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Class Action Coverage and Defence Across Canada

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- SVR currently involved in the defence of a class action involving a claim against the Lutheran Church regarding the investment of funds.
- SVR is currently involved in the defence of a class action relating to a product liability claim concerning a hot water heating system in a large condo complex.
- SVR defended three universities in a billion-dollar class action involving allegations of misallocation of pension monies. The class action was never certified, and the claim was abandoned.
- SVR is currently involved on the plaintiffs' side in a proposed class action against two oil and gas companies and certain of their directors arising out of the cancellation of deferred compensation rights held by employees of one of the defendant companies, which was purchased by the other defendant company. A class has not yet been certified.
- SVR is currently involved in a cannabis class action involving cannabis product liability, sale of goods, unjust enrichment and mislabeling.
- SVR has been any also been involved in successfully defending many class action certifications.

- Lawyers now at SVR acted as counsel to the province in a billion dollar claim arising from the sexual sterilization of persons with disabilities over a fifty year period from the 1920s to the 1970s. While this action pre-dated Alberta's class action legislation, there were 1,000 plaintiffs and it was run as a de facto class action.
- Lawyers now at SVR acted for a medical/dental equipment supplier in the defence of a national class action involving the supply of dental-jaw joint implants.
- CBM Lawyers in Edmonton has successfully defended against a Class Certification application.

British Columbia

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LINDSAY | LLP

BARRISTERS

Andrew Epstein

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Richard Lindsay QC, John Kim and Andrew Epstein have class action experience from a number of different perspectives, including the following:

A. LIABILITY

1. Plaintiff
 - a) Product liability on behalf of the public and subrogating insurers
2. Defence
 - a. Asbestos
 - b. Tobacco
 - c. Financial Services
 - d. Product Liability
3. Third Party Defence
 - a. Product Liability
4. Amicus Curiae
 - a. Price-fixing

B. COVERAGE

1. Dozens of cases on a wide range of issues

Andrew Epstein is currently working on the Lutheran Church class action with Alan Rudakoff of SVR in Calgary.

Manitoba

Contacts

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Fillmore Riley LLP has lawyers who have been involved in class action defence for Volkswagen, General Motors, Ticketmaster, Money Mart, Canada Bread and a pet food manufacturer. They have also been involved with three class actions related to securities mis-dealing, the most notable of which was the Sino-Forest litigation. They have acted on class actions dealing with price-fixing for auto parts that included as majority of the international parts-maker supplying the North American auto assembly market as defendants.

Newfoundland & Labrador

Contacts

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- Steve May, Q.C. defended NL residential school class action on behalf of the Moravian Church of NL in the Newfoundland and Labrador Supreme Court. Obtained a discontinuance against our client in advance of the commencement of trial of the action.
- Steve May, Q.C. is defending a class action involving Federation of Newfoundland Indians in Federal Court over enrolment issues in the Qalipu Mi'kmaq First Nation.

- Megan Taylor represented Beechcraft Corporation in a proposed class action arising from an airplane 'crash' at the Gander Airport. Obtained a discontinuance against our client in advance of the commencement of trial of the action.
- Jorge Segovia successfully defended a manufacturer of video lottery terminals (VLTs) in a class action brought against Atlantic Lottery, who in turn brought third party claims against several VLT manufacturers. The plaintiffs alleged that VLTs are inherently dangerous, deceptive and harmful. They advanced claims based on: misrepresentation under the Competition Act, R.S.C., 1985, c. C-34; breach of the Statute of Anne, 1710; breach of the Criminal Code's prohibition against games similar to three-card monte; failure to warn of the dangers of VLTs; breach of contract; unjust enrichment; and waiver of tort. The action was certified by the applications judge as a class proceeding under the Class Actions Act, SNL 2001, c. C-18.1, and this was upheld on appeal (for most of the claims). But the certification order was set aside, and the action was struck by the Supreme Court of Canada: *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19.
- Richard Gosse acted as the local agent for a national lender on process to strike a putative class action by interlocutory proceeding prior to certification (2007-2008).
- Richard Gosse led a team of local agents for Government of Canada in overturning certification of nationally-scoped class action on appeal and developing evidentiary database for actions other provincial jurisdictions (2008-2011).
- Richard Gosse was part of a litigation team member and leader in defending the private owner of hydroelectric power plant in putative class action against private industry and public authorities (2015-present).

