IADC Committee Newsletter

INTERNATIONAL AND CLASS ACTIONS AND MULTI-PARTY LITIGATION

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IN THIS DOUBLE ISSUE

While long confined to the legal realm of the United States, class actions and other legal forms of collective redress have experienced a dramatic uptick in interest and considered adoption in various jurisdictions around the globe. Herein a brief update of key decisions, developments and trends in the United States, the United Kingdom, Australia and Canada. Also in this issue, how willing are Canadian courts to assume jurisdiction over international classes of plaintiffs? With the recent shift in American jurisprudence towards a more restrictive approach to certification, and Canada being perceived by plaintiffs' lawyers as an attractive jurisdiction in which to bring class actions, how "open for business" is Canada for international classes?

Featured Articles

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International Class Action & Collective Redress Update

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Introduction

For decades, the United States stood alone in its provision of class action procedures for civil litigants, and the global legal community has been slow to adopt similar procedures.[1] In 1973, one of Canada's provinces, Quebec, decided to allow class action procedures, but it was not until the early 1990s that the procedures spread to other Canadian provinces. Similarly, in 1992 Australia adopted a federal class action rule.

In the past decade, that slow growth has turned into rapid acceleration, as more and more countries have adopted—or at least shown interest in adopting—class action or collective redress procedures. In all, approximately 25 countries now have implemented class action/collective redress systems, and several others are actively debating the adoption of such procedures.[2] But, not surprisingly, implementation has not been uniform globally: the design and development of these procedures vary considerably by country. In light of that fact, we have endeavored to survey briefly here some recent class action and collective redress developments in various jurisdictions worldwide.

I. Key Class Action Cases Facing the United States Supreme Court

Just last month, the United States Supreme Court decided two cases—*Comcast Corp. v. Behrend* and *Standard Fire Insurance Co. v. Knowles*—with far-reaching implications for class action proceedings in the United States. Although most commentators expected that in *Comcast* the Court would resolve lower federal courts' disagreement on the question

[1] FED. R. CIV. P. 23 (adopted 1966).

[2] By the authors' count, the following countries have adopted some form of class action or collective litigation procedure: Argentina, Australia, Brazil, Bulgaria, Canada, Chile, China, Denmark, England and Wales, Finland, Germany, Indonesia, Italy, India, Japan, Netherlands, Norway, Poland, Portugal, South Africa, Spain, Sweden, Switzerland Taiwan, and the United States.

whether class certification must be supported with admissible expert witness evidence—an issue explicitly left unresolved in the Court's 2011 decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541—the Court largely avoided that question. *Comcast* will instead play a different but no less important role in the development of class-certification law post-*Dukes*. After *Comcast*, it is clear that *Dukes*'s holding about the primacy of commonality on issues of liability and damages applies outside of the employment context. And in *Knowles*, the Court unanimously held that plaintiffs cannot avoid federal jurisdiction under the Class Action Fairness Act (CAFA) simply by making pre-certification stipulations that would limit class-wide damages below the jurisdictional threshold. Although defendants still bear the burden to establish that CAFA's $5 million damages threshold has been met, *Knowles* closes a loophole commonly used to avoid federal jurisdiction.

Comcast Corp. v. Behrend

Comcast is a concise, punchy opinion, written by Justice Scalia for a 5–4 Court, that clarifies four key points about class certification under Federal Rule of Civil Procedure 23. First, the Court made clear that it meant what it said in *Dukes*—namely, that the commonality required by Rule 23 for class certification demands more than just the existence of common *questions*. To establish commonality, the Court held, those common questions must be answered for each and every class member with the same class-wide *proof*. Second, *Comcast* clarifies that courts must be vigilant to ensure that expert testimony used to establish class certification actually provides a method for drawing class-wide conclusions. Third, after *Comcast*, there is no doubt that courts must examine both the merits of plaintiffs' claims and their proffered method for resolving those claims before drawing conclusions about whether those claims can be established in a collective fashion at trial. Fourth, and finally—in an important footnote[3]—the Court at least implicitly rejected the view adopted by several courts that plaintiffs need not be able to prove class-wide damages to certify the class. Instead, the Court clarified, the common proof requirement of Rule 23 applies to questions of both liability and damages.

