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The Evolution of the Class Action Trial in Ontario


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The Evolution of the Class Action Trial in Ontario

Abstract

Only a few short years ago, there was a nearly universal view among practitioners in the class actions field: any class action case that could be certified was almost surely going to settle. The fact of the matter, however, is that this universal view is incorrect. Full-blown class action trials have been occurring in Canada for decades. The authors of this paper embarked on an investigative research project in 2011, aimed at discovering, to the greatest extent possible, all class action matters across the country that had been tried since the advent of class action legislation. Because there were no sources of consolidated information, the investigation required both conventional and unconventional research techniques. This paper will describe the investigation and its surprising results, suggest techniques for trial management, and conclude that class action proceedings have evolved into a healthy process for trial resolution.

Keywords

class actions, plaintiffs, litigation, lawsuits, Canada, torts, trials, Harrison Pensa, group actions, Ontario, aggregate damages, costs, awards, damages

THE EVOLUTION OF THE CLASS ACTION TRIAL IN ONTARIO

JON J. FOREMAN & GENEVIEVE MEISENHEIMER*

INTRODUCTION

Only a few short years ago, there was a nearly universal view among practitioners in the class actions field: any class action case that could be certified was almost sure to settle. Certainly some cases settle after a certification order is won, and to an extent, certain cases always will settle. The fact of the matter, however, has proven that universal view to be incorrect. Full-blown class action trials have been occurring in plain sight in Canada for decades. What is most interesting about this fact is how little attention those cases had received despite class action litigation having become a high-profile area of law.

The authors of this paper embarked on an investigative research project in 2011, which aimed to discover, to the greatest possible extent, all class action matters across the country that had been tried since the advent of class action legislation. Because there were no sources of consolidated information, the investigation required both conventional and unconventional research techniques. This article will describe the investigation and its surprising results.

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I. A BRIEF HISTORY OF CLASS ACTIONS IN CANADA

Since 1978, Quebec legislation has enabled class proceedings.¹ Ontario was the first common law province to enact specific class proceedings legislation in 1992.² British Columbia followed shortly thereafter and, subsequently, every other province in Canada adopted class proceedings legislation with the exception of Prince Edward Island and the three territories, which have other local rules that allow class actions to proceed in their jurisdictions.

Quebec experienced a sustained level of general class action activity following the enactment of its class proceedings legislation. In the common law provinces, activity in the field began slowly but, over time, a substantial body of Canadian jurisprudence has been generated in the field. All class proceedings legislation requires a threshold event, where the court must employ a test to ascertain whether the proceeding should be “certified” or “authorized” (in the case of Quebec) as a class action.³ Much of the jurisprudence in Canada in the class actions field is focused on the certification or authorization requirements outlined in the various class proceedings legislation across Canada.

Particularly in the common law provinces, the case law proves that both plaintiffs and defendants will deploy substantial resources to contest a certification motion. If granted, the certification motion establishes the “common issues” to be resolved and paves the way to a common issues trial, which will bind the defendant and the class members to its outcome. If the certification motion is lost, most cases do not have the economic heft or the procedural capability to be tried.

In the common law provinces, parties to a certification motion generally file substantial evidentiary records, including affidavits from experts. Extensive cross-examinations rivalling the length and intensity of traditional examinations for discovery are routine. Motions to strike affidavits and pleadings commonly occur in the lead-up to a certification motion. Certification motions last up to eight days, and parties often invest hundreds of thousands of dollars, if not more,⁴ in legal time, leading up to the

¹ *Code of Civil Procedure*, CQLR, c C-25, s 1002.

² *Class Proceedings Act*, SO 1992.

³ See, in Ontario, *Class Proceedings Act*, *ibid*, s 5; in Alberta, *Class Proceedings Act*, SA 2003, c C-16.5, s 5; in British Columbia, *Class Proceedings Act*, RSBC 1996, c 50, s 4; in Manitoba, *Class Proceedings Act*, CCSM c C-130, s 4; in New Brunswick, *Class Proceedings Act*, RSNB 2011, c 125, s 6; in Newfoundland and Labrador, *Class Actions Act*, SNL 2001, c C-18.1, s 5; in Nova Scotia, *Class Proceedings Act*, SNS 2007, c 28, s 7; in Quebec, *Code of Civil Procedure*, *ibid*, s 1003; and in Saskatchewan, *Class Actions Act*, SS 2001, c C-12.01, s 6.

⁴ In cost submissions following a 2010 certification motion, which was dismissed, the successful defendant revealed that it had paid \$2.9 million to its counsel in defending the motion. Costs in the amount of \$525,000 were awarded against the plaintiff. See *Fresco v Canadian Imperial Bank of Commerce*, [2009] OJ No 2531 (Sup Ct J); Additional reasons at: 2010 ONSC 1036. In a 2012 certification appeal decision, which was dismissed, the defendant requested \$1 million in costs and stated

conclusion of the motion before appeals.⁵ Amendments to Quebec legislation came into force in 2003, which dictated that evidence was no longer required to be filed by the plaintiff (including representative plaintiff affidavits), and that evidence from the defendant was prohibited.⁶ These developments were seen to greatly favour requests for authorization, such that Quebec is regularly identified as a "class action haven."⁷ That is not to say that all authorization requests will be granted. Recent commentators have compiled statistics for authorization proceedings in Quebec. While a large majority of authorization applications are authorized or settled, more than a third of them are not authorized.⁸

Appeals from certification and authorization hearings have been frequent, and there is substantial appellate authority on this topic.

Certification requirements have undergone significant jurisprudential refinement: first, via a trilogy of decisions from the Supreme Court of Canada in 2001;⁹ second, through four decisions from the Ontario Court of Appeal;¹⁰ and finally and most recently, through the delivery of a second trilogy of cases from the Supreme Court of Canada.¹¹ The effect of these cases has been to guide lower courts and litigants in navigating the certification and authorization requirements. For the most part, these decisions have been perceived to liberalize the interpretation of the certification and authorization requirements¹² in order to facilitate the three objectives of class

that it had paid almost \$2.3 million in legal costs on account of the certification motion alone. Justice Perell ordered \$475,000 in costs to be paid to the defendant. See *McCracken v Canadian National Railway*, 2012 ONSC 6838.

⁵ In 5 recent certification costs decisions the Honourable Mr. Justice Belobaba set out a new framework for determination of costs awards in Ontario class proceedings. In setting out this framework, Justice Belobaba noted that generally speaking, in his view, the time spent by legal counsel on these motions is too high, the volume of materials is excessive, the court hearings take too much time, and counsel has over-litigated these motions. See *Sankar v Bell Mobility*, 2013 ONSC 6886; *Brown v Canada (Attorney General)*, 2013 ONSC 6887; *Crisante v DePuy Orthopaedics*, 2013 ONSC 6351; *Dugal v Manulife Financial*, 2013 ONSC 6354; and *Rosen v BMO Nesbitt Burns*, 2013 ONSC 6356.

⁶ See for example: *Marcotte v Banque de Montreal*, JE (QL) 2003-1919 (QCCS).

⁷ Eleni Yiannakis & Noah Bourdreau, *Paradise lost? Rethinking Quebec's Reputation as a Haven for Class Actions*, online: The Canadian Bar Association <http://www.cba.org/CBA/sections_civil/newsletters2013/paradise.aspx#!>.

⁸ *Ibid*, indicates that approximately 52% of authorization motions between January 2000 and July 2013 were granted, while 38% were refused and 10% were settled.

⁹ *Hollick v Toronto (City)*, 2001 SCC 68; *Western Canadian Shopping Centres v Dutton*, 2001 SCC 46; *Rumley v British Columbia*, 2001 SCC 69.

