MLT AIKINS

WESTERN CANADA'S LAW FIRM

CLASS ACTIONS 201:

Diving Deeper into Decisions and Trends in the Class Action Landscape

Jason Mohrbutter and Allison Graham

AREAS COVERED

- National Cases of Interest
- Notable Saskatchewan Cases
- Ontario Law Reform Initiative and Possible Ramifications for Saskatchewan

NATIONAL CASES OF INTEREST

THREE CASES OF INTEREST:

- *Heller v Uber Technologies Inc.*, 2019 ONCA 1
- *Telus Communications Inc. v Wellman*, 2019 SCC 19, 433 DLR (4th) 1
- *Pioneer Corp. v Godfrey*, 2019 SCC 42, 437 DLR (4th) 383

HELLER V UBER TECHNOLOGIES INC.

FACTS:

- Mr. Heller was licenced to use the Uber Driver App since 2016 and had used the Uber Driver App to provide food delivery services to people in Toronto.
- Mr. Heller then commenced a class action against Uber on behalf of "[a]ny person, since 2012, who worked or continues to work for Uber in Ontario as a Partner and/or independent contractor, providing any of the services outlined in Paragraph 4 of the Statement of Claim pursuant to a Partner and/or independent contractor agreement".

HELLER V UBER TECHNOLOGIES INC.

FACTS:

- These class members were persons who provided food delivery services and/or personal transportation services using various Uber Apps.
- Mr. Heller sought a declaration that drivers in Ontario who had used the Uber Apps to provide food delivery and/or personal transportation were employees of Uber.
- He also sought declarations that Uber had violated the provisions of the Ontario employment legislation and that the arbitration provisions of the service agreements were void and unenforceable.

HELLER V UBER TECHNOLOGIES INC.

The Arbitration Provision

- When drivers create online accounts to access the Uber Apps, Uber requires the drivers to accept a service agreement which includes confirmation of agreement and that each driver has reviewed all of the applicable documents.
- These documents include the service agreement, which contains an arbitration clause speaking to governing law.

HELLER V UBER TECHNOLOGIES INC.

The Arbitration Provision

- Governing Law; Arbitration. Except as otherwise set forth in this Agreement, this Agreement shall be exclusively governed by and construed in accordance with the laws of The Netherlands, excluding its rules on conflicts of laws. . . . Any dispute, conflict or controversy howsoever arising out of or broadly in connection with or relating to this Agreement, including those relating to its validity, its construction or its enforceability, shall be first mandatorily submitted to mediation proceedings under the International Chamber of Commerce Mediation Rules ("ICC Mediation Rules"). If such dispute has not been settled within sixty (60) days after a request for mediation has been submitted under such ICC Mediation Rules, such dispute can be referred to and shall be exclusively and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC Arbitration Rules"). . . . The dispute shall be resolved by one (1) arbitrator appointed in accordance with ICC Rules. The place of arbitration shall be Amsterdam, The Netherlands. . . .

HELLER V UBER TECHNOLOGIES INC.

Ontario Superior Court of Justice

- Before the Ontario Superior Court of Justice, Uber brought a motion to stay Mr. Heller's action in favour of arbitration.
- The motion judge granted this motion, finding that the *International Commercial Arbitration Act, 2017*, SO 2017, c 2, Sched 5 applied – not the *Arbitration Act, 1991*, SO 1991, c 17.
- He then found that courts must enforce arbitration agreements freely entered into, even in contracts of adhesion, and rejected the unconscionability exception that Mr. Heller advanced.
- Mr. Heller appealed this decision to the Ontario Court of Appeal.

HELLER V UBER TECHNOLOGIES INC.

Ontario Court of Appeal

- Applying a standard of review of correctness, the Court of Appeal granted Mr. Heller's appeal.

- First, the Court found that the arbitration provision constituted unlawful contracting out under the employment legislation. In so doing, it applied a presumption that Mr. Heller could prove what he pled – namely, that he is an employee of Uber – and that therefore, employment legislation presumptively applied. Because the arbitration provision contracted out of the investigative process provided for under that regime, it was invalid.