In short, the Court delivered an elegantly simple message in *Comcast*: federal courts cannot certify a class unless the plaintiffs can produce specific common proof—as to both liability and damages—that is sufficient to establish the claims of all class members.

Standard Fire Insurance Co. v. Knowles

Knowles examined whether a plaintiff's pre-certification stipulation that a proposed class defeats federal jurisdiction under CAFA.[4] In a unanimous opinion written by Justice Breyer, the Court held that it does not.

Briefly, the facts are these: the plaintiff filed a putative class action in Miller County, Arkansas, alleging that the insurance-company defendant had breached its contractual duties by underpaying claims of

[3] *See Comcast* will not seek damages in excess of $5 million *Corp. v. Behrend*, slip op. at 10 n.6 (U, available at http://www.supremecourt.gov/opinions/12pdf/11-864_k537.pdf.

[4] CAFA was enacted in 2005 and established a $5 million amount-in-controversy threshold for federal jurisdiction. Following CAFA, the use of claims-limiting stipulations became a popular tactic among the plaintiffs' bar to avoid federal jurisdiction.

loss or damage to the proposed class of homeowners. In conjunction with the complaint, the named plaintiff filed a signed stipulation stating that the class would not seek damages "in excess of $5,000,000 in the aggregate."[5] Despite the stipulation, the defendant removed the case to federal court under CAFA, arguing that the claims could exceed $5 million and that the named plaintiff lacked the authority to bind the class through such a stipulation. The district court rejected that argument and held that the case should be remanded because, by virtue of the stipulation, the plaintiffs had met their burden to show that their claims were worth less than CAFA's $5 million threshold.[6] The defendant appealed to the Eighth Circuit under CAFA's immediate appeal provision, but the Eighth Circuit denied review without opinion.[7] The Supreme Court granted the defendant's petition for certiorari, setting the stage for the Court's first-ever review of issues related to CAFA.

Knowles is significant in two ways. First, the Court adopted a broad view of federal jurisdiction under CAFA, even though most jurisdictional rules require federal courts to limit their jurisdiction. Second, the Court distinguished CAFA cases from individual cases that involve stipulations about the amount in controversy. The Court recognized that in individual cases, plaintiffs are able to defeat a federal court's diversity jurisdiction by stipulating that their claims do not exceed the amount in controversy. In CAFA cases, however, the Court held that the same principle does not apply: plaintiffs cannot defeat federal jurisdiction under CAFA simply by purporting to limit class damages. *Knowles* could, therefore, lead to a significant uptick in class actions filed in United States federal courts.

II. Recent Reform Initiatives in the United Kingdom

In the United Kingdom, collective-litigation reform seems to be looming. Although litigants in England and Wales have two primary forms of collective redress available to them—group litigation orders (GLOs)[8] and representative actions[9]—those actions cannot be maintained on behalf of a class of unnamed and unidentified claimants and claimants must elect to join in the action in order to share in any of the damages recovered.

In 2007, the Office of Fair Trading (OFT) and the Department for Business Innovation and Skills (BIS) began advocating for reform. In 2007, 2011, and 2012, the OFT and BIS released consultation papers questioning the effectiveness of GLOs and representative actions. The consultation papers sought responses from a variety of organizations, including local government organizations, academic bodies, and other interested parties. In total, the BIS received 129 written responses. In January of this year, the BIS

[5] *Knowles v. Standard Fire Ins. Co.*, No. 4:11-CV-04044, 2011 WL 6013024, at *2 (W.D. Ark. Dec. 2, 2011).

[6] *Id.* at *3, *6.

[7] *Knowles v. Standard Fire Ins. Co.*, 11-8030, 2012 WL 3828891 (8th Cir. Jan. 4, 2012).

[8] GLO is made under Civil Procedure Rule 19 and available for claims which "give rise to common or related issues of fact or law." CPR Part 19, Title III, Rule 19:10.