¹⁰ *Cloud v Canada (Attorney General)* (2004), 247 DLR (4th) 667 (Ont CA) [*Cloud*]; *Pearson v Inco* (2005), 78 OR (3d) 641 (CA) [*Pearson*]; *Markson v MBNA Canada Bank*, 2007 ONCA 334 [*Markson*]; and *Cassano v The Toronto-Dominion Bank*, 2007 ONCA 781 [*Cassano*].

¹¹ *Pro-Sys Consultants v Microsoft Corporation*, 2013 SCC 57; *Infineon Technologies v Option consommateurs*, 2013 SCC 59; and *Sun-Rype Products v Archer Daniels Midland Company*, 2013 SCC 58.

¹² *Cloud*, *supra* note 10, was cited in the Court of Appeal's certification decision in *Pearson*, *supra* note 10 at para 3, as suggesting a more liberal approach to be taken toward the certification of class proceedings.

proceedings legislation: access to justice, judicial economy, and behavior modification.¹³

While litigation and case decisions surrounding the certification requirements have consistently enjoyed a high profile, with few exceptions, the volume of class action trials has historically received much less attention.

I. A BRIEF HISTORY OF CLASS ACTIONS IN CANADA

At the 2008 Osgoode National Class Actions Symposium, one of the leading legal conferences in Canada in the class actions field, a panel of presenters compiled a list summarizing a number of class action trials that had occurred in the province of Ontario.¹⁴ Two years later, the authors of this article were asked to build on that 2009 list to include national results on the subject of class action trials and to present our results to the same conference in 2011. Specifically, we undertook an investigation to uncover all contested class action trials across Canada to that date. The project seemed simple enough, until it was quickly determined that there were no consistent or consolidated reference sources on the topic. Our team divided Canada into sections, established a methodology, and set out to complete the investigation.

We began by consulting court registries in major centres across Canada, interviewing leading class action practitioners in all parts of the country, and reviewing informal data sources, including class action blogs, archived news reports, websites of class action law firms, and other industry leading web-based data sources. The most fruitful source of information was the institutional memory of leading class action practitioners in various jurisdictions around the country. Often we would learn some details of a case that might have been tried and, with some further investigation, we could find sufficient proof to warrant the inclusion of a particular trial in our study.

Once the dust settled, the results were remarkable. We determined that there had been over 80 class action trials in Canada, a number far greater than we expected.

Our research was well received and we were asked to continue to update our work, republish it, and make it available at additional legal conferences in the class actions field. To date, we have been able to identify 94 trials. A table reflecting the results of our research is shown below in Figure 1, and a detailed review of these decisions has been included as a schedule to this paper.

¹³ *Cloud*, *ibid* at para 17.

¹⁴ WK Winkler et al, “Beyond Certification and Settlement: Discovery and Trials of Class Actions”, *6th Annual Symposium on Class Actions* (Toronto: Osgoode Professional Development, April 2009). See Appendix “A” of their paper for a summary of Ontario class action trials.

Figure 1

Province	Trials	Trial Decisions Released	Success Rate Plaintiffs vs. Defendants
AB	1	1	0–1
BC	8	8	3–5
MB	1	1	1–0
NB	0	N/A	N/A
NL	0	N/A	N/A
NS	0	N/A	N/A
NWT	1	1	1–0
NU	0	N/A	N/A
ON	18	16*	10–8
QB	63	59**	41–17
SK	1	1	0–1
PEI	0	N/A	N/A
YK	0	N/A	N/A
FED	1	1	0–1
Total	94	88	57–33

*Ontario—two settled after commencement of trial; **Quebec—two decisions cannot be located, one was settled after commencement of trial, and one is ongoing.

We were surprised by the wealth of class action trial activity, which had not previously been consolidated into a single data set. This information had apparently escaped the consciousness of the national class actions bar.

An obvious question follows: what lessons can be taken from this unexpected quantity of information?

III. ANALYSIS OF RESULTS

The results of our study show that the largest number of trials occurred in the Province of Quebec, followed by Ontario, and then British Columbia. The trial experience reflected in our data shows that many areas of law have been the subject of class actions trials, including: consumer law, employment law, pension law, environmental law, insurance law, medical device litigation, claims against governments, securities and financial services, educational services, and products liability.

We conclude that this substantial trial activity reflects positively on the success of the various class action regimes across Canada. In our estimation, the results indicate that provincial regimes are functioning well and are maturing at a high rate. To this end, a broad range of subject matters have been litigated. There is now a fairly meaningful body of law in Canada respecting common issue trials, both procedurally and substantively, from which to draw guidance.

IV. TRIAL MANAGEMENT

Class actions are inherently complex, and they involve the interests of large numbers of people and oftentimes a significant amount of money. As this area of practice matures, more focus will be placed on trial management. The authors of this paper have acted as plaintiffs' counsel in two lengthy class action trials and have gained valuable insights along the way, which are shared below.

Class action trials contain a number of unique processes not normally included in regular civil trials. Some of the key features of class proceedings legislation, which may impact the trial process, are as follows:

- 1) Statutory requirements of a certification order:
 - a. The pleadings or notice of application must disclose a cause of action.
 - b. There must be an identifiable class of two or more persons.
 - c. The claims (or defences) of the class members must raise common issues.
 - d. A class proceeding must be the preferable procedure for the resolution of these common issues.
 - e. There must be a representative plaintiff (or defendant) who would fairly and adequately represent the class, has produced a workable plan for advancing the proceeding and does not, on the common issues, have interests which might conflict with those of the class.
- 2) Decertification motions:
 - The parties have the right to bring motions to disaggregate the case if new evidence indicates that the case may be unworkable as a class action.
- 3) Determination of common issues for a class and subclass potentially in stages:
 - The judge maintains management powers to divide and subdivide legal issues in a given matter for efficiency.
- 4) Participation of class members in the proceeding
 - The various class proceedings statutes contain mechanisms to involve class members for purpose of giving evidence, and otherwise participating in trials.
- 5) Admissibility of statistical evidence in respect of remedies:
 - Most class proceedings statutes permit evidence that would otherwise be inadmissible—for example, the CPA authorizes statistical evidence for modelling purposes.
- 6) Aggregate assessment of monetary relief:
 - Class proceedings statutes also provide for methods of calculating damages for the class without resorting to individual inquiries from each class member.
- 7) Determination of individual issues:

- It is often the case that not all issues are common to all class members, and the court has capacity to create streamlined processes to resolve factual and legal issues that are individual to class members after common issues are resolved.
- 8) Distribution of judgments:
- Class proceedings allow for flexible mechanisms for delivering relief to class members.
- 9) Judgment on common issues:
- The statutory requirements for judgment on the common issues mirrors the required content of the certification order (noted above).

The rules of civil procedure in courts across Canada also apply to class proceedings and may intersect in helpful ways with the provincial legislation in each jurisdiction.

In terms of techniques for the management of a class actions trial, it is best to begin in the pre-trial phase. The authors recommend that any litigator undertaking a class action trial prepare a comprehensive trial management plan that anticipates any key issues to be dealt with in the trial, and that establishes processes to manage them.¹⁵ Ideally, the parties will negotiate and agree upon all matters to be included in the plan and a process for dealing with each issue. Examples of matters that could be the subject of a trial management plans are as follows:

- a. Delivery of the trial record;
- b. Timing of expert reports;
- c. Exchange of objections to expert qualifications;
- d. Management of any additional issues re: expert evidence;
- e. Document management;
- f. Exchange of summaries of anticipated evidence of trial witnesses;
- g. Order of witnesses and trial scheduling;
- h. Anticipated motions;
- i. Discovery read-ins;
- j. Requests to admit;
- k. *Evidence Act* notices;
- l. Practices surrounding opening and closing briefs and submissions;
and
- m. Case management protocols during the trial.

