

OPINION ON CERTIFICATION

I. THE TEST

a) Do the Pleadings Disclose a Cause of Action?

What is the cause of action underlying the claim?

Will the defence argue there is no cause of action? Why?

b) Identifiable Class?

What is the identifiable class?

Will the defence argue there is no identifiable class? Why?

c) Common Issues

What are the common issues?

What are the uncommon or individual issues?

How will the defence attempt to show that the “common” issues are in fact not common?

d) Appropriate Representative Plaintiff

Does the plaintiff fairly and adequately represent the interests of the class?

Are there any conflicts with or amongst the class?

Does the plaintiff have a cause of action against each defendant?

Will the defendant object to this plaintiff, and on what basis?

e) Jurisdiction

Is there a national class?

Is Ontario the proper forum to hear this class action?

What class action jurisdictional issues exist in this lawsuit?

Does the proposed class include extra-provincial individuals?

Will the defendant object to the jurisdiction of the Ontario Courts?

II. THE CASE LAW

a) Plaintiff's Cases

Are there certification cases the plaintiff will be relying upon which have comparable or analogous facts or issues?

Provide relevant extracts.

b) Defendant's Cases

Are there certification cases the defendant will be relying upon which have comparable or analogous facts or issues?

Provide relevant extracts.

III. OPINION

Based on counsel's objective assessment of the plaintiff's arguments and the defendant's arguments, what is the likelihood that this matter will be certified?