[9] Representative actions may be made by (or against) one or more persons who have the "same interest" in a claim. Representative actions are available under Civil Procedure Rule 19.6. *See* CPR Part 19, Title II, Rule 19.6, *available at*: http://www.justice.gov.uk/courts/procedure-rules/civil

responded to the written responses by releasing "A Consultation on Options for Reform—Government Response." In the "Government's Response," the BIS announced its proposal to increase the Competition Appeal Tribunal's (CAT) power and introduce an opt-out "collective action" scheme before the CAT. Under the proposal, the CAT will be responsible for determining whether a collective action proceeds on an *opt-out* or *opt-in* basis (with the opt-out collective action only applicable to those domiciled in the United Kingdom). In addition, the proposal includes a judicial certification process and requires court approval of *opt-out* class actions settlements. Treble damages, exemplary damages, and contingency fees are all prohibited under the proposal. And, likely to be the subject of some controversy, the collective action proposal provides that unclaimed sums are to be paid to the Access to Justice Foundation,[10] rather than revert back to the defendant. The proposal is undoubtedly a major step towards instituting collective action procedures. However, the proposal has yet to be drafted into legislation and, thus, it is likely to be several years before any proposals are implemented into practice.[11]

III. Trends in Australian Class Actions

Australia's procedure for class actions or collective redress, known as "Representative Proceedings," became available in Australia's federal court in 1992. Under the procedure, a representative proceeding may be commenced if seven or more people have a claim that arises out of "the same, similar or related circumstances" and presents a "substantial common issue of fact or law." Several aspects of this system are noteworthy.[12]

Although the actual number of federal court proceedings remains low, Australia has seen a significant number of high-profile and high-value class actions. (By current count, 14 class actions, on average, are filed each year in Federal Court.) The increase in major claims may be attributed to the fact that, in many respects, the Australian procedure is considered plaintiff-friendly. For example, Australian law has no class certification procedure or requirement. Instead, the defendant bears the burden to show that the requirements of a representative proceeding have not been met. Moreover, there is no requirement—as in the American model—that common issues among class members predominate over individual issues. Rather, an action need have only one "substantial" common issue of law or fact to be considered a representative proceeding.

The majority of representative proceedings in Australia do not go to trial. This trend towards settlement may merely be a reflection of the fact that the risks associated with a class action are high. But, in Australia, an additional factor counsels in favor of settlement—namely, in 2011, the Australian Federal Court began requiring parties to file

[10] The Access to Justice Foundation currently is funded by section 194 of the Legal Services Act of 2007. Its purported mission is to "receive and distribute additional financial resources that will help to get free of charge (pro bono) legal assistance to those who need it most." http://www.accesstojusticefoundation.org.uk/downloads/Access_to_Justice_Foundation_leaflet.pdf.

[11] For a more detailed review of the current UK proposals, see the article at this link: http://www.lexology.com/library/detail.aspx?g=b29eb6bb-c03d-4b9d-8991-7c3eee0332e8.

[12] Many of these aspects are discussed more fully in in King & Wood Mallesons recent review of class actions in Australia. Available at http://www.mallesons.com/Documents/ClassActions_2012_FINAL.pdf

statements that set out the "genuine steps" taken to resolve disputes, including class action lawsuits. That process requires parties to evaluate any cases at an early stage and, in many cases, may drive early, informal resolution of claims.

Recently, plaintiffs have targeted a broader range of defendants. Although the majority of representative proceedings involve the company that most directly damaged the class members, in recent years, plaintiffs have been increasingly willing to include as defendants persons and entities who were less involved in the loss—*e.g.*, advisors, auditors, brokers, and rating agencies. In the *Progen Pharmaceutical* proceeding, for example, the plaintiffs asserted claims against a stockbroker, and the *Fincorpo* and *Westpoint* class actions targeted financial advisors.

All of these trends evidence a greater (if incremental) willingness among Australian courts and plaintiffs to resolve disputes in a collective action.

IV. Important Antitrust Case Awaiting Decision by the Supreme Court of Canada

In Canada, antitrust class actions have seen significant developments in the last three years. This year, the Canadian Supreme Court is set to resolve a split among the Canadian Provincial Courts of Appeal as to whether an indirect purchaser can sue for antitrust losses. Although the recent trend had been to allow certification of these classes, in companion cases that the Supreme Court will address, the British Columbia Court of Appeal ("BCCA") rejected this practice. Shortly after the BCCA's decision, on November 16, 2011 the Quebec Court of Appeal upheld a class containing indirect purchasers in *Option Consommateurs v. Infineon Technologies AG*. In resolving this split, the Canadian Supreme Court will answer whether consumers can recover for losses allegedly caused by price-fixing ahead of them in the supply chain.