¹⁵ The Ontario *Class Proceedings Act* and many other class proceedings statutes require a satisfactory litigation plan as an element of the certification test. See Ontario's *Class Proceedings Act*, *supra* note 2, s 5(1)(e)(ii); Alberta's *Class Proceedings Act*, *supra* note 3, s 5(1)(e)(ii); British Columbia's *Class Proceedings Act*, *supra* note 3, s section 4(1)(e)(ii); Manitoba's *Class Proceedings Act*, *supra* note 3, s 4(e)(ii); New Brunswick's *Class Proceedings Act*, *supra* note 3, s 6(1)(e)(ii); Newfoundland's *Class Proceedings Act*, *supra* note 3, s 5(1)(e)(ii); Nova Scotia's *Class Proceedings Act*, *supra* note 3, s 7(1)(e)(ii); and Saskatchewan's *Class Proceedings Act*, *supra* note 3, s 6(1)(e)(ii).

Counsel may also want to consider having a pre-trial conference with the case management judge in order to assist the parties in narrowing the issues and preparing a clear plan for the trial. The parties should also consider requesting a “turnover” meeting where the case is passed from the management judge to the trial judge so that the trial judge can become acquainted with the case.¹⁶

Prior to trial, it may also be helpful for the parties to explore the potential for agreements regarding expert evidence. Many rulings in connection with recent common issues trials reflect some difficulty in managing complex and important expert evidence during trial. Some potential strategies could include the early exchange of expert reports in order to ensure that all parties thoroughly understand the opponents’ expert reports and opinions in advance of the trial.¹⁷ With a clear understanding of the issues raised by experts, the parties may be able to narrow the issues in dispute prior to or during the trial.

During trial, there are a number of techniques that can make the process more efficient. Opening submissions and the opening brief provide excellent opportunities for clearly identifying each party’s position with the trial judge regarding any outstanding trial process issues. The parties should consider taking special care to draw the judge’s attention to some of the unique features of the class proceedings legislation, which may aid the judge in managing the trial.

Similarly, in their closing submissions the parties have another opportunity to address process issues. It is recommended practice that the parties prepare a draft judgment for the court, which meets the requirements of the class proceedings legislation in place and contends with all issues pertaining to remedies — including the extent to which provisions of the class proceedings statute are engaged.

CONCLUSION

The large volume of class action trial activity across Canada is a validation of the various class proceedings regimes established across Canada. Whether a case is won or lost, each common issues trial represents the opportunity for the lofty goals of class proceedings legislation to be achieved.¹⁸ Where a class is successful, legal, economic, and practical barriers have been overcome and legal rights have been vindicated. When

¹⁶ In Ontario, case management judges must recuse themselves from the trial to allow a hearing of the issues by a new judge, but this is not the case in all provinces.

¹⁷ In *Smith v Inco*, 2010 ONSC 3790, the parties agreed to permit the discovery of expert witnesses in advance of the trial.

¹⁸ In *Cloud*, *supra* note 10 at para 17, the court reiterated that the important function of class action litigation is access to justice for plaintiffs, judicial economy, and behavior modification.

a defendant is successful, they have achieved finality and a conclusion to a substantial controversy.

The Canadian class action system improves with each case as jurisprudence is refined and counsel and the Judiciary earn valuable experience. While it is obvious that trial activity has been greater than most would have suspected, we expect the pace of significant class action trials to increase. Members on both sides of the bar have increased their appetites to litigate class action matters through trial. Class action trials have undoubtedly left the realm of myth and are now a reality of life for practitioners in the field.

Appendix A

Alberta - Trial Decisions			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Lloyd v Imperial Oil Limited</i> , 2008 ABQB 379 (available on CanLII).	A representative action brought on behalf of a class of former employees challenging an amendment to their pension plan.	The trial judge dismissed the action.	There is no reported appeal from the trial decision in this matter.
British Columbia - Trial Decisions			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Barbour v University of British Columbia</i> , 2009 BCSC 425, rev'd 2009 BCCA 334, leave to appeal to SCC refused, [2010] SCCA No. 135.	An action alleging that revenues collected by the University of British Columbia pursuant to its Parking Regulations were collected unlawfully since the Regulations were <i>ultra vires</i> the university's delegated legislative authority.	The trial judge found in favour of the plaintiffs and held that the class members were entitled to restitution with respect to monies class members paid pursuant to the University's Parking Regulations.	The decision was reversed on appeal following the BC Legislature's enactment of amendments to the University Act that resulted in universities being allowed to collect fines from parking violations. An application for leave to appeal to the Supreme Court of Canada was dismissed.
<i>Bennett v British Columbia</i> , 2009 BCSC 1358, aff'd 2012 BCCA 115.	An action brought on behalf of a group of retired members of the British Columbia Sector Pension Plan. The claim alleged breach of fiduciary duty and breach of contract with respect to an alleged unilateral change in pension benefits.	The trial judge dismissed the action.	The Plaintiff filed an appeal to the British Columbia Court of Appeal in December of 2009. The appeal was dismissed.

British Columbia - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Lieberman v Business Development Bank of Canada</i> , 2009 BCSC 1312 (available on CanIII).	An action by a class of retired Business Development Bank of Canada employees. The trial issues included amendments to and the administration of the Bank's Pension Plan that the plaintiffs' claimed were made to the detriment of retired employees and for the benefit of the Bank and its current employees. The plaintiffs claimed the Bank breached its fiduciary duty to class members.	The plaintiffs were partially successful in challenging certain amendments to the Plan entitling the Business Development Bank of Canada to surplus during the operation of the Plan and in requiring the repayment of certain expenses to the Plan. The Judge found that the BDC had not breached its fiduciary duty to retirees. Furthermore, the Judge did not find that payment of expenses related to the administration of the Plan out of the Fund constituted a breach of fiduciary duty.	There is no reported appeal from the trial decision in this matter.
<i>Payne v Eagle Ridge Pontiac GMC</i> , 2009 BCSC 530 (available on CanLII)	An action brought against Eagle Ridge Pontiac GMC Ltd. for negligent misrepresentations made with regard to the legitimacy of the "Cashable Voucher Program" and the entity offering the voucher program.	The Court held that Eagle Ridge Pontiac GMC Ltd. was liable for negligent misrepresentation. Damages were assessed as the difference between the price each class member paid the defendant when they purchased the vehicle and the market value of such a vehicle at that date.	In August 2010, the BC Court of Appeal determined that eligibility to claim damages by individual class members is to be ascertained through responses in affidavit form. Class members had until March 15, 2011 to confirm intention to participate in assessment of damages.