- Second, the Court found that the arbitration provision was invalid on the basis of unconscionability. It found that the proposed class action, until certified, remained a single claim by the appellant – one which would cost US$14,500 to initiate the arbitration process alone, let alone travel and other expenses.

HELLER V UBER TECHNOLOGIES INC.

Ontario Court of Appeal

- Applying the four element test for unconscionability, it concluded:

1) **Grossly Unfair and Improvident Transaction:** The arbitration provision was a substantially improvident or unfair bargain that required an individual with a small claim to incur the significant costs of arbitrating that were out of all proportion to the amount that may be involved. Further, the drivers' rights were to be determined in accordance with the laws of the Netherlands, but the provision gave no information about what those laws were.

2) **Lack of Independent Legal Advice:** There was no evidence Mr. Heller had any legal or other advice and he had no reasonable prospect of being able to negotiate any terms.

3) **Overwhelming Imbalance in Bargaining Power:** Uber acknowledged there was a significant inequality of bargaining power.

HELLER V UBER TECHNOLOGIES INC.

Ontario Court of Appeal

4. <u>Knowingly Taking Advantage of Vulnerability:</u>

Nordheimer J.A. wrote:

> 4. Given the answers to the first three elements, I believe that it can be safely concluded that Uber chose this Arbitration Clause in order to favour itself and thus take advantage of its drivers, who are clearly vulnerable to the market strength of Uber. It is a reasonable inference that Uber did so knowingly and intentionally. Indeed, Uber appears to admit as much, at least on the point of favouring itself when drafting the Arbitration Clause. Its rationale in support of that favouring, i.e. that it chose this particular arbitration process in order to provide consistency of results, is an unpersuasive one.

HELLER V UBER TECHNOLOGIES INC.

Appeal to the Supreme Court

The Supreme Court granted leave to appeal from the Ontario Court of Appeal's Decision on May 23, 2019: Docket No. 38534

TELUS COMMUNICATIONS INC. V WELLMAN

Background:

- The plaintiff had filed a proposed class action in Ontario against TELUS, alleging that TELUS was improperly overcharging customers by rounding up calls to the next minute without disclosing this to the customer. The class action included both consumers and business customers in the proposed class.
- The contracts between TELUS and its customers (both consumers and business) included standard form arbitration clauses requiring that all contractual disputes be resolved through binding arbitration.

TELUS COMMUNICATIONS INC. V WELLMAN

Background:

- TELUS conceded that the statutory prohibition in Ontario's *Consumer Protections Act, 2002* invalidated this clause with respect to the consumers.
- **However**, it sought a partial stay of the action *vis a vis* the business customers on the basis that the *Consumer Protections Act, 2002* did not apply to those customers and that the business customers remained bound by the arbitration clause.

TELUS COMMUNICATIONS INC. V WELLMAN

Background:

- The issue turned on s. 7 of the Ontario *Arbitration Act*, which establishes that arbitration agreements should be enforced, subject to five exceptions to this rule.
- Section 7(5) addresses arbitration agreements that cover only part of a dispute.
- It states that a stay may be issued with respect to matters dealt with in the arbitration agreement and continue with respect to the others, where two criteria are met.

TELUS COMMUNICATIONS INC. V WELLMAN

Background:

- The motions judge refused TELUS's motion to stay the claims, and the Ontario Court of Appeal dismissed TELUS's appeal.
- These courts found that s. 7(5) granted the court discretion to allow all of the class members to pursue their claims together, if it would not be reasonable to separate their claims.
- Therefore, the question before the Supreme Court was whether this section in fact granted the courts this discretion.

TELUS COMMUNICATIONS INC. V WELLMAN

The Supreme Court's Decision

- Justice Moldaver, writing for the majority, overturned the decisions of the motions judge and the Court of Appeal.
- He found that s. 7(5) does not grant the court discretion to refuse to stay claims that are dealt with in an arbitration agreement. Therefore, while the consumers were free to use consumer protection legislation to pursue their claims in court, the business customers were not.
- The Court allowed the appeal and stayed the claims of the business customers.

