

Schulich School of Law at Dalhousie

**CLASS ACTION LAW AND PROCEDURE IN CANADA**

LAW 2253 – Wednesday 6:30 – 9:30 pm  
Winter Term, 2019  
(Room 309)

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Professor: Mike Dull  
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Phone: (902) 443-4488

Course text: Janet Walker, eds., *Class Actions in Canada: Cases, Notes, and Materials* (Toronto: Emond Montgomery Publications, 2018)

**Course Description**

This course is intended to provide an introduction to class actions in Canada. Over the past 20 years, class actions have played an increasingly significant role in the Canadian legal system.

Class action practice combines both broad theoretical legal issues and more practical, technical considerations. This course is designed to reflect that combination.

The course will begin with an introduction to the general area of class proceedings. This course will take a critical look at the purposes behind class action legislation, namely efficiency, improved access to justice and behaviour modification. The course will consider whether, in practice, the class action regimes in Canada have obtained the desired benefits.

As class actions are essentially a “procedural vehicle,” procedure will be a necessary component of the course.

Class actions raise unique ethical and financial considerations for counsel. Students will discuss these ethical issues and how the courts have dealt with them in the past. Students will also be introduced to the practical financial considerations of prosecuting and funding a class action as well as how to choose the right class actions.

**Submission of Major Papers and Assignments**

Major papers and assignments must be submitted in hard copy. Students should hand papers in to the place stipulated by the instructor and ensure they are date and time stamped. Please read the law school policy on late penalties: <https://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>.

Please note students may also be required to provide an identical electronic copy of their paper to the instructor by the due date. Papers may be submitted by the instructor to a text-matching software service to check for originality. Students wishing to choose an alternative method of

checking the authenticity of their work must indicate to the instructor, by no later than the add/drop date of the course, which one of the following alternative methods they choose:

- a) submit copies of multiple drafts demonstrating development of their work
- b) submit copies of sources
- c) submit an annotated bibliography

### **Students with Special Needs/Requests for Accommodation**

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or the Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836.

### **Plagiarism**

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

### **Evaluation**

1. Class attendance and participation..... 20%
2. Certification motion moot:
  - a. Affidavit and written submissions ..... 20%
  - b. Oral submissions ..... 20%
3. Take home exam..... 40%

**Schedule**

<b>Class</b>	<b>Date</b>	<b>Topic</b>	<b>Readings</b>
1.	January 9, 2019	<p>Introduction and overview of the course.</p> <p>The purposes and history of class actions. Advantages and disadvantages. Alternatives to class actions.</p>	<p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at pages 1-44.</p>
2.	January 16, 2019	<p>Introduction to class action procedure.</p> <p>Certification 1 –</p> <p>Introduction to certification The standard of proof. Evidence.</p> <p>Overview of Certification requirements:</p> <ul style="list-style-type: none"> <li>• Pleadings/Cause of action</li> <li>• Class Actions as vehicle for evolution of common law</li> </ul>	<p><i>Class Proceedings Act</i>, S.N.S. 2007, c. 28 at s. 7.</p> <p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at pages 45-52; 90-98</p> <p><i>Pro-Sys Consultants Ltd. v. Microsoft Corporation</i>, 2013 SCC 57.</p> <p><i>Hunt v. Carey</i>, [1990] 2 S.C.R. 959</p>
3.	January 23, 2019	<p>Certification 2 –</p> <p>Certification requirements: (con't)</p> <ul style="list-style-type: none"> <li>• Identifiable class</li> <li>• Common issues</li> </ul> <p>**Give out Moot Assignment</p>	<p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at pages 52-72.</p> <p><i>Cloud v. Canada</i>, (2004) 73 OR (3d) 401 (ONCA)</p>
4.	January 30, 2019	<p>Certification 3 –</p> <p>Certification requirements: (con't)</p> <ul style="list-style-type: none"> <li>• Preferability of class actions</li> <li>• Representative plaintiff</li> </ul>	<p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at pages 72-90.</p> <p><i>AIC Limited v. Fischer</i>, 2013 SCC 69.</p>

5.	February 6, 2019	<p>Procedural Issues on Certification</p> <ul style="list-style-type: none"> <li>• Notice of Motion</li> <li>• Affidavits</li> <li>• Cross examinations</li> <li>• Written submissions</li> <li>• Order</li> <li>• Notice/Opt-Out</li> </ul> <p>Representation</p> <ul style="list-style-type: none"> <li>• Role of the representative plaintiffs</li> <li>• Litigation plan</li> <li>• Role of counsel</li> </ul> <p>Plaintiff's certification materials are due on <u>February 6</u></p>	<p><i>Nova Scotia Civil Procedure Rules 22, 23, 39 and 40.</i></p> <p><i>Waverley (Village Commissioners) v. Nova Scotia (Minister of Municipal Affairs) (1993), 123 N.S.R. (2d) 46 (S.C.)</i></p> <p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at pages 99-131.</p>
6.	February 13, 2019	<p>After Certification:</p> <p>Trial of a Class Action and subsequent individual issues.</p> <p>Settlement of a class action.</p> <p>Defendant's submissions are due on <u>February 13</u></p>	<p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at pages 137-190 and 279-318.</p> <p><i>Ramdath v. George Brown College of Applied Arts and Technology, 2015 ONCA 921.</i></p>
7.	February 20, 2019	WINTER STUDY BREAK	
8.	February 27, 2019	Moot Certification Hearings from 6:00 pm to 10 pm.	
9.	March 6, 2019	<p>The money class: costs, funding and fees.</p> <p>Legal ethics in a class action.</p>	<p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at pages 131-136; 191-235.</p>

10.	March 13, 2019	<p>Remedies:</p> <ul style="list-style-type: none"><li>• Individual Damages</li><li>• Aggregate Damages</li><li>• Declaratory Relief</li><li>• Cy Pres</li></ul> <p>Jurisdictional issues and the national class action:</p> <ul style="list-style-type: none"><li>• Carriage motions</li><li>• Abuse of Process</li></ul>	<p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at pages 239-277; 291-318</p> <p><i>Markson v. MBNA Canada</i>, [2007] OJ No. 1684 (ONCA)</p> <p><i>Endean v. British Columbia</i>, 2016 SCC 42</p> <p><i>BCE Inc. v. Gillis</i>, 2015 NSCA 32</p>
11.	March 20, 2019	<p>Class Action Examples</p> <ul style="list-style-type: none"><li>- Consumer Protection</li><li>- Product Liability</li><li>- Environmental Pollution</li><li>- Claims against Government</li><li>- Securities</li><li>- Competition Law</li></ul>	<p><i>Class Actions in Canada: Cases, Notes, and Materials</i> at page range 329-595 (TBD: specific pages dependant on your assigned topic)</p>
12.	March 27, 2019	<p>The class action experience in Nova Scotia (guest lecture)</p>	
13.	April 3, 2019	<p>Class wrap up and hand out take home exam.</p> <p>Take home exam due April 5, 2019 at 4:30 pm.</p>	