British Columbia - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Withler et al v Canada (Attorney General)</i> , 2006 BCSC 101, aff'd 2008 BCCA 539, aff'd 2011 SCC 12 (available on CanLII).	An action challenging the constitutionality of federal legislation that decreased the amount payable to surviving families of federal servants and members of the Canadian Forces through a supplementary death benefit by 10% for every year the deceased was in excess of 65 years or 60 years.	The trial judge held that the requirements to prove discrimination under s.15 of the Charter were not met and ruled in favour of the defendants.	The BC Court of Appeal dismissed the plaintiff's appeal. Leave to appeal was granted by the SCC, however, the SCC dismissed the appeal on March 4, 2011. The SCC found that s. 15 of the Charter was not violated.
<i>Sharbern Holding v Vancouver Airport Centre</i> , 2007 BCSC 1262, rev'd 2009 BCCA 224, aff'd 2011 SCC 23.	An action by owners of units in a Vancouver Airport hotel project. The plaintiffs alleged the defendant developers misrepresented projected financial returns and the conflict of interest that arose from its management of two other hotels at the airport.	The plaintiffs were partially successful as the trial judge held that while the defendant had not negligently misrepresented the financial projections, it had breached its fiduciary duties to class members in misrepresenting its conflict of interest.	The British Columbia Court of Appeal allowed the defendant's appeal, holding that there was insufficient evidence to show that the defendant's conflict of interest resulted in a diversion of business from the plaintiff's hotel to the other airport hotels. Leave to appeal to the Supreme Court of Canada was granted. The appeal was heard in October of 2010. The Supreme Court of Canada released its decision on May 11, 2011, dismissing the plaintiff's appeal.

British Columbia - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Kotai v Queen of the North (Ship)</i> , 2009 BCSC 1405, additional reasons in 2009 BCSC 1604.	An action brought in response to the sinking of the ferryboat "Queen of the North" off the coast of British Columbia. By the time the trial occurred, all of the common issues had been resolved except for the issue of damages. The Court held six mini-trials to assess the claims of various class members in an attempt to assist the parties in settling outstanding damage claims.	The trial judge assessed the damage claim of various class members. After the release of the decision, the action was settled. The settlement provided that those that were "upset" were given compensation of \$500 while those that may have had actual compensable claims were given between \$1,000 - \$25,000.	The action was settled before any appeals.
<i>Reid v British Columbia (Egg Marketing Board)</i> , 2007 BCSC 155.	An action by organic egg producers and graders, which alleged that the defendant B.C. Egg Marketing Board acted in abuse of its public office and intentionally interfered with the plaintiffs' economic interests. The claim alleged that the Egg Board insisted the organic producers comply with regulatory schemes meant for normal egg producers and acted to force organic producers out of the market.	The trial judge dismissed the action.	There was no appeal from the trial decision in this matter.

Manitoba - Trial Decisions			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<p><i>Dinney v Great West Life</i>, 2000 MBQB 209, aff'd 2005 MBCA 36.** <i>Dinney v Great West Life</i>, 2006 MBQB 247, rev'd 2009 MBCA 29, leave to appeal refused to SCC, [2009] SCCA No. 25. **This representative action was started in 2000, before Manitoba enacted its Class Proceedings Act.</p>	<p>An action brought by former employees of Great-West Life in respect of their entitlements under the Great-West Life pension plan. A second trial was heard in 2006 to determine how damages should be assessed.</p>	<p>At the first trial decision in 2000 the court held in favour of the plaintiff. At the second trial, the trial judge determined the appropriate method with which to assess damages.</p>	<p>The Court of Appeal dismissed Great-West Life's appeal of the first judgment in 2005. The defendants appealed and the plaintiff cross-appealed the second judgment in 2009. The Court of Appeal overturned the 2006 trial judgment and ordered that a new formula be approved for calculating pension increments. Leave to Appeal to the Supreme Court was denied.</p>
New Brunswick - Trial Decisions			
There have been no trial decisions in New Brunswick			
Newfoundland - Trial Decisions			
There have been no trial decisions in Newfoundland			
Nova Scotia - Trial Decisions			
There have been no trial decisions in Nova Scotia			
Ontario - Trial Decisions			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<p><i>Windisman v Toronto College Park</i> (1996), 132 DLR (4th) 512 (Ont Ct Gen Div).</p>	<p>An action involving claims of approximately 600 residential condominium owners to statutory interest on deposit money.</p>	<p>The class members won a judgment of approximately \$1.5 million.</p>	<p>There were no appeals from the trial decision in this matter.</p>

Ontario - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Simpson v Ontario</i> (1997), 36 OTC 109 Ont Gen Div), aff'd (1999) 118 OAC 201 (CA)	An action involving allegations of breached employment contracts with senior government employees.	The trial judge dismissed the action.	The result was upheld by the Court of Appeal.
<i>Peppiatt v Nicol</i> (1998), 71 OTC. 321 (Ont Gen Div), aff'd 148 OAC 105 (CA).	An action by members/investors in a private golf club alleging breach of contract and fiduciary duty.	The class members won a judgment for the return of their initial investment valued at approximately \$6 million and punitive damages of \$845,000.	The result was upheld by the Court of Appeal.
<i>Bywater v Toronto Transit Commission</i> (1998) 27 CPC (4th) 172 (Ont Sup Ct J).	An action alleging adverse impacts to subway passengers as a result of a fire in a Toronto subway tunnel.	This is an example of a trial of common issues which did not resolve the entirety of the case, or even the liability component. The trial judge made findings pertaining to facts that were important ingredients of each class members' claims.	There were no appeals from the trial decision in this matter.
<i>Hislop v Canada</i> (2003), 234 DLR (4th) 465 (Ont Sup Ct J), rev'd (2004) 73 OR (3d) 641 (CA), aff'd 2007 SCC 10	An action involving a constitutional challenge to statutory limitations on the rights of same-sex couples to certain Canada Pension Plan benefits.	The plaintiffs were successful at trial. The trial judge held that the exclusionary provisions of the Canada Pension Plan were struck down and class members were granted a constitutional exemption to benefits. The trial judgment was valued at over \$50 million.	The Court of Appeal set aside the constitutional exemption awarded by the trial judge but upheld the declaration of invalidity in respect of certain sections of the CPP. The Supreme Court of Canada upheld the decision of the Court of Appeal.
<i>Kerr v Danier Leather</i> (2004), 46 BLR (3d) 167 (Ont Sup Ct J), rev'd (2005) 77 OR (3d) 321 additional reasons at (2006) 20 BLR (4th) 1, aff'd at 2007 SCC 44.	An action by a class of shareholders alleging a breach of the prospectus misrepresentation provisions of the <i>Securities Act</i> and other claims at common law.	The class was successful at trial and a substantial monetary judgment of approximately \$14 million was granted.	The decision was overturned at the Court of Appeal. The Court of Appeal's decision was upheld at the Supreme Court of Canada.

Ontario - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Sutherland v Hudson's Bay Company</i> (2007), 60 CCEL (3d) 64 (Ont Sup Ct J), aff'd 2011 ONCA 606, leave to appeal o SCC refused, [2011] CSCR No 516.	An action by pension plan members challenging certain governance actions and plan amendments made in respect of company pensions.	The trial judge dismissed the action.	An appeal was filed and notwithstanding the trial result, a significant monetary settlement of approximately \$13 million was achieved prior to the argument of the appeal. HBC pursued a cross-appeal notwithstanding the settlement. The Ontario Court of Appeal dismissed HBC's cross-appeal from the trial decision which held that it was neither a beneficiary of the pension plan nor was it entitled to any surplus assets.
<i>Denis v Bertrand & Frère Construction</i> (2008), 71 CLR (3d) 246 (Ont Sup Ct J).	An action by a class of homeowners pertaining to defective house foundations.	The plaintiffs were successful at trial. Specific amounts were ordered payable to each class member on account of general damages, itemized amounts payable for each year since the action was filed and amounts for stress and inconvenience.	There were no appeals from the trial decision in this matter.
<i>Ruffolo v Sun Life Assurance Co of Canada</i> (2008,) 90 OR (3rd) 59 (Ont Sup Ct J), aff'd 2009 ONCA 274, leave to appeal to SCC refused [2009] CSCR No 222.	An action brought under the CPA alleging improper deductions from LTD insurance payments. The parties elected not to contest certification and agreed to conduct a form of test case on the issues raised in the lawsuit.	The trial judge dismissed the action and a substantial costs award was made in favour of the defendant. The plaintiff had received an indemnity against adverse costs from the Ontario Class Proceedings Fund.	The decision was upheld by the Court of Appeal and leave to the Supreme Court of Canada was denied.