PIONEER CORP. V GODFREY

BACKGROUND:

- Mr. Godfrey commenced a class action alleging that manufacturers of optical disc drives ("ODDs") and related products conspired to fix prices between 2004 and 2010.
- In this action, Mr. Godfrey named multiple defendants, four of which he alleged controlled 94% of the global ODD market.
- Mr. Godfrey applied to certify this class proceeding pursuant to the British Columbia *Class Proceedings Act*.
- The British Columbia Supreme Court, the Court of Appeal and the Supreme Court all certified the class action.

PIONEER CORP. V GODFREY

BACKGROUND:

- Before the Supreme Court, there were four significant issues:
  1) Do "umbrella purchasers" have a cause of action under the *Competition Act*?
  2) Does discoverability apply to claims under the *Competition Act*?
  3) Are there additional causes of action beyond the *Competition Act*, or is it exhaustive?
  4) Can commonality of loss be a common issue?

PIONEER CORP. V GODFREY

1) Do "umbrella purchasers" have a cause of action under the *Competition Act*?

- Umbrella purchasers are purchasers of a product who did not buy it from the alleged conspirators but bought it from a third party who was not part of the conspiracy.
- The Supreme Court found that a cause of action under the *Competition Act* does exist for so-called umbrella purchasers. It reasoned that "a rising tide lifts all boats" and that while such actions may be difficult to prove, there is no reason why defendants should be exonerated from liability on the basis that they exercised no control over their liability.

PIONEER CORP. V GODFREY

2) Does discoverability apply to claims under the *Competition Act*?

- Section 36(4) of the *Competition Act* provides that the no action under s. 36 may be brought "after two years from (i) a day on which the conduct was engaged in".
- This language led to a significant jurisprudential dispute regarding whether the discoverability principle applied to that limitation period.
- In this decision, the majority of the Court ruled definitively that the rule of discoverability did apply to that statutory limitation period.

PIONEER CORP. V GODFREY

3) Are there additional causes of action beyond the *Competition Act*, or is it exhaustive?

- Another issue raised before the Supreme Court was whether s. 36(1) of the *Competition Act* barred common law or equitable claims.
- In addition to his statutory claims under the *Competition Act*, Mr. Godfrey had also advanced claims in civil conspiracy.
- The majority of the Supreme Court found that s. 36(1) was not a comprehensive and exclusive code, and that common law or equitable causes of action could also be advanced.

PIONEER CORP. V GODFREY

4) Can commonality of loss be a common issue?

- The last significant issue addressed by the Supreme Court in *Godfrey* concerned whether commonality of loss can be a common issue in class actions.
- The Supreme Court confirmed that commonality of loss could be a common issue, and that to certify loss as a common issue, "a plaintiff's expert's methodology need only be sufficiently credible or plausible to establish loss reached the requisite purchaser level".

PIONEER CORP. V GODFREY

4) Can commonality of loss be a common issue?

- A plaintiff **did not** need to show that each and every class member suffered a loss, and the expert's methodology does not need to identify those class members who suffered no loss from those who did.
- However, the majority did note that after the common issues trial, the trial judge must be satisfied either that all class members suffered loss, or that he or she can distinguish those who have not suffered loss from those who have .

NOTABLE SASKATCHEWAN CASES

FOUR CASES OF INTEREST:

- *Kish v Facebook Canada Ltd.*, QBG 1728 of 2018
- *Ammazzini v Anglo American PLC*, 2019 SKQB 60, leave to appeal ref'd, 2019 SKCA 142
- *Gadd v Bayer Inc.*, QBG No 333 of 2018
- *Home Depot of Canada Inc. v Hello Baby Equipment Inc.*, 2020 SKCA 7

KISH V FACEBOOK CANADA LTD.

Background

- Kelly Kish commenced a class action against Facebook in relation to privacy breaches arising from the improper collection and disclosure of user information.
- The representative plaintiff sought to schedule an application to certify the class action, while the defendants brought an application to stay the action. They argued that it was duplicative of the Ontario actions, a collateral attack on the Ontario court orders, or because Saskatchewan was not the more appropriate and convenient forum.

KISH V FACEBOOK CANADA LTD.

Court of Queen's Bench Decision

- In a Fiat dated January 8, 2020, Keene J. issued his reasons with respect to scheduling. In his decision, he determined that the application to stay the action should be heard at the time of the certification hearing.
- After reviewing the legislation and jurisprudence in relation to this issue, he adopted the considerations as set out in *Piett v Global Learning Group Inc.*, 2018 SKQB 144.

