

Class Proceedings Committee

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?*