Ontario - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Smith v Money Mart</i> (2007), 37 CPC (6th) 171; See 2010 ONSC 1334.	An action alleging usurious interest rates on payday loans.	After 17 days of trial, the parties agreed to attempt to mediate a settlement before Retired Supreme Court Justice Iacobucci. An agreement was reached which was estimated to provide over \$100 million in value to class members.	
<i>Smith v Inco</i> , 2010 ONSC 3790, rev'd 2011 ONCA 628, leave to appeal to SCC refused, [2011] CSCR No 539. See <i>Smith v Inco</i> , 2012 ONSC 5094 (costs of trial proceeding).	An action which arises out of the alleged environmental contamination in Port Colborne, Ontario. It was alleged that the nickel contaminated properties in the Port Colborne area and that disclosures to the public of this contamination negatively affected property values.	The plaintiffs were successful at trial and were granted an aggregate damage award of \$36 million.	The defendants appealed the trial decision. The Ontario Court of Appeal allowed the appeal and dismissed the action. \$100,000 in costs was awarded to Inco. Leave to the Supreme Court of Canada was denied. The defendants were awarded \$1.766 million in costs.
<i>Jeffery v London Life</i> , 2010 ONSC 4938, rev'd 2011 ONCA 683, leave to appeal to SCC refused, [2012] SCCA No 1.	Two companion class actions challenged the legality and governance review of virtually identical financing transactions undertaken within each of the two life insurers in 1997 in connection with the Great-West Life acquisition of London Insurance Group.	The plaintiffs were successful at trial. The trial judge held that the transactions violated the <i>Insurance Companies Act</i> and awarded class members approximately \$400 million.	The defendants appealed the trial decision. The appeal was allowed in part, while the bulk of the trial outcome was upheld. Leave to the Supreme Court of Canada was denied. The trial judge made a determination on damages, which was appealed to the Court of Appeal. That appeal was heard on Sept. 4, 2013 and the parties are awaiting a decision.

Ontario - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Andersen v St Jude Medical Inc</i> , 2012 ONSC 3660.	An action on behalf of a class of persons implanted with allegedly defective heart valves.	The trial lasted approximately 140 days. The plaintiffs were unsuccessful.	A Notice of Appeal has been filed by the plaintiffs and the appeal is scheduled to be heard in 2014.
<i>Berry v Pulley</i> , 2012 ONSC 1790; See <i>Berry v Pulley</i> , 2011 ONSC 3135 (settlement approved).	An action which arises out of a dispute between former members of the Canadian Airline Pilots Association.	The trial of this matter began on March 16, 2011 and finished on June 2, 2011. During the trial, a settlement was reached with one of seven sub-classes of defendants, which was approved by Ontario Superior Court of Justice. The plaintiffs were unsuccessful at trial for the other sub-classes.	
<i>Burke v Hudson's Bay</i> (2005), 51 CCPB 66 (Ont Sup Ct J), rev'd 2008 ONCA 394, rev'd 2010 SCC 34..	An action in which the plaintiff class claimed a pro-rata entitlement to a surplus that was present in their HBC pension plan. The plaintiffs also claimed recovery of administrative costs that were charged to the pension plan.	At trial the judge held in favour of the plaintiffs finding that HBC was entitled to pay some expenses out of the pension plan fund, but that the employees had a reasonable expectation to benefit enhancements from the surplus.	The decision was reversed at the Court of Appeal on the basis that the trust agreements which incorporated the pension plan texts did not give any right or interest in the surplus to the employees. The Supreme Court dismissed the plaintiff's appeal.

Ontario - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Horti-Pak v Nikko Materials USA</i> (2009), 179 ACWS (3d) 1229 (Ont Sup Ct J).	An action in which the class consisted of residents of a community that evacuated their homes in response to a three day long fire at Horti-Pak's plastic container manufacturing plant.	The class action settled following a settlement conference which took place during the trial. The organic farmer, greenhouse operator and residents that comprised the class were paid a total of \$800,000. Each person evacuated during the fire was able to claim up to \$700.	
<i>Mandeville v Manufacturers Life Insurance</i> , 2012 ONSC 4316.	An action in which the class consisted of individuals who owned participating policies of life insurance issued by or assumed by the Barbados Branch of Manulife, whose ownership rights were terminated upon demutualization of the parent company.	The trial began on March 5, 2012, and lasted 29 days. The plaintiffs were unsuccessful.	The plaintiffs have appealed this decision and the appeal is scheduled to be heard in December of 2013.
<i>Ramdath v George Brown College of Applied Arts and Technology</i> , 2012 ONSC 6173, aff'd 2013 ONCA 468.	An action in which the class consisted of students enrolled in a college program that did not provide the promised accreditation at its conclusion.	The plaintiffs were successful at trial. The trial took place on October 23 and 26, 2012. The defendant was found liable for breach of the <i>Consumer Protection Act</i> and certain common issues in the negligent misrepresentation analysis were resolved in favour of the class.	An appeal to the Court of Appeal was dismissed.

