: direction of the law given *Condon* and *Evans*
- *Kaynes v. BP*: jurisdiction over extraterritorial classes in securities cases
- When is a statutory remedy a bar to a class action?
- How do class actions interact with CCA/bankruptcy proceedings?
- Update from the LCO: status update on CPA and class actions practice review
- International developments in Class Actions

**Plus!** Don't miss the **Live Moot Court** session

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Interactive in-person program

#### Chair

**Garry D. Watson, QC**  
*Professor Emeritus, Osgoode Hall  
Law School, York University*

#### Dates and Times

April 23 - 24, 2015  
9:00 a.m. - 5:15 p.m.  
9:00 a.m. - 12:30 p.m.

#### Location

Osgoode Professional Development  
1 Dundas St. W., 26th Floor  
Toronto, ON

#### Wine & Cheese Reception

April 23, 2015  
5:15 p.m.

## 12TH NATIONAL SYMPOSIUM ON CLASS ACTIONS

Class actions are still booming, with a never-ending list of high profile new cases. These complex litigation files continue to foster old and new challenges for those professionals who must be on top of their game to succeed. Perennial issues include the latest in competition and securities class actions, and a review of the class actions trials of the year.

In addition, questions relating to insurance issues, the latest in settlement approvals and reforms to *Ontario's Class Proceedings Act* are also on the horizon. Canada's premier forum for class actions debate, now in its 12th year, brings together leaders from both sides of the bar as well as experienced judges and academics to share and explain the strategies and tactics at play in this form of high-stakes litigation. This year's program includes outstanding faculty and new topics, including the Latest in U.S. Class Actions; a discussion of International Developments (lead by a panel of international experts) and a unique Live Moot Court session.

Through lively panel discussions, *OsgoodePD's* expert faculty will critically examine today's hot-button issues, and guide you through the many complexities of class actions litigation.

Space is limited. Secure your place for Canada's authoritative Class Actions conference.

**REGISTER NOW BY VISITING [WWW.OSGOODEPD.CA](http://WWW.OSGOODEPD.CA),  
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OR FAXING 416.597.9736**

### WHO SHOULD ATTEND

- Plaintiff and Defence Counsel Practising in Class Actions
- In-House Counsel
- Government Litigators
- Liability Insurers
- Notice and Settlement Specialists

### Chair

**Garry D. Watson, QC**, Professor Emeritus, Osgoode Hall Law School  
York University

### Faculty

**Marie Audren\***, Borden Ladner Gervais LLP, Montreal

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

**Jason K. Balgopal**, Ministry of the Attorney General for Ontario - Counsel in Residence, Law Commission of Ontario

**John H. Beisner**, Skadden, Arps, Slate, Meagher & Flom LLP  
Washington, DC

**Paul R. Bennett**, Hordo Bennett Mounteer LLP

**Ward K. Branch\***, Branch MacMaster LLP, Vancouver

**Theodore P. Charney**, Charney Lawyers LLP

**The Hon. Justice Chantal Corriveau**, Superior Court of Quebec, Montreal

**The Hon. Justice Barbara A. Conway**, Ontario Superior Court of Justice

**Chesley F. Crosbie, QC**, Ches Crosbie, Barristers, St. John's, NL

**Neil Finkelstein**, McCarthy Tétrault LLP

**Mary Margaret Fox**, Clyde & Co. Canada LLP

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

**Professor Manuel A. Gomez**, Florida International University College of Law, Miami, FL

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

**Joseph Groia**, Groia & Company Professional Corporation

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

**Carsten Jensen, QC, FCI Arb**, JSS Barristers, Calgary

**Craig E. Jones, QC**, Branch MacMaster LLP

**Jasminka Kalajdzic**, Associate Professor, Faculty of Law University of Windsor

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

**Adrian C. Lang\***, Associate General Counsel BMO Financial Group

**Dimitri Lascaris**, Siskinds LLP  
London, Ontario

**André Lespérance**, Lauzon Bélanger Lespérance Inc.  
Montreal

**Larry Lowenstein**, Osler, Hoskin & Harcourt LLP

**The Hon. Justice Wendy M. Matheson**, Ontario Superior Court of Justice

**Gordon McKee\***, Blake, Cassels & Graydon LLP

**Catherine McKenzie**, Irving Mitchell Kalichman LLP, Montreal

**William W. McNamara**, Norton Rose Fulbright Canada LLP

**Grant B. Moffat**, Thornton Grout Finnigan LLP

**Reidar M. Mogerman**, Camp Fiorante Matthews Mogerman  
Vancouver

**Tim Pinos**, Cassels Brock & Blackwell LLP

**Emmanuelle Rolland**, Borden Ladner Gervais, Montreal

**Kenneth T. Rosenberg**, Paliare Roland Rosenberg Rothstein LLP

**Kevin L. Ross**, Lerners LLP  
London, Ontario

**David Sterns**, Sotos LLP

**Steven Stieber**, Stieber Berlach LLP

**The Hon. George R. Strathy**, Chief Justice, Court of Appeal for Ontario

**Randy C. Sutton**, Norton Rose Fulbright Canada LLP

**Ianika N. Tzankova**, Morganti Legal/Bentham Europe/  
Tilburg University, Tilburg the Netherlands

**Paul B. Vickery**, Senior General Counsel, Litigation, Branch Department of Justice Canada

**Margaret L. Waddell, LSM**, Paliare Roland Rosenberg Rothstein LLP

**K. Craig Wildfang**, Robins Kaplan LLP, Minneapolis, MN

**Charles M. Wright\***, Siskinds LLP, London, Ontario

\*Planning Committee (also includes **The Hon. Justice Edward P. Belobaba**, Ontario Superior Court of Justice; **Garry D. Watson, QC**, Professor Emeritus, Osgoode Hall Law School, York University)

Why this event is essential  
for the Class Actions bar ...



