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CLASS ACTIONS IN CANADA

by Ward Branch

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This respected and comprehensive guide to bringing and defending class actions provides detailed analysis emphasizing the practical and tactical, as well as identifying pitfalls. This important work provides examples and direction through analysis of hundreds of class action cases litigated across Canada, as well as a comprehensive bibliography of class action articles. This well-organized, easy-to-read text features: practical direction and commentary, guidelines for drafting pleadings, guidance on the use of class actions in different legal areas such as: securities, environmental law and product liability, and case law analysis.

What's New in this Update:

Several chapters have been updated and re-written: Chapter 9 (Funding); Chapter 10 (Class Notice and Communication); Chapter 11 (Opting In and Out); Chapter 12 (Jurisdictional Issues); Chapter 13 (Limitation Periods); Chapter 14 (Case Management); Chapter 15 (Discovery after

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Certification); and Chapter 16 (Other Procedural Issues).

The following chapters have been updated:

Chapter 9 — Funding
Chapter 10 — Class Notice and Communication
Chapter 11 — Opting In and Out
Chapter 12 — Jurisdictional Issues
Chapter 13 — Limitation Periods
Chapter 14 — Case Management
Chapter 15 — Discovery after Certification
Chapter 16 — Other Procedural Issues

The following cases are of particular interest:

- **Class Notice and Communication — Communication with Class Members** In *David v. Canada Bread Co.*, the court declined to interfere with a public relations and reimbursement (gift card) program instituted by a defendant in the face of a price-fixing class action. The gift card contained a term purporting to release the defendants to the extent of the \$25-face value of the cards. The court found nothing oppressive in the provision of the card, although it cautioned that it would still have the ability to consider the proper financial treatment of the card's benefits on any eventual final settlement approval or judgment: *David v. Canada Bread Co.*, 2018 ONSC 198.
- **Limitation Periods** — The court may decline to strike a claim by a proposed representative plaintiff based on limitation grounds if it is unclear whether other proposed class members may be able to overcome any limitation hurdle. Similarly, the potential that individual class members may have limitations issues will not necessarily be a bar to certification, if the common issues would still advance the resolution of the underlying claims: *Ross v. Canada (Attorney General)*, 2018 SKCA 12.
- **Discovery after Certification** — There are a number of factors that the trial court will consider in assessing whether discovery of other class members is required, including the stage of the proceeding and the monetary value of the individual claims. In *Coburn and Watson's Metropolitan Home v. Bank of Montreal*, the court ordered the plaintiffs to propose certain class members for discovery, given that the pleadings acknowledged some element of individualization of the challenged fees across categories of class members: *Coburn and Watson's Metropolitan Home v. Bank of Montreal*, 2018 BCSC 897.