Quebec - Trial Decisions			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Feinberg c L'Une et L'Autre Inc</i> (1983), JE 83-1148 (Que Sup Ct).	An action was brought on behalf of female members of the club "L'une et L'autre".	The plaintiffs were successful at trial. The Defendant was ordered to pay the amount of \$13,829.45.	There is no reported appeal from the trial decision in this matter.
<i>Nault c Jarmark and Fonds D'Aide Aux Recours Collectifs</i> , [1985] RDJ 180 (Que Sup Ct).	An action was brought on behalf of consumers who purchased electronic game consoles from newspaper ads. The console was not available and they were not reimbursed.	The plaintiffs were successful at trial.	There is no reported appeal from the trial decision in this matter.
<i>Plouffe c Câblevision Nationale Ltée</i> , [1982] CS 257.	An action was brought against a cable company for advance payments made by customers for cable services that were interrupted in January of 1979.	The plaintiffs were successful at trial. 47,764 class members were awarded \$20,219.80.	There is no reported appeal from the trial decision in this matter.
<i>Clouatre c Bromont (Ville)</i> (1983), JE 83-570 (Que Sup Ct).	An action was brought by homeowners living in Bromont against the Town of Bromont for not abiding by its promise to not raise taxes.	The plaintiffs were successful at trial. The defendant was ordered to pay homeowners for additional taxes paid.	There is no reported appeal from the trial decision in this matter.
<i>Comartin c Bordet</i> , [1984] CS 257.	An action was brought by 95 Canadian tourists who booked an all-inclusive trip from Montreal to Acapulco and arrived to find that they did not have a hotel to stay in because it had been overbooked. The action was brought against the travel company who arranged the trip.	The plaintiffs were successful at trial. The defendant was ordered to pay a total of \$50,000 in damages.	There is no reported appeal from the trial decision in this matter.
<i>Jobin c. Giguère</i> , [1985] JQ no 110 (QL) (Que Sup Ct J).	* Unable to locate reasons for judgment		There is no reported appeal from the trial decision in this matter.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Comète c Association de bienfaisance et de retraite des policiers de la Communauté urbaine de Montréal</i> (1985), JE 89-1061 (Que Sup Ct), aff'd [1989] RL 416 (CA).	An action was brought on behalf of all widows of deceased police officers in Montreal who had reduced benefit payments.	The trial judge dismissed the action.	The Court of Appeal dismissed the appeal.
<i>Tremblay c Québec (Régie des Assurances Agricoles)</i> (1988), JE 89-143 (Que CA).	An action was brought on behalf of veal producers seeking additional compensation above and beyond what other beef cattle producers received.	The trial judge dismissed the action.	The Court of Appeal dismissed the appeal.
<i>Desmeules c Hydro-Québec</i> , [1990] R.J.Q. 2298 (Que Sup Ct J).	An action was brought by non-permanent employees of Hydro-Québec for benefits.	The trial judge dismissed the action.	There is no reported appeal from the trial decision in this matter.
<i>Côté c Informatique Vidéotron Ltée</i> (1988), JE 91-1368 (Que CA).	An action was brought on behalf of subscribers to Pay TV who lost a decoder required to unscramble incoming signals and had to pay an additional \$200 to the defendant.	The plaintiff was successful at trial.	The Court of Appeal overturned the trial decision.
<i>Bolduc c Commission scolaire de Ste-Foy</i> (1988), JE 89-345 (CS).	An action was brought by residents living in the territory of a certain school board who had levied a special tax on them and who had misused taxes paid.	The plaintiff was successful at trial. The special tax was cancelled and other taxes were repaid.	There is no reported appeal from the trial decision in this matter.
<i>Dagenais c Centre local des services communautaires Kateri</i> , [1988] RJQ 2505 (CS), aff'd [1992] RL 395 (CA).	An action was brought on behalf of all individuals who had paid for household maintenance services from a government-sponsored community organization. It was the position of the plaintiffs that it should be illegal to charge money for necessary social services.	The trial judge dismissed the action.	The plaintiff's appeal was denied.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Dinelle c Université de Montréal</i> (1989), JE 90-76 (CS).	An action was brought on behalf of 191 part-time employees who had worked in the sports and recreation department of the University of Montreal and who lost their employment when the program was shut down. The employees sought severance pay from the defendant.	The plaintiffs were successful at trial. The trial judge awarded the plaintiffs \$25,828.66.	There is no reported appeal from the trial decision in this matter.
<i>Curateur public c Syndicat national des employés de l'hôpital St-Ferdinand</i> , [1990] RJQ 359 (CS), aff'd [1994] RJQ 2761 (CA), aff'd [1996] 3 RCS 211.	An action was brought by patients of a hospital for the mentally handicapped who were left unattended when the staff at the hospital went on an illegal strike for more than one month. The class sought damages for violation of their rights under the Charter.	The plaintiffs were successful at trial. The judge ordered the defendants to pay the sum of \$1,750 as compensatory damages to each member of the group covered by the class action, with the exception of the patients in the transit unit and the medical-surgical unit.	The appeal was denied at the Court of Appeal, but a cross-appeal was allowed. The defendants were ordered to pay a sum of \$200,000 to the patients of the hospital as exemplary damages. The appeal was denied by the Supreme Court of Canada.
<i>Robitaille c Constructions Désourdy inc</i> (1991), JE 98-543 (CS), aff'd [1998] RRA 229 (CA).	An action was brought by the citizens of Bromont for the damages they incurred through the illegal exploitation of a sandpit in their town.	The plaintiffs were successful at trial.	The appeal was denied by the Court of Appeal.
<i>Viau c Syndicat canadien de la fonction publique</i> , [1991] RRA 740 (CS).	An action was brought by individuals who used the Montreal public transportation system, which had been suspended during an illegal strike.	The plaintiffs were successful at trial and the trial judge ordered that the Defendant pay \$1,000,000.00 in damages.	There is no reported appeal from the trial decision in this matter.
<i>Gosselin c Québec (Procureur général)</i> , [1992] RJQ 1647 (CS), aff'd [1999] RJQ 1033 (CA), aff'd [2002] 4 SCR 429.	An action was brought on behalf of all Quebec citizens under the age of 30 who were denied full social assistance benefits. The plaintiff alleged violations of rights under the Charter.	The trial judge dismissed the action.	The trial judge's decision was affirmed by the Court of Appeal and the Supreme Court of Canada.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Villeneuve c Québec (Procureur général)</i> , [1993] JQ 554 (CS), aff'd (1998), JE 98-200 (CA).	An action was brought on behalf of general practitioner doctors who were working as specialists but did not have specialist privileges at the hospitals in which they worked.	The trial judge dismissed the action.	The trial decision was affirmed by the Court of Appeal.
<i>Lambert c Minerve Canada</i> , [1993] RJQ 2840 (CS), rev'd [1998] RJQ 1740 (CA).	An action was brought on behalf of individuals who had purchased an all-inclusive vacation but whose flight left a day late. They sought their expenses for having to stay at the airport hotel as well as other damages.	The trial judge dismissed the action. The Court of Appeal reversed the lower court's decision and ordered the defendants to pay damages.	The Court of Appeal allowed the appeal.
<i>Joyal c Élite Tours inc.</i> , [1993] RJQ 1143 (CS)	An action was brought on behalf of individuals who had booked vacations through the defendants and whose flights were rescheduled and rerouted to Brussels instead of Paris without their consent.	The plaintiff was successful at trial and the defendants were ordered to pay damages.	There is no reported appeal from the trial decision in this matter.
<i>Châteauneuf c TSCO of Canada Ltd.</i> , [1993] RJQ 2663 (CS), aff'd [1995] RJQ 637 (CA).	An action was brought on behalf of employees of a company that went bankrupt and subsequently terminated their pension plans.	The plaintiff was successful at trial. The company was ordered to reimburse employees out of the surplus funds.	The appeal was denied by the Court of Appeal.
<i>Association coopérative d'économie familiale (A.C.E.F.) du centre de Montréal c. 120984 Canada Inc. (Promotions Ciné-mode)</i> (1993)(C.S.).	* Unable to locate reasons for judgment		There is no reported appeal from the trial decision in this matter.
<i>Lasalle c Le Marier</i> , [1994] RRA 612 (CS).	An action was brought on behalf of prisoners who were tortured by prison guards when a riot broke out in a jail.	The plaintiff was successful at trial.	There is no reported appeal from the trial decision in this matter.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Château c Placemens Germarich Inc</i> (1994), JE 94-1205 (CS), aff'd (1997), JE 97-1254 (CA).	An action was brought by members of an association who retained the services of a taxi company and did not want to pay increased rates.	The trial judge dismissed the action.	The Court of Appeal denied the appeal.
<i>ACEF Sud-Ouest de Montréal c Arrangements alternatifs de crédit du Québec inc.</i> , [1994] RJQ 114 (CS).	An action was brought on behalf of all Quebec consumers who entered into credit contracts with the defendant. The plaintiff alleged that the class members were fraudulently induced to enter illegitimate credit arrangements.	The plaintiff was successful at trial. The trial judge ordered that the contracts were rescinded and the class members were awarded damages.	There is no reported appeal from the trial decision in this matter.
<i>Pearl c Investissements Contempra Ltée.</i> , [1995] RJQ 2697 (CS).	An action was brought on behalf of all owners and drivers who had their cars towed by the defendant without their consent and therefore incurred damages consisting of towing and storage fees.	The plaintiff was successful in part. The defendant was ordered to pay damages for certain costs incurred by class members.	There is no reported appeal from the trial decision in this matter.
<i>Jolicoeur c 2963-7634 Québec Inc</i> (1996), JE 97-229 (CS).	An action was brought by individuals who had purchased all-inclusive trips from the defendants and whose flights were delayed by 2 days on a return trip to Venezuela.	The plaintiff was successful at trial. The defendants were ordered to pay general and punitive damages to the class.	There is no reported appeal from the trial decision in this matter.
<i>Fortier c Entreprises Dorette Va/Go Inc.</i> , 1997 CarswellQue 4230 (CS).	An action was brought by individuals who had purchased all-inclusive trips from the defendant and who were not able to stay in the resort that they booked because no rooms were available.	The plaintiff was successful in part. The defendant was ordered to pay damages in the amount of \$250 per person.	There is no reported appeal from the trial decision in this matter.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Duverger-Villeneuve c Agence de voyages les Tours Corail inc</i> , 1997 CarswellQue 4161 (CS).	An action was brought on behalf of individuals who were scheduled to travel on a flight to France that was inexplicably cancelled. The class sought compensatory damages.	The plaintiff was successful at trial. The defendant was ordered to pay \$382,750 in general damages.	There is no reported appeal from the trial decision in this matter.
<i>Masson c Thompson</i> , [1997] RJQ 634 (CS), aff'd [2000] RJDT 1548 (CA)	An action was brought on behalf of employees of the defendant for unpaid wages and benefits.	The plaintiff was successful at trial.	The Court of Appeal affirmed the trial decision.
<i>Lessard c Commission scolaire des Mille-Îles</i> (1997) JE 97-1630, varied (2002) JE 2002-123 (CA), leave to appeal to SCC refused, [2002] CSCR No 106.	An action was brought on behalf of parents of children attending schools in the defendant school board's region who were not provided public transportation to and from school.	The trial judge dismissed the action.	The Court of Appeal allowed the appeal in part.