## AGENDA

DAY ONE: THURSDAY, APRIL 23, 2015

**8:30-9:05**

### Registration and Continental Breakfast

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**9:05-10:00**

### Caselaw Update: 2013-2014 SCC Class Action Decisions

**Moderator**

**Emmanuelle Rolland**, *Borden Ladner Gervais, Montreal*

**Panelists**

**Catherine McKenzie**, *Irving Mitchell Kalichman LLP Montreal*

**Neil Finkelstein**, *McCarthy Tétrault LLP*

- The new bank trilogy ("Marcotte"): the impact within and outside of Quebec
- *Vivendi Canada Inc. v. Dell'Aniello*: the commonality requirement
- *Amex Bank of Canada v. Adams*: interjurisdictional immunity or federal paramountcy
- *AIC Ltd. v. Fischer*: preferability requirement for certification

**10:00-10:45**

### Insurance Issues that Drive Class Actions

**Moderator**

**Ward K. Branch**, *Branch MacMaster LLP, Vancouver*

**Panelists**

**Steven Stieber**, *Stieber Berlach LLP*

**Mary Margaret Fox**, *Clyde & Co. Canada LLP*

- When to ask for the policy/what to look for
- Making sure there isn't more than one policy engaged
- The implications of pleading an intentional act
- The importance of pleading resultant damage

**10:45-11:00**

### Refreshment Break

**11:00-11:45**

### International Developments in Class Actions

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**Moderator**

**Jasminka Kalajdzic**, *Associate Professor, Faculty of Law University of Windsor*

**Panelists**

**Professor Manuel A. Gomez**, *Florida International University College of Law, Miami, FL*

**Ianika N. Tzankova**, *Morganti Legal, Bentham Europe, Tilburg University, Tilburg, the Netherlands*

**Randy C. Sutton**, *Norton Rose Fulbright Canada LLP*

- New collective action regimes
- Procedural developments: opting in/out; financing; contingency fees
- Enforcement of foreign judgments
- Availability of remedies in different jurisdictions

**11:45-12:30**

### Competition Class Actions: Post SCC Trilogy

**Moderator**

**David Sterns**, *Sotos LLP*

**Panelists**

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

**Charles M. Wright**, *Siskinds LLP, London, Ontario*

- How is the SCC trilogy playing out one year later?
- New positions taken by defendants on certification
- Are plaintiffs constructing their cases any differently?
- Dealing with inter-class conflicts
- How are courts seeking to distribute monies to indirect purchasers?

**12:30-1:30**

### Luncheon

**1:30-2:15**

### Live Moot Court: The National Class Action

**Judges**

**The Hon. Justice Wendy M. Matheson**

*Ontario Superior Court of Justice*

**Paul B. Vickery**, *Senior General Counsel, Litigation Branch, Department of Justice Canada*

# AGENDA (Cont'd)

**Carsten Jensen, QC, FCI Arb, JSS Barristers, Calgary**

## Counsel

**Paul R. Bennett, Hordo Bennett Mounteer LLP**

**Tim Pinos, Cassels Brock & Blackwell LLP**

In this unique session, Counsel will conduct a mock trial of a national class action case appearing before the SCC.

Specific topics raised will include:

- Are national class actions constitutional?
- Jurisdiction of provincial courts over class actions with members from other provinces
- Recognition by another provincial court and the role of notice
- Can the national class dilemma be solved?

## 2:15-2:45

### A Review of the *Class Proceedings Act* and Class Actions Practice by the Law Commission of Ontario

**Jason K. Balgopal, Ministry of the Attorney General for Ontario - Counsel in Residence, Law Commission of Ontario**

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

**Margaret L. Waddell, LSM, Paliare Roland Rosenberg Rothstein LLP**

- Status update and what is yet to come
- Timing: what the class actions bar can expect
- Potential implementation of any recommended changes

## 2:45-3:00

### Refreshment Break

## 3:00-3:45

### The Latest in U.S. Class Actions

#### Moderator

**Gordon McKee, Blake, Cassels & Graydon LLP**

#### Panelists

**John H. Beisner, Skadden, Arps, Slate, Meagher & Flom LLP, Washington, DC**

**K. Craig Wildfang, Robins Kaplan LLP, Minneapolis, MN**

- What lives/dies as a class action in the US?
- The new trends for class action activity in the US
- How has *Walmart v. Dukes* been applied?
- How are the Circuit courts applying the *Comcast* decision?
- "Ascertainability" requirement: what does this entail?
- Will US courts certify classes that include Canadians? When?
- U.S. judicial review of proposed class settlements