In these cases, *Pro-Sys Consultants Ltd. v. Microsoft Corporation*[13] and *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*,[14] the BCCA refused to certify two indirect purchaser classes on the basis that indirect purchasers do not have a cause of action under Canadian antitrust law. The *Microsoft* class, comprised entirely of indirect purchasers, alleged Microsoft conspired with other computer manufacturers to reduce competition thereby allowing Microsoft to charge higher prices for its software. The *Sun-Rype* class, comprised of direct and indirect purchasers, alleged Sun-Rype conspired with other defendants to fix the price of high fructose corn syrup. The *Microsoft* and *Sun-Rype* appeals have been briefed, were argued in December 2012, and are awaiting decision by the Canadian Supreme Court. A ruling against certification would bring Canada's antitrust law in line with U.S. jurisprudence. Given the increasing role of antitrust class actions in Canada, the Supreme Court's decision will have a significant impact.

Conclusion

Whether referring to the process as a "class action," "representative proceeding," or "collective redress," one 2013 trend is clear—collective and representative litigation is becoming increasingly important on a global

[13] *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2011 BCCA 186.
[14] *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2011 BCCA 187.

scale in civil litigation. The legal environment around developments of such procedures is dynamic and all readers will want to continue to pay close attention to this important legal trend.

Certification of International Classes in Canadian Class Actions: Is Canada "Open for Business"?

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In December 2009, in *Silver v. Imax Corp.* ("Imax")[15] the Ontario Superior Court of Justice certified a class-action involving a large international class of plaintiffs in a secondary market liability case. One commentator noted at the time that "…never before has a global class of claimants on such a large scale been certified in a Canadian court."[16]

The few cases that have been decided since *Imax* have followed the jurisdictional analysis applied in that case, and support the notion that Canadian courts are quite willing to assume jurisdiction over international classes of plaintiffs, assuming certain basic requirements are met.

Canada has been historically perceived by plaintiffs' lawyers as an attractive jurisdiction in which to bring class actions. Given the recent shift in American jurisprudence towards a more restrictive approach to the certification, and the U.S. Supreme Court's decision in *Morrison v. National Australia Bank,*[17] limiting foreign classes of plaintiffs in securities class actions, will we see more enterprising plaintiffs' counsel setting their sights on Canada on behalf of international classes?

Requirements for Certification in Canada

Each province in Canada has its own statutory class action regime. There is no coordinated, national regime akin to the MDL system in the U.S. Despite this fragmentation, there is general consistency between the provinces in respect of the requirements for certification.

[15] *Silver v. Imax Corp.*, [2009] O.J. No 5585 (Sup. Ct. J.)

[16] Tanya J. Monestier, *Is Canada the New Shangri-La of Global Securities Class Actions?* Northwestern Journal of International Law and Business. Winter 2012. Volume 32 / Issue 2, at 313.

[17] *Morrison v. National Australia Bank*, [2010] 130 S. Ct. at 2873

In Ontario, these requirements are set out in section 5(1) of the *Class Proceedings Act:*[18]

> a) The pleadings disclose a cause of action;
>
> b) There is an identifiable class of at least two persons;
>
> c) The claims raise common issues;
>
> d) A class proceeding would be the preferred procedure; and
>
> e) The representative plaintiff would fairly represent the interest of the class, and has produced a plan to advance the proceedings.

The legislation expressly affirms three specific policy considerations underlying class actions, namely judicial economy, access to justice, and behavior modification.

Certification is generally considered to be less difficult to obtain in Canada than in the U.S., for the simple reason that there is no requirement that the common issues outweigh the individual issues. Further, there is no formal requirement of typicality for the representative plaintiff.[19]

Law Prior to *Imax*

Ontario courts have long certified national classes of plaintiffs (classes which include residents from other provinces). One of the leading cases which certified a national class of plaintiffs is *Carom v. Bre-X Minerals Ltd.*[20] A brief review of *Carom* is useful, as the analysis in that case has been adopted in subsequent decisions certifying international classes, such as *Imax*.

