

SO WHAT EXACTLY IS A CLASS ACTION?

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While there are many factors to litigating class actions that make them unique from regular actions, for the purposes of this article, it is sufficient to state that a class action is really just a large scale lawsuit. Class actions differ from regular actions in that the claims of many people with common, but not necessarily identical, interests are brought in a single court proceeding with one individual representing the "class." This individual, called the "representative plaintiff," advances the claim on behalf of all individuals who have suffered a loss or damage as a result of a common complaint or issue with a defendant or its actions.

Environmental contamination cases, for instance, are well suited to class actions because several individuals may wish to join together to claim damages from the defendant or defendants that caused the contamination. Similarly, where a drug manufacturer has failed to warn of a side effect of a particular medication, individuals who have taken the medication may wish to make a claim against the manufacturer. Instances where employers are alleged to have wrongly terminated a large number of employees have also been the subject matter of class actions, as have cases involving faulty products such as medical implants and various household items such as washing machines, fireplaces, and plumbing pipes. These types of cases illustrate the variety of situations that might give rise to a class action, and demonstrate how common issues can unite individuals seeking redress from defendants who have caused them harm.

The Supreme Court of Canada has held that the three main objectives of class proceedings are to promote economy of the judicial system, to make the court system more accessible to the public and to modify the behaviour of large defendants. Class actions are therefore a useful tool for enabling individuals who have similar claims to join together in their legal claims against large scale defendants. Doing so allows such claims to be advanced efficiently without taking up judicial resources with multiple claims that are virtually identical in nature. Another advantage to class actions is that they are more economical for plaintiffs who might otherwise be unable to afford costly litigation against large corporate defendants with seemingly unlimited resources. Class actions are generally pursued on a contingency fee basis where the lawyers' fees and other costs of litigation are paid on completion of successful litigation or settlement without any up front costs to class members. By shifting the financial risk from class members to counsel, class actions can be pursued against defendants who might otherwise think that they are immune from corporate responsibility simply because they have more money than the everyday person to fund litigation.

It is not the case that just any group of people who believe they have a common interest against a common defendant can start a class action. In Ontario, class actions are subject to a particular set of procedural rules called the *Class Proceedings Act 1992*. In order for a class action to proceed, the *Class Proceedings Act 1992*, requires that the action first be certified by the court. Before an action can be certified, however, notice must be given to the potential class members that a certification hearing is going to take place. Because the goal of a class action is to reach as many potential class members as possible, notice of certification is usually quite widely disseminated, and will appear in places most likely to reach the largest population of individuals likely to be impacted by the litigation. In addition to national newspapers and magazines for

example, notification of a pharmaceutical class action may be disseminated to family physicians, while notification of a vehicle related class action may be disseminated to car dealerships and appear in auto magazines.

For certification to be granted, a judge must first be convinced of several factors. First, it must be shown that there is a legitimate claim against the defendants or that "the pleadings disclose a cause of action." It must also be shown that there is an identifiable class of two or more persons that would be represented by the representative plaintiff, and that the claims of the class members raise common issues.

A class action also has to be shown to be the preferable procedure for resolving those common issues, in light of the stated objectives of class proceedings. If a judge is not convinced, for example, that a class proceeding would be preferable to filing individual law suits, the action will not be certified.

In addition, for a class action to become certified, the court must be satisfied that there is a representative plaintiff who would fairly and adequately represent the interests of the class. In order to satisfy this requirement, it must be demonstrated that the representative plaintiff (or a lawyer acting on behalf of the class) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding. Finally, it must be shown that the representative plaintiff does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

Once a class action has been certified, the process of obtaining recovery for the class can begin. Although some defendants may offer to settle a class action either before or after certification has been achieved, some class actions will ultimately proceed to trial, and may accordingly result in a lengthy court battle. When an action is settled, the settlement must be court approved as being in the best interests of the class, and notice must be given to class members. Typically, Notice of Settlement Approval would be published in the manner described above, and would contain information on how to go about making a claim.

There is little doubt that the class action process is somewhat mystifying to the average person. Nevertheless, if you see a class action Notice and you think you might be a class member, take the time to find out more information using the contact information contained in the Notice. Your individual legal rights may be affected and where the Notice involves a settlement, you might just be surprised to discover you qualify for compensation.

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