## 3:45-4:30

### Privacy Claims/Intrusion Upon Seclusion

#### Moderator

**Craig E. Jones, QC, Branch MacMaster LLP, Vancouver**

#### Panelists

**Theodore P. Charney, Charney Lawyers LLP**

**Adrian C. Lang, Associate General Counsel, BMO Financial Group**

Recent data breaches have resulted in class actions in the U.S. and Canada. The Federal Court of Canada also recently

certified a class action (*Condon et al.*) on the basis of the new tort "intrusion upon seclusion" and on the basis of breach of contract. This panel will explore:

- The recent surge of privacy class actions
- The direction of the law given the *Condon* and *Evans v. The Bank of Nova Scotia* decisions
- The defendant's views on defending such claims

## 4:30-5:15

### The Complicated Interplay: Statutory vs. Common Law Causes of Action

#### Moderator

**Kevin L. Ross, Lerner LLP, London, Ontario**

#### Panelists

**Reidar M. Mogerman, Camp Fiorante Matthews Mogerman Vancouver**

**William W. McNamara, Norton Rose Fulbright Canada LLP**

- A review of first principals established in multiple jurisdictions
- The application to substantive areas including Consumer Protection, Competition, IP and Privacy
- Implications for the formulation of Class Proceedings: identifying causes of action and the quest for a National Class
- Where are we heading?

## 5:15

### Day One Concludes

## WINE & CHEESE RECEPTION

Immediately following the last session of Day One. All delegates and faculty are cordially invited to attend.

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## DAY TWO: FRIDAY, APRIL 24, 2015

## 8:30-9:00

### Registration and Continental Breakfast

## 9:00-9:45

### The Troublesome Class Actions/CCAA/Bankruptcy Overlap

#### Moderator

**The Hon. Justice Barbara A. Conway**  
*Ontario Superior Court of Justice*

#### Panelists

**Kenneth T. Rosenberg, Paliare Roland Rosenberg Rothstein LLP**

**Grant B. Moffat, Thornton Grout Finnigan LLP**

- How do class actions interact with CCAA and bankruptcy proceedings?

## AGENDA (Cont'd)

- What's the difference between bankruptcy and a CCAA filing?
- Proving within a bankruptcy what the class action is worth
- How and where do fees get approved?
- Interacting with the U.S. and other jurisdictions

**9:45-10:30**

### The Latest in Securities Class Actions

#### Moderator

**Dimitri Lascaris**, *Siskinds LLP, London, Ontario*

#### Panelists

**Joseph Groia**, *Groia & Company Professional Corporation*

**Larry Lowenstein**, *Osler, Hoskin & Harcourt LLP*

- Jurisdiction over extraterritorial classes in securities cases
  - *Kaynes v. BP; Excalibur; Canadian Solar*
- The leave standard: *Green v CIBC; Theratechnologies; Kinross*
- Disclosure/production obligations in leave motions
- The civil liability regime under the proposed federal securities legislation: how is it different from the *Ontario Securities Act*?

**10:30-10:45**

### Refreshment Break

**10:45-11:30**

### The Class Action Trials of the Year

#### Moderator

**Marie Audren**, *Borden Ladner Gervais, Montreal*

#### Panelists

**Chesley F. Crosbie, QC**, *Ches Crosbie, Barristers, St. John's, NL*

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

**André Lespérance**, *Lauzon Bélanger Lespérance Inc., Montreal*

- The challenges of lengthy common issues trials
- Lengthy trials and defendant conduct which may be viewed as designed to fiscally strangle the plaintiffs' claim
- Evidentiary management in common issues trials
- The role of public nuisance as a tenable cause of action
- The role of aggregate damages
- The role of public opinion

**11:30-12:30**

### The Latest Issues in Settlement Approvals

#### Moderator

**The Hon. George R. Strathy**

*Chief Justice, Court of Appeal for Ontario*

#### Panelists

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

**The Hon. Justice Chantal Corriveau**

*Superior Court of Quebec, Montreal*

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

- Are judges becoming more aggressive in rejecting settlements?
- What about the concept of amicus counsel? Who pays for such a role?
- Recent cases to discuss: *Quiznos; Thomson-Reuters*

**12:30**

### Conference Concludes

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# REGISTRATION

## 12th National Symposium on Class Actions

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\$1695 plus 13% HST

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

### CPD Credits Eligible CPD/MCLE Hours:



**LSUC (ON):** 10.75 Substantive Hours; **NY CLE (onsite participants only):** 11.5 credit hours in the Area of Professional Practice for Transitional and Non-transitional lawyers. OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions. To inquire about credit eligibility, please contact [cpd@osgoode.yorku.ca](mailto:cpd@osgoode.yorku.ca).

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

### Registrant Information

Please complete all registrant information.

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### 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 (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.

### Dates & Time

April 23 - 24, 2015

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

9:00 a.m. - 12:30 p.m.

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

### Location

Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3



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