In *Carom*, the plaintiffs were investors in a publicly traded mining company which was found to have made fraudulent misrepresentations about its gold reserves. In determining whether there was a sufficient connection between Ontario and the claims of non-Ontario residents for the court to assume jurisdiction over those claims, the Ontario Superior Court of Justice applied the "real and substantial connection" test previously enunciated by the Supreme Court of Canada in *Morguard Investments Ltd. v. De Savoye*.[21] The Court relied upon the fact that the corporate defendants were either Ontario corporations, had subsidiary operations in Ontario or were engaged in business activities within the province; that they were trading their shares on the Toronto Stock Exchange and that they had been producing and disseminating the allegedly fraudulent information from Ontario. The Court stated that the principles of order and fairness would be upheld by certifying a national class of plaintiffs, as the notice requirements and opt-out provisions of the *Class Proceedings Act*[22]

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[18] *Class Proceedings Act, 1992*, S.O. 1992, c.6.

[19] Rosenhek, *Lessons Learned from a Landmark Denial of Certification in Canada: Martin v. Astrazeneca*, IADC Drug, Device and Biotechnology Newsletter, February 2013 - Second Edition

[20] *Carom v. Bre-X Minerals Ltd.*, [1999] 43 O.R. (3d) 441 (Gen.Div.). (See also *Wilson v. Servier Canada Inc. et al*, [2000] 50 O.R. (3d) 219 (S.C.J.), *McCutcheon v. The Cash Store Inc*., [2006] 80 O.R. (3d) 644 (S.C.)).

[21] *Morguard Investments Ltd v. De Savoye*, [1990] 3 S.C.R. 1077

[22] Section 17 of the *Class Proceedings Act* requires that certain notice be provided to individuals who are made a party to the class membership and section 9 provides that such individuals have the option to opt-out of the class membership. The "real and substantial connection" test was subsequently applied in *Wilson v. Servier Canada Inc. et al*, [2000] 50 O.R. (3d) 219 (S.C.J.), in which the Ontario Superior Court

would prevent any prejudice to class members.

There were also several cases prior to *Imax* in which international classes of plaintiffs had been certified by Ontario courts, although there had been minimal consideration of the jurisdictional issues. For example, no territorial limit was applied to the class of persons who had received breast implants that had been "manufactured, developed, designed, fabricated, sold, distributed or otherwise placed into the stream of commerce by the defendants" in *Bendall v. McGhan Medical Corp.*[23] In another Ontario case brought by purchasers in a failed commercial condominium project, *Cheung v. Kings Land Development Inc.*,[24] the Court certified a class of members that included residents of Hong Kong. In *Brimner v. Via Rail Canada Inc.*,[25] the class included any and all persons traveling on a train from Windsor to Toronto, including several residents of Michigan.

The *Imax* Certification Decision

i) The Facts

Imax Corporation is a reporting issuer whose securities are listed on the Toronto Stock Exchange and NASDAQ. The plaintiffs brought a class-action on behalf of a class of international shareholders who acquired and held Imax shares between certain dates in 2006 and 2008. The plaintiffs alleged that Imax's public disclosure documents had contained misrepresentations.

The motion concerning the certification of an international class of plaintiffs related only to claims of common law misrepresentation against Imax. In her decision released in December 2009, Justice van Rensburg applied the "real and substantial connection" test, the principles of order and fairness as enunciated in *Carom*, and took a "wait and see" approach to the potential conflict of law developments.

ii) "Real and Substantial Connection" and Principles of Order and Fairness

Justice van Rensburg found that the Court had the authority to certify an international class of plaintiffs, so long as there was a "real and substantial connection" between the claims asserted by the non-residents and the local jurisdiction. Her Honour relied on the "real and substantial connection" test from *Morguard*, and as applied by the Court in *Carom*. As Imax was a corporation formed under the *Canada Business Corporations Act*,[26] with its head office in Ontario; and was a reporting issuer under the Ontario *Securities Act*,[27] with shares traded on the Toronto Stock Exchange, Her Honour found that a "real and substantial connection" existed.

As in *Carom*, Justice van Rensburg held that the court must not only find that a "real and substantial" connection existed between the class members and Ontario, but also that any assertion of jurisdiction was consistent with the principles of order and fairness. In determining that the certification of an international class would not be an affront to the principles of order and fairness, Her Honour considered the conflict of laws issues. She found that while the claims of foreign residents might be subject to a multiplicity of

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of Justice certified a national class of plaintiffs which claimed adverse health effects from a weight loss drug.

