

LAW 343 – CLASS ACTIONS AND MASS LITIGATION

Course Description

This course will provide an overview and analysis of mass litigation, whether brought by way of various representative actions available under the Rules of Court and certain statutes; repetitive individual tort actions as in the asbestos and residential schools litigation; test cases; and statutory class proceedings, available in Quebec, Ontario and British Columbia, and Saskatchewan. Consideration will be given to policy reasons for the development and expansion of mass litigation in British Columbia and other jurisdictions as well as certain procedural and substantive law developments that have contributed to the growth of this kind of litigation. The course will examine the apparent deficiencies in the law leading up to the enactment of class action legislation and will highlight the key provisions of that statutory framework and the case law that has interpreted it.

This type of litigation is extremely important from the perspective of both social and legal analysis. Moreover, it involves many diverse practice areas, including securities, banking law, aboriginal law, torts (including sexual assault), wrongful dismissal, shareholders actions, products liability and consumer claims generally, and constitutional law. Increasingly, practitioners – both barristers and solicitors – are being asked to advise their clients (whether potential plaintiffs or defendants) on the subtleties of class actions and other forms of mass litigation. This course will give students a point of entry into what is a complex, challenging and rewarding field that continues to expand rapidly. Given the cross-border implications of mass litigation, constitutional and conflicts of law issues will also be given some brief (but not over-technical) scrutiny.

Instructor

Rod Hayley is a partner at Lawson Lundell LLP in Vancouver, where he practises in the area of complex civil litigation, securities litigation, and class actions. Rod has acted successfully for both plaintiffs and defendants in major provincial and national class actions. Rod is currently acting for the Government of Canada in multi-billion dollar tobacco litigation (including class actions) in British Columbia, Newfoundland, and New Brunswick. Rod has been the Chair of

the Uniform Law Conference of Canada's National Class Actions Project and was a member of the committee recently responsible for the setting up of a National Class Actions database, sponsored by the Canadian Bar Association. He has twice been Chair of the CBA's National Civil Litigation Section and has also been Chair of Vancouver's Civil Litigation Section.

Rod has published and delivered over 45 papers and has chaired many conferences in several provinces on a variety of legal issues, including class actions. Rod is also a member of the Editorial Board of the Class Action Defence Quarterly.

A graduate of the University of Victoria (B.A., Hon.), Rod obtained his LL.B. degree from Queen's University. He also has a Ph.D. from the University of London, where he studied as a Commonwealth Scholar. Rod has taught at the University of Victoria both full-time and also part-time (Rod is currently teaching a course he designed entitled "Class Actions and Mass Litigation"). Rod has also been an Adjunct Professor at UBC's Faculty of Law, where he has taught courses in Construction Law and Mass Torts and Class Actions. In addition, Rod has lectured on legal topics in UBC's Faculty of Engineering. As an English professor, Rod has taught at the University of Alberta, the University of Western Ontario, Dalhousie University and the University of Ottawa, where he was Chair of the Honour's English programme.

Course Instructor:
Rod Hayley, B.A., LL.B., Ph.D.
Assisted by,
Chris Dafoe, B.A., B.J., LL.B.

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Fall Term, 2009
Course Requirements and Evaluation

1. Paper	Due Date	Value
(a) Topic chosen	Oct. 2	
(b) Outline (3 pages maximum)	Oct. 16	
(c) Seminar presentation/oral argument:		
(i) oral classroom presentation or outline and work in process, <i>or</i>	Oct. 16 – Nov. 27	30%
(ii) oral submissions (as argument in Court of Appeal)		
(d) Written requirement:		
(i) paper (length approximately 6000-7500 words), <i>or</i>	Dec. 11	60%
(ii) 15-page Factum and a short (approximately 2000-3000 words) paper on a legal issue arising from the oral argument and Factum		10%

2. Classroom Participation

The required readings for the course will not be extensive. However, I expect that students will read the material carefully, and come to class prepared to discuss it in detail.

3. Penalties

Late papers: 2% deducted per day overdue.

4. Possible Essay Topics

The attached list may assist you in choosing an essay topic. However, you are certainly not restricted to the topics on the list. Please bring your topic to me so that I can help you decide whether it will be a suitable one.

5. Contact Information

Chris and I are available to meet students by appointment at UVic on Friday afternoons; during other week days I am available at Lawson Lundell:
ph: (604) 631-9211; e-mail – rhayley@lawsonlundell.com. Chris's contact information is: ph: (604) 631-9193; e-mail – cdafoe@lawsonlundell.com.

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Possible Essay Topics

The following are merely suggestions for essay topics; I would be pleased to receive papers based on refinements of these topics, or indeed on any topics concerning class actions which interest you. Topics however, must be approved.

- “Moving the Limits of Social Justice” or “Legalizing Blackmail”: Class Action Policy Considerations
- Aboriginal Schools Litigation: History and Current Issues
- Class Actions Involving Misrepresentations
- Representative Actions: Post *Naken*
- National (Multijurisdictional) Class Actions
- Class Actions and Securities Law
- Class Actions and the Financial Services Industry
- Class Actions and Shareholder Disputes
- Class Actions and Product Liability Litigation
- Class Actions and Environmental Law
- Class Actions and Employment Law
- The Test for Certification in Canada and American Class Action Litigation
- The “Preferable Procedure” Test: Recent Developments
- Counsel Fees in Class Actions
- Communications with Class Members

- Court Approval of Settlements in Class Actions
- The Representative Plaintiff: Duties and Responsibilities
- Regulating Defendants' Conduct: The Significance of the Third Policy Goal of Class Actions Legislation
- Costs v. No Costs Regimes in Canada
- When Class Actions are Not Permitted: Section 41 of the B.C. *Class Proceedings Act* and its Counterpart in other Class Proceeding Statutes
- Limitations and Class Actions – the “Tolling” Provisions
- Striking Down Class Actions: An Analysis of Recent Preliminary Attacks
- Defendant Class Actions
- International Class Actions
- Class Actions – Can They Remedy Historical Wrongs to Minority Groups?
- Class Actions and Ethics