New Brunswick

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- Jade Spalding represented a tobacco company in the defence of a multi-billion dollar product liability claim commenced by the Province of New Brunswick. Similar litigation had been commenced in other jurisdictions.
- Catherine Bowlen defended the Miramichi Regional Hospital pathology class action, representing the hospital. Certification was refused by the Court of Queen's Bench. The Court of Appeal overturned the lower Court Decision and granted Certification. A negotiated settlement was subsequently achieved between the parties and approved by the Court.
- Catherine Bowlen also defended the Miramichi Regional Hospital colposcopy class action representing the hospital. The parties consented to Certification upon negotiating a settlement, which was approved by the Court.
- Catherine Bowlen is presently defending a health authority on a proposed class action with respect to alleged misuse of oxytocin in the labour and delivery unit of a hospital.
- Catherine Bowlen is also presently defending a proposed class action involving a health authority who administers a psychiatric facility regarding alleged historical abuse and systemic negligence. She has also been Counsel in other class actions brought in New Brunswick against the provincial health authority.
- Talia Profit is presently involved in defending the same class action involving a health authority who administers a psychiatric facility regarding alleged historical abuse and systemic negligence.
- Talia Profit has also been Counsel in other class actions brought in New Brunswick against the provincial health authority.

Nova Scotia

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Harry Thurlow and John Boyle are currently retained as defence counsel to a large Canadian Financial Institution involved in a securities related class proceeding (*Gayle Crooks et al v CIBC World Markets Inc.*). Mr. Thurlow is lead defence counsel on CIBC's behalf.

Mathew Saunders has been involved in consideration of several class actions pertaining to privacy breaches.

Ontario

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Specific examples of class actions and mass tort claims Blaney McMurtry have handled, and/or for which we have acted as coverage counsel, include:

- class action brought in Ontario by investors in tax driven condominium developments as a result of alleged misrepresentations
- class actions brought in Ontario, British Columbia, and Quebec by breast implant recipients against the manufacturer of the implants
- claims brought in Ontario by family members of victims of the sinking of the Ocean Ranger oil rig
- class actions brought in Ontario, Alberta and British Columbia by car owners against their insurers in which the plaintiffs sought to recover their deductibles
- class action brought in Ontario by recipients of a Hepatitis B vaccine against the various manufacturers of the vaccine
- class action brought in Ontario by the families of Special Needs children against the Ontario Government
- class actions brought in Ontario by recipients of temporomandibular jaw implants against the Federal Government
- class action brought in Ontario by insureds against their insurers for losses suffered as a result of the August 2003 Regional Blackout
- class action brought in Ontario by clients of a lawyer against that lawyer for failing to protect their investments
- class actions brought in Ontario, Saskatchewan, and Quebec by breast implant recipients against the Federal Government
- actions brought in Ontario by families of victims of the Air India bombing, the shooting down of KAL 007 and the Air Canada Cincinnati fire
- class action brought in Ontario arising out of a train derailment
- class actions brought in Ontario, B.C., Saskatchewan, Alberta, and Quebec against the manufacturer of luncheon meats
- class action brought in Ontario against telephone service providers
- class actions brought in Ontario, Saskatchewan, and the U.S. against manufacturer of pet food
- class actions brought in Ontario, Quebec, and the U.S. against plumbing manufacturer
- class actions brought in Ontario, Alberta, and the U.S. against roofing manufacturer
- class actions brought in Ontario, B.C., Alberta, Saskatchewan, Quebec and the U.S. against Directors and Officers of a major newspaper conglomerate
- class action brought in Quebec by former students of a school in relation to alleged abuse
- class action brought in Ontario against the Ontario government arising out of the Plastimet fire
- class action brought in Ontario by Canada Post parcel post customers arising out of charges alleged to violate the Weights and Measures Act

- class actions brought in Ontario and Saskatchewan by travelers to Cuba against their Travel Agency for damages allegedly suffered as a result of a water shortage
- class actions brought in Ontario against travel wholesalers arising out of alleged misrepresentations in relation to travel packages
- class action brought in Ontario by residents of an apartment complex following an explosion
- class action brought in Ontario arising out of a major propane explosion in Toronto which forced 12,000 people from their homes
- class action brought in Ontario against a major Canadian bank arising out of alleged misrepresentations made by a third party promoter in connection with loan facilities established by the bank in favour of investors in the promoter's venture
- class actions brought in Ontario and British Columbia against the manufacturer and distributor of a porcine based collagen dermal filter used in the treatment and correction of facial wrinkles and laugh lines
- class action brought in British Columbia against the distributor of a cosmetic filler arising from alleged negligence and misrepresentation in relation to the injections
- class action brought in Ontario against a financial advisor arising from allegedly improper advice relating to leveraged investing

Kelly Santini acted in the class action case *Ducharme v. Solarium de Paris Inc.*, 2007 CanLII 14346 (ON SC). They also were successful in the appeal of the decision at Divisional court.