[23] *Bendall v. McGhan Medical Corp.*, [1993] 14 O.R. (3d) 734 (Gen. Div.)

[24] *Cheung v. Kings Land Development Inc.*, [2002] 55 O.R. (3d) 747 (S.C.)

[25] *Brimner v. Via Rail Canada Inc.*, [2002] 50 O.R. (3d) 1145 (S.C.)

[26] *Canada Business Corporations Act*, RSC 1985, c C-44

[27] *Securities Act*, RSO 1990, S.5.

laws which might add complexity to the litigation, this would not weigh against the decision to certify an international class. As Her Honour described it, she decided to take a "wait and see" approach to the potential conflict of law developments.[28]

Jurisprudence Following *Imax*

Subsequent Ontario courts considering certification of international classes have continued to apply the jurisdictional analysis used in *Imax.*

In *McKenna v. Gammon Gold Inc.*,[29] the plaintiffs alleged that the defendants had made misrepresentations in connection with the sale of securities. Justice Strathy of the Ontario Superior Court of Justice applied Justice van Rensburg's jurisdictional analysis, using the "real and substantial connection" test and applying the principles of order and fairness. Indeed, His Honour noted that the "real and substantial connection" test does not require a finding that Ontario has *the most* real and substantial connection; simply that one exists.[30]

The certification of the international class in *Imax* was supported in the Ontario Superior Court of Justice less than a year after Justice Strathy's decision in *McKenna.* In *Dobbie v. Arctic Glacier Income Fund*,[31] the Court granted certification of an international class of plaintiffs in a common law misrepresentation claim. The plaintiffs consisted of Ontario residents who had purchased units in the defendant income fund on the Toronto Stock Exchange during a period between 2002 and 2008. The plaintiffs alleged that the defendants had made misrepresentations relating to the sale of publicly traded securities in both the primary and secondary markets. His Honour certified an international class, holding that "the lack of territorial limitation to the proposed class [was] not a barrier to certification."[32]

Most recently, in *Green v. Canadian Imperial Bank of Commerce* ("CIBC"),[33] Justice Strathy again applied the same jurisdictional analysis from *Imax.* In *CIBC*, a group of shareholders alleged that CIBC had misrepresented its exposure to the U.S. residential mortgage market. In this case, the class was defined as any and all persons who had purchased shares of CIBC on the Toronto Stock Exchange during a specified period of time. His Honour held that "in acquiring their shares in Ontario, non-residents could reasonably expect that their rights would be determined by the courts of Canada."[34] While His Honour found it would have been appropriate to certify an international class of

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[28] *Imax*,at para 164. (While this article was being prepared, Justice van Rensburg delivered a decision on March 19, 2013 - *Silver v. Imax*, 2013 ONSC 1667 - in which Imax was successful in its motion to amend the class definition to exclude from the certified class, "all persons who would be bound by a final judgment approving the pending settlement of the U.S. proceedings").

[29] *McKenna v. Gammon Gold Inc.*, [2010] ONSC 1691

[30] *Ibid*, at para 114. (However, certification of the international class was denied in this case by Justice Strathy for other reasons. In this case and the *Green v. CIBC* case discussed below, Justice Strathy refused to certify an international class on the basis that class-wide reliance in respect of an alleged common law misrepresentation could not be established).

[31] *Dobbie v. Arctic Glacier Income Fund*, [2011] ONSC 25

[32] *Ibid*, at para 202. (Similar to Justice van Rensburg's decision in *Imax*, His Honour left the issue of reliance to be determined at the common issues trial.)

[33] *Green v. Canadian Imperial Bank of Commerce*, [2012] ONSC 3637

[34] *Ibid*, at para 588

plaintiffs, he ultimately declined to certify the action for reasons unrelated to the class definition.

Conclusion

Ontario courts have been quite willing to certify international classes in class-action proceedings, provided that the "real and substantial connection" test is satisfied and such decision is not offensive to principles of order and fairness. The securities cases illustrate that the factors that support such a finding include the location of the issuer, whether the issuer is regulated by the Ontario Securities Commission, and whether or not the trade of securities took place in Ontario. Given growing resistance to certification by U.S. courts, Canada may well be of greater appeal for putative international classes.

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