<i>Lacroix Perron c Entreprises Dorette Va/Go</i> (1997), REJB 1997-04183.	An action was brought by individuals who had purchased travel packages through the defendant.	The plaintiff was successful at trial.	There is no reported appeal from the trial decision in this matter.
<i>Bouchard c Entreprises Dorette Va/Go</i> , [1997] RJQ 2579 (CS).	An action was brought by individuals who had purchased travel packages through the defendant and whose flight dates were changed without their consent.	The plaintiff was successful at trial. The defendant was ordered to pay general and punitive damages.	There is no reported appeal from the trial decision in this matter.
<i>Carruthers c Paquette</i> , [1998] RRA 608 (CS).	An action was brought on behalf of individuals who had had wheel locks placed on the tires of their vehicles when they contravened parking laws in the City of Montreal.	The trial judge dismissed the action.	Appeals were denied.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Ouimette c Canada (Procureur général)</i> , [2000] JQ no 967 (CA), leave to appeal to SCC refused, [2002] CSCR No 282.	An action was brought by individual residents on the banks of Lake Temiscamingue against the government for maintaining too high of water levels and allowing the erosion of soil.	The trial judge dismissed the action.	Appeals were denied.
<i>Doyon c Fédération des producteurs acéricoles du Québec</i> , [2000] JQ no 149, rev'd [2001] RJQ 827, leave to appeal to SCC rejected, [2001] CSCR No 214.	An action was brought in respect of marketing maple syrup.	The plaintiff was successful at trial.	Court of Appeal set trial decision aside, SCC refused leave.
<i>Roberge c Sherbrooke (Ville de)</i> (2001), JE 2001-2218, REJB 2001-27416, rev'd [2004] JE 2004-1862.	An action was brought on behalf of real estate developers against the City of Sherbrooke for the gases being released from solid waste facilities.	The trial judge dismissed the action.	Appeal was allowed in part.
<i>Dikranian c Québec (Procureure générale)</i> (2001) JE 2002-752, aff'd 2009 QCCA 1014.	An action was brought on behalf of students who had received loans and bursaries from the Ministry of Education and who were liable to pay interest at the end of their studies.	The trial judge dismissed the action.	Appeal denied in 2009 QCCA 1014.
<i>Bergeron c Sogidès Itée</i> (2002), JE 2002-624 (CS).	An action was brought in respect of royalties owed under publishing contracts.	The trial judge dismissed the action.	There is no reported appeal from the trial decision in this matter.
<i>Association provinciale des retraités d'Hydro-Québec c Hydro-Québec</i> , 2005 QCCA 304; aff'd [2005] CSCR No 215.	An action was brought on behalf of employees of the defendant following an amendment of their pension plan, which reduced employer contributions.	The trial judge dismissed the action.	The appeal was denied.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Girard c 2944-7828 Québec</i> , [2003] RJQ 2237, (CS), varied [2004] JQ No 13624 (QCCA).	An action was brought in respect of materials deposited at Shipshaw in contravention of environmental standards.	The plaintiff was successful at trial.	Appeal allowed in part. The apportionment of liability was changed.
<i>Binette c Syndicat des chauffeurs et chauffeurs de la Corp Métropolitaine de Sherbrooke, section locale 3434 (SCFP)</i> (2004), JE 2004-952.	An action was brought on behalf of individuals using the public bus system in Sherbrooke following a strike by the drivers that deprived class members of transportation.	The plaintiff was successful at trial. The defendant was ordered to pay \$99,700.00 in damages.	There is no reported appeal from the trial decision in this matter.
<i>Riendeau c Compagnie de la Baie d'Hudson</i> , [2004] JQ No 11070, aff'd [2006] JQ No 12222 (CA)	An action was brought on behalf of individuals with a Hudson's Bay credit card against the defendant for the interest payable on purchases made with these cards.	The plaintiffs were successful at trial.	The Court of Appeal upheld the trial decision.
<i>Option Consommateurs c Service aux marchands détaillants ltée (Household Finance)</i> , [2003] RJQ 1603; varried 2006 QCCA 1319.	An action was brought by consumers who had purchased furniture from a certain retailer and entered under financing agreements where they were told they could pay at a later date, interest-free for one year. The plaintiffs alleged that the defendants had not disclosed that interest rates would run between 26.9% and 35.18% and that there would be a minimum monthly payment.	The plaintiffs were successful at trial. The trial judge ordered the defendant to reimburse the class members for the additional fees they were forced to pay as well as interest.	The Court of Appeal altered the class definition and ordered the defendants to pay additional amounts to class members.
<i>Deronvil c Univers gestion Multi-Voyages</i> , 2006 QCCS 3354.	An action was brought on behalf of all persons who bought airline tickets and were not included on their scheduled flights.	The plaintiffs were successful at trial. The defendant was ordered to pay each class member damages depending on their sub-class grouping.	There is no reported appeal from the trial decision in this matter.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Malhab v Diffusion Metromedia CMR</i> , 2006 QCCS 2124, rev'd 2008 QCCA 1938, aff'd 2011 SCC 9.	An action was brought by taxi drivers in Montreal after a radio station made defamatory remarks about the group.	The trial judge dismissed the action.	Trial decision reversed by the Court of Appeal, which was upheld by the SCC.
<i>Comité d'environnement de Ville Émard (CEVE) c Domfer Poudres Métalliques ltée</i> (2002), JE 2002-2048; rev'd 2006 QCCA 1394, leave to appeal to SCC granted, [2007] SCCA No 54.	An action was brought by residents of the town of Émard against a company operating 2 factories in the area, and causing nuisance and environmental damage in the area.	The trial judge dismissed the action. The Court of Appeal reversed the lower court's decision and ordered the defendant to indemnify the residents.	Reversed by Court of Appeal. Application for leave to appeal to SCC granted with costs. Notice of discontinuance filed August 31, 2007.
<i>Riendeau c Brault & Martineau</i> , 2007 QCCS 4603, aff'd 2010 QCCA 366.	An action was brought on behalf of a class of Quebec residents who had bought furniture from the defendant between a certain period of time and were told that they did not have to pay anything before a certain period of time and did not have to pay interest.	The plaintiffs were successful at trial. The defendant was ordered to pay a sum of \$2 million to the class members.	Trial decision upheld by Court of Appeal.
<i>St Lawrence Cemest v Barette</i> , 2008 SCC 64.	An action was brought against a cement manufacturer for nuisance caused by its activities.	The plaintiffs were successful at trial.	The Court of Appeal reduced the amount awarded to the plaintiffs. The Supreme Court of Canada overturned the Court of Appeal and upheld the trial decision.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Marcotte c Banque de Montréal</i> , 2009 QCCS 2764, rev'd 2012 QCCA 1396, leave to appeal to SCC granted, 2012 SCCA 419.	Nine related actions were brought against banks that issued credit cards by cardholders who paid for goods or services in foreign currency. The plaintiffs alleged that the card issuers had charged a fee that was separate from amounts applied to conversion rates.	The plaintiffs were successful at trial and the banks were ordered to pay over \$200 million in general and punitive damages.	The Quebec Court of Appeal allowed the appeal in part. Cases were dismissed against CIBC, Laurentian Bank, Bank of Nova Scotia, Royal Bank, and Amex. The damages were reduced for the remaining defendants to total \$13 million. A notice of application for leave to the SCC was filed on Oct. 1, 2012 and leave was granted.
<i>Adams v Amex Bank of Canada</i> , 2009 QCCS 2695, rev'd 2012 QCCA 1394, leave to appeal to SCC granted, 2012 SCCA 438.	This case was tried with the Marcotte actions noted above. The plaintiff alleged that Amex had charged a fee that was separate from amounts applied to conversion rates.	The plaintiff was successful at trial and Amex was ordered to pay \$13,097,896 in general damages plus \$2.5 million in punitive damages.	The Quebec Court of Appeal allowed the appeal in part. Punitive damages were struck from the original judgment, and the general damages amount remained the same. A notice of application for leave to the SCC was filed on Oct. 15, 2012 and leave was granted.
<i>Myette c Commission administrative des régimes de retraite et d'assurances</i> , 2009 QCCS 5144.	An action was commenced against the CARRA because they were refusing to pay class members their full pension benefits on the basis that fiscal rules did not allow them to.	The plaintiffs were successful at trial. The trial judge held that CARRA was liable for providing erroneous information and granted the class members their shortfalls for the years preceding the judgment.	There is no reported appeal from the trial decision in this matter. The time for appeals has now expired.
<i>Biondi c Syndicat des cols bleus regroupés de Montréal</i> , 2010 QCCS 4073, aff'd 2013 QCCA 404, leave to appeal to SCC refused, 2013 SCCR 184.	An action was commenced by members of the public who slipped and fell on Montreal city sidewalks after the city union workers delayed snow removal in the city as a tactic while negotiating a new collective bargaining agreement.	The plaintiff was successful at trial and the union was ordered to pay \$2 million in damages to the class.	The defendants were unsuccessful on their appeal to the Quebec Court of Appeal, and their motion for leave to appeal to the Supreme Court of Canada was dismissed.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Allard c Syndicat des professionnelles de soins de Québec (SPSQ) (Syndicat Professionnel des infirmières et infirmiers de Québec (SPIIQ), 2010 QCCS 1309.</i>	An action was commenced by the Nurses of Quebec against the Nurses of Quebec's trade union for a refund of union fees.	The plaintiffs were successful. The trial judge ordered that the trade union repay union fees to class members in different amounts based on the number of hours worked during a week and within a certain period.	There is no reported appeal from the trial decision in this matter.
<i>Conseil pour la protection des malades c Fédération des médecins spécialistes du Québec, 2010 QCCS 6094.</i>	An action was brought against the Federation of Specialist Physicians by the Council for the Protection of Patients and patient class members for the specialists having organized three days equivalent to a strike and having incited their members to participate in it. As a result, many surgeries and consultations were cancelled and rescheduled during this time.	The plaintiffs were successful at trial. The trial judge held that the Federation had to pay \$2.5 million in damages to the class.	Respondents were granted an extension in time for filing their appeals brief to January 2012. There is no record of the appeal having been heard.
<i>Desgagné c Quebec (Ministre de l'Éducation, du Loisir & Sport), 2010 QCCS 4838.</i>	A plaintiff representing a class of students in primary and secondary school who had dyslexia commenced an action. The plaintiff alleged discrimination against students with dyslexia in certain school boards.	The plaintiff was successful at trial and the defendants were ordered to provide accommodation and programming for the class. They were also ordered to pay exemplary damages of \$500,000.	There is no reported appeal from the trial decision in this matter.
<i>Brochu c Société des loteries du Québec, 2010 QCCS 1338.</i>	An action was brought on behalf of individuals who had developed gambling addictions after using video lottery machines.	After 125 days of trial over the span of 14 months, the parties settled.	There is no reported appeal from the trial decision in this matter.

Quebec - Trial Decisions (Continued)			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Spieser c Canada (Procureur général)</i> , 2012 QCCS 2801.	An action was brought against the Attorney General of Canada and General Dynamics on behalf of individuals residing in the municipality of Shannon who have been affected personally or materially by groundwater contamination from trichloroethylene (TCE).	The trial began Jan. 10, 2011 and was completed in November of 2011. After 115 days of trial and 74 witnesses, the judge concluded that though Spieser had not demonstrated that the TCE was the cause of an abnormally high rate of cancer in the area, the case was certified and compensatory damages were ordered. Up to \$12,000 per person was awarded for fear, worry, and nuisance of contaminated waters.	The plaintiff has appealed the decision. The appeal has not yet been heard.
<i>Letourneau c JTI-MacDonald Corp., et al & Conseil Québécois sur le Tabac et la sante, et al. c. JTI-MacDonald Corp, et al.</i> - trial in progress	There are two actions representing different groups that are being tried together. One class is made up of current and former smokers with smoking-related ailments, and the second class is made up of current smokers who say they are unable to quit.	The trial began on March 12, 2012. The case claims \$27.25 billion in damages and is the largest civil suit in Canada's history to go to trial. As of the date November 1, 2013, there has been 178 days of trial.	

Saskatchewan - Trial Decisions			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>May v Saskatchewan, 2010 SKQB 310, aff'd 2013 SKCA 11.</i>	An action brought by Saskatchewan's public servants alleged that their pension plan entitled them to enhanced benefits and inflation protection based on representations made to them by the government. The plaintiff also claimed the government owed pension plan members a fiduciary duty.	The trial judge dismissed the action finding that the Government of Saskatchewan did not have a fiduciary duty to act in the best interest of class members. The court also held that there was no contractual term promising to adjust the pension plan for inflation or for adding additional health benefits as the plaintiffs' alleged.	An appeal to the Court of Appeal was dismissed.
Federal - Trial Decisions			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Harris v Canada, 2001 FCT 1408.</i>	An action brought by a Canadian taxpayer alleging breach of fiduciary duty to taxpayers in general and alleged preferential treatment for certain groups.	The plaintiff was not successful. The trial judge determined there was no preferential treatment and that the plaintiff did not establish a fiduciary obligation owed by the Minister to taxpayers in general.	There is no reported appeal from the trial decision in this matter.
Northwest Territories - Trial Decisions			
Case	Summary of Case	Outcome at Trial	Appeal(s)
<i>Anderson v Bell Mobility, 2013 NWTSC 25.</i>	An action was brought by an individual Bell Mobility customer residing in the Northwest Territories alleging that Bell Mobility breached its service agreement with customers by charging them a system access fee for use of 911 services when no services were in fact available.	The trial judge found in favour of the plaintiffs, ruling that the defendant had breached its service agreements and alternatively, was unjustly enriched.	The defendant has announced it intends to appeal the trial decision.