Prince Edward Island

Contact

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COX & PALMER

There is no class action legislation on PEI and a limited number of class actions are filed here due to the small size of our population.

Quebec

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Stein Monast defended the interests of the Centrale des Syndicats du Québec, responsible for the maintenance of the cooling towers identified to have been at the origin of the 2012 outbreak of Legionnaire's disease in Quebec City, in the Class action lawsuit initiated in 2015 by Ms. Allen, the widow of one of the victims. After several calls in warranty, examinations on discovery and the filing of numerous experts' reports, many of which were produced by foreign experts, the trial was scheduled to take place from September 24 to October 19, 2018 when an out of court settlement intervened in August 2018.

Stein Monast represents the interests of one of the leading insurers a privacy protection matter. This case requires in-depth knowledge of insurance coverage to determine which policies have been triggered, whether they are concurrent or excess, whether certain exclusions apply. This file requires a special skill in order to establish the best strategy with regard to the risks presented by the file, in particular by forming alliances on certain points and anticipating the next steps. This case also calls for mastery and know-how with regard to the procedural stakes of the case, the impressive volume of documents to be analyzed and the number of participants involved. Finally, this case requires an in-depth knowledge of the applicable jurisprudence, both in Canada and the United States, in class actions or otherwise.

Stein Monast served in a class action involving real estate matters and the professional liability of engineers. We represented one of few land developers who sold residential lots in the City of Lévis, in a neighbourhood known as the "Constellations". Houses were built on these lots by various constructors and citizens. Afterwards it was discovered that some houses were starting to "sink" basically because the houses' foundations were not

adapted to the type of soil. A group of citizens filed a class action against the City of Lévis for wrongful emission of construction permits, and the City in turn added the land developers, and consulting firms as defendants. The class action was recently settled, without our client or the other land developers having to contribute to the settlement.

Stein Monast represented the interests of Université Laval in a class action lawsuit filed concerning the patrimonial and moral rights of authors and publishers whose works had allegedly been reproduced and/or communicated to the public or students without authorization. The parties negotiated and agreed to settle the dispute out of Court, without admission of liability on either part.

Donati Maisonneuve's Christian Azzam and Messica Bari are presently acting on a class action against the main Canadian airlines' over their refusal to refund the tickets.

Donati Maisonneuve's Christian Azzam acted as counsel for a travel agency in a class action launched by clients unsatisfied of the trip they had bought.

Saskatchewan

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Our team of lawyers have experience with defence of class actions in a variety of situations. Some recent examples include the following:

- Covid19 business interruption
- Pharmaceutical companies
- Aviation claims
- Privacy breaches
- Financial planners
- Ride sharing companies
- Mortgage protection insurance
- Modular home imports

Class Action Cases

- David E. Thera, Q.C. is acting as co-counsel for in defence of a Saskatchewan class action relating to business interruption claims arising from Covid-19 restrictions;
- Gregory Thompson, Q.C. and Caroline Smith are defending a Saskatchewan class action based on a failed tax shelter;
- Gregory Thompson, Q.C. and Caroline Smith are defending a Saskatchewan class action based on municipal bylaws regulating the ridesharing industry in Saskatoon. A summary judgment application to dismiss is in progress;
- David E. Thera, Q.C. and Graham Quick acted as counsel for a federal crown corporation in defence of a Saskatchewan class action relating to imported modular homes. A consent dismissal order was obtained following an application to dismiss for failure to assert a reasonable cause of action;
- David E. Thera, Q.C. and Graham Quick are acting as co-counsel for pharmaceutical companies in two separate class actions alleging adverse effects from medication;
- McKercher's lawyers also have experience in defending class actions involving aviation claims, privacy breaches and mortgage protection insurance;