



Class Actions

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Overview

Class actions are the litigation trend of the 21st century. They provide Plaintiffs who have similar claims with a powerful new tool to band together. They pose new challenges for Defendants who must now face novel claims seeking large payouts, sometimes in the billions of dollars. Both sides need expert legal counsel to guide them through this new landscape. That's where we come in.

Field Law has plenty of experience in complex and mass tort litigation where the stakes are high. We have defended billion dollar construction suits, pursued claims against governments for injury to hundreds, even thousands, of plaintiffs, and handled some of the longest and most complicated trials in Alberta and Canada. We enjoy helping clients with their challenges.

So class actions are a natural for us. Field Law is the Alberta firm on the team that negotiated the \$5 billion Indian Residential School class action settlement. Field Law is the firm Alberta hospitals turned to when news stories about improperly-sterilized medical equipment became class action lawsuits. We believe you will get better service from a law firm that knows what it's like to have been on both sides of a class action.

To view the Canadian Bar Association Class Action Database, click [here](#).

For more information please contact Dan Carroll at dcarroll@fieldlaw.com.

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What is a Class Action?

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Let's walk through the class action process and discuss the Who, What, When, Where, Why and How behind a class action.

Who?

Any individual who is prepared to act as a representative plaintiff can commence a class action. The power of the procedure is that the lawsuit commenced by a representative plaintiff exposes the defendant to the multiplied risk of many claims in a single process. Class actions are a substitute for multiple plaintiff – similar claim litigation and the resulting profusion of individual lawsuits. For instance, one person exposed downstream to carcinogenic material can sue on behalf of all who are or were exposed.

What?

Class actions are creatures of statute – in Alberta, the *Class Proceedings Act*. A class action is a lawsuit commenced by a single party ("representative plaintiff") on his or her own behalf and on behalf of all those other persons ("the class") with a claim for a remedy for the same or a similar alleged wrong.

In theory, the differences between a class action and an ordinary action are merely procedural, and the substantive law as to the causes of action, causation, damages and so forth does not differ from an individual action.

The representative plaintiff instructs and works with counsel, enters into a fee agreement with counsel (subject to Court approval and generally a contingency arrangement) and is exposed personally to costs (in Alberta), all on behalf of the class.

Upon certification in Alberta, all residents of the province who meet the class definition are deemed to be members of the class, unless he or she opts out. Alberta law has recently changed so that like other jurisdictions (e.g. Saskatchewan, Ontario), a non-resident is also a member of the class unless he or she opts out.

When?

In Alberta, class actions have been available since April 1, 2004 – when the legislation was proclaimed into force.

In Federal Court, class actions have been available since September 12, 2002 when the Rules were amended to institute the procedure.

A class action must be commenced within the applicable limitation period, like any other lawsuit. This may be governed by Alberta law or by the law of Canada in some cases.

Where?

Class actions in Alberta are started in the Court of King's Bench. The usual jurisdictional rules apply to the proceedings, including with respect to jurisdiction over defendants outside the province.

A class action can purport to have "reach" outside Alberta as to the composition of the class, as the class can be defined to also include members from outside the province, although those not resident in the province who choose to opt out will be excluded.

Class actions in Federal Court are started in Federal Court. Usually such actions are against His Majesty the King in Right of Canada.

Why?

Class action legislation was enacted to serve three purposes:

1. Enhancement of Justice – improve access to the courts, avoid inconsistent findings
2. Judicial economy – one suit, not many
3. Behaviour modification - greater deterrence of wrongdoing

The power of class actions in that they can hold to account wrongdoers whose wrong causes harm to many without each class member having to fund their own individual lawsuit.

How?

Filing a Statement of Claim commences a class action. The action is case managed from the start. The first order of business, often before Statements of Defence are filed or records are produced, is the application for certification.

In order to proceed as a class action, an action must be certified – i.e. approved by the Court of King's Bench a class action – pursuant to the provisions of the *Class Proceedings Act*, Part 1.

Section 5 sets out the test for certification:

5(1) In order for a proceeding to be certified as a class proceeding on an application made under section 2 or 3, the Court must be satisfied as to each of the following:

1. the pleadings disclose a cause of action
2. there is an identifiable class of 2 or more persons;
3. the claims of the prospective class members raise a common issue, whether or not the common issue predominates over issues affecting only individual prospective class members;
4. a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;
5. there is a person eligible to be appointed as a representative plaintiff who, in the opinion of the Court,
6. does not have, in respect of the common issues, an interest that is in conflict with the interests of other prospective class members.
7. has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
8. will fairly and adequately represent the interests of the class,

If certified, the action will then go through the usual steps of filing and service of pleadings (including possible third party Notices), record production, examination for discovery, exchange of expert reports and trial.

Trial will resolve the common issues and further proceedings will be required to resolve individual issues, such as damages assessment. Settlement is subject to court approval on notice to the class members, who can opt out of a settlement should they choose. The results of trial or an approved settlement bind all class members unless they opt out.

Notable Work

Class actions are lawsuits brought by one plaintiff on behalf of many. Because of their unique procedural structure, class actions are intensely strategic in both their process and substance. Field lawyers are in the unique position of having advocated for both plaintiffs and defendants and have deep experience with the complexities from both perspectives.

Some of our experience includes:

- Lead Alberta counsel in both Alberta and national class proceedings arising out of the Indian Residential Schools' and Chair of the Steering Committee for the National Consortium, an alliance of over 20 plaintiffs' firms from across Canada. The Indian Residential Schools' class litigation was settled with Canada and the churches for a value of approximately \$5 billion.
- Defense counsel in a class action by investors in a corporate scheme that resulted in an approximately \$70 million loss. We defended the claim on behalf of a professional allegedly involved in the scheme. This lawsuit was settled as against our client without any payment to the plaintiffs.
- Plaintiff counsel in a \$200 million claim against Canada for regulatory negligence in connection with its imposition of import restrictions banning the import of honeybees from the United States. We were successful at the Federal Court of Appeal in establishing that there is a reasonable cause of action, with leave to appeal further to the Supreme Court sought by Canada denied. The lawsuit was certified as a class action in February 2017.
- Defense counsel in a multi-billion dollar claim that Alberta and its health care system improperly overcharged seniors in extended care facilities. We were successful in having this lawsuit dismissed after trial. An appeal from that dismissal was also dismissed.
- Lead Plaintiff counsel in the prosecution of claims for damages as a result of illegal sexual sterilization by Alberta. We were plaintiff counsel for both the initial trial decision involving Leilani Muir and the later mass action litigation on behalf of thousands against the provincial government. This is called a "mass action" because it was brought before the passage of class action legislation in Alberta. The mass action claim was successfully settled on the eve of trial.