KISH V FACEBOOK CANADA LTD.

Court of Queen's Bench Decision

- These are:

-Is it likely that hearing an application or applications in advance of certification will result in "multiple rounds of proceedings through various levels of courts": On a related note, will the application require a substantial record, including cross-examinations on affidavits, thereby diverting attention and resources from certification?

-Does the application address an issue which would be canvassed at the certification hearing in any event?

-Will the court have all of the evidence necessary to decide the motion, or is there relevant evidence that should inform the decision that might form part of the certification record?

-Will the application likely, or at most, dispose of the action only in relation to some claims, and some but not all defendants?

-Could the application eliminate all claims against all defendants?

-Has the plaintiff proceeded expeditiously to seek certification?

-Is it more likely that scheduling the application to be heard after certification will promote efficiency in the circumstances?

-Is the motion time sensitive or, is it necessary to ensure the proceeding is conducted fairly?

-Does the applicant allege that it is not properly a party to an action which makes allegations which stigmatize them in their professional capacity?

KISH V FACEBOOK CANADA LTD.

Court of Queen's Bench Decision

- Applied to the case before him, the strongest argument in favour of hearing the application for a stay first was that it would be much more efficient.
- However, he found that the defendants had not met their heavy burden because (a) it was not clearly more efficient for the court; (b) the proposed timing for certification is June, pending court availability; and (c) the benefit of the doubt should go to the plaintiff, as the six month delay was not so great that the proceedings should be resolved immediately.

AMMAZZINI V ANGLO AMERICAN PLC

Background

- The representative plaintiffs commenced a multi-jurisdictional class action in Saskatchewan in 2011, alleging that the defendants conspired to unlawfully impose, maintain and fix the price of natural diamonds.
- Similar proceedings were certified in British Columbia (2014), Ontario (2016) and Quebec (2018).

AMMAZZINI V ANGLO AMERICAN PLC

Background

- The representative plaintiffs in British Columbia and Ontario then brought an application for a conditional stay of the Saskatchewan Action, which was granted in 2016 (see *Ammazzini v Anglo American PLC*, 2016 SKQB 63, aff'd 2016 SKCA 164, 405 DLR (4th) 119).
- This stay directed that the Saskatchewan action would remain stayed until the certification application in Ontario was stayed.

AMMAZZINI V ANGLO AMERICAN PLC

Background

- In the meantime, the parties in British Columbia, Ontario and Quebec reached a national settlement under which the defendants agreed to pay $9.4 million in exchange for the dismissal of those actions and either the dismissal or permanent stay of the Saskatchewan action.
- This settlement received approval in British Columbia, Ontario and Quebec, with this approval contingent on the Saskatchewan courts dismissing or permanently staying the Saskatchewan action.

AMMAZZINI V ANGLO AMERICAN PLC

Background

- As such, the defendants applied to the Court of Queen's Bench to have the Saskatchewan action dismissed or permanently stayed.

AMMAZZINI V ANGLO AMERICAN PLC

Court of Queen's Bench Decision

- The matter then went before Justice Currie, who had previously granted the conditional stay.
- When determining whether to grant the stay, Justice Currie found authority to do so in s. 6(2) of *The Class Actions Act* and noted the comments of the Court of Appeal in the previous decision.
- Ultimately, Currie J. permanently stayed the Saskatchewan action.

AMMAZZINI V ANGLO AMERICAN PLC

Court of Queen's Bench Decision

- In so doing, he considered the reasonableness and appropriateness of the settlement, finding that:
  - *The national settlement was not an early settlement or reached with apparent haste, and the litigation was hard-fought;*
  - *A number of litigation risks would exist if the matter proceeded to trial;*
  - *The evidence did not establish hat the settlement was disappointingly low and even if it had, the question remained whether it was possible to do better; and*
  - *There was no evidence that the settlement had not modified the defendants' behavior.*

AMMAZZINI V ANGLO AMERICAN PLC

Court of Queen's Bench Decision

- The Chambers judge then concluded that, as in his previous decision, he remained persuaded that the Saskatchewan was duplicative of the other actions, and now, was an abuse of process.
- Given these findings, he concluded that a permanent stay was appropriate as the national settlement was reasonable and the Saskatchewan action was duplicative and unnecessary.

AMMAZZINI V ANGLO AMERICAN PLC

Leave to Appeal Denied

- The representative plaintiffs then sought leave to appeal Currie J.'s decision to the Court of Appeal.
- In a decision dated December 24, 2019, Caldwell J.A. dismissed the representative plaintiffs' application for leave to appeal from the Court of Queen's Bench decision.

AMMAZZINI V ANGLO AMERICAN PLC

Leave to Appeal Denied

- Of note are his comments regarding rights of appeal. He wrote:

> [31] First, the Legislature has conferred specific and conditional rights of appeal under s. 39 of *The Class Actions Act*; however, an order permanently staying an action is not one of the orders in respect of which the Legislature has granted a right of appeal. That is, the statute does not say there is a right to appeal, whether conditional or limited, against such an order when it is made in the context of class proceedings. Given that lacuna, it is important to recall that in *Kourtessis v M.N.R.*, 1993 CanLII 137 (SCC), [1993] 2 SCR 53 at 69–70, the Supreme Court said, "it remains true that there is no right of appeal on any matter unless provided for by the relevant legislation". However, a permanent stay of the class actions aspect of this Action is arguably akin, at least in result, to an order refusing to certify an action as a class action. The Legislature has conferred a conditional right to appeal an order refusing to certify a class action under s. 39(3)(a) of *The Class Actions Act*. Nonetheless, the rough analogy of a permanent stay to a refusal to certify seems inapt given the different legal analyses the decisions call for, even though they both end class proceedings.

GADD V BAYER INC.

BACKGROUND

- Mr. Gadd commenced a class action in Saskatchewan seeking damages for health effects relating to the use of the herbicide, Roundup. Merchant Law Group acts as counsel.
- Two other proposed class actions had been commenced in Ontario, *Bardoul and Lovshin v Bayer Canadian Inc. et al.*, Ontario Court File No. 1752/19 and *Walker and Walker v Monsanto Canada ULC*, Ontario Court File NO. 699/19. Merchant Law Group is counsel on *Bardoul*.

GADD V BAYER INC.

BACKGROUND

- The Saskatchewan defendants brought an application to dismiss or, alternatively, stay the Saskatchewan class action on the basis that it is duplicative and serves no legitimate purpose.
- This Application was heard January 6, 2020.

GADD V BAYER INC.

Chambers Judge's Decision

- On February 20, 2020, the Chambers judge released a fiat dismissing the defendants' Application.
- He found that while many of the indicia of duplicative actions amounting to an abuse of process were present, he was not satisfied that permitting the Saskatchewan action to continue would serve "no legitimate purpose"
- Significantly, the Chambers judge also noted that he would prepare and file further reasons at a later date.

HOME DEPOT OF CANADA INC. V HELLO BABY EQUIPMENT INC.

BACKGROUND

- Class proceedings were initiated in British Columbia in 2011 against banks that issue credit cards in Canada, including Visa Canada Corporation, Mastercard International Incorporated and National Bank of Canada Inc.
- Similar actions were also commenced in Alberta, Saskatchewan, Ontario and Québec.
- Then, in 2017, settlements were reached in these class proceedings between the representative plaintiffs and Visa, Mastercard and National Bank.

HOME DEPOT OF CANADA INC. V HELLO BABY EQUIPMENT INC.

BACKGROUND

- Pursuant to the class action legislation in each province, before the settlements became effective, court approval was required.
- The settlements then went before the provincial superior courts in British Columbia, Alberta, Saskatchewan, Ontario and Québec. Before each court, Home Depot and Wal-Mart objected to the settlements.
- Yet despite these objections, the courts in each province approved the 2017 settlements.

HOME DEPOT OF CANADA INC. V HELLO BABY EQUIPMENT INC.

BACKGROUND

- Home Depot and Wal-Mart subsequently appealed these decisions to the appellate courts in each respective jurisdiction.
- The British Columbia and Ontario Courts of Appeal both found that Home Depot and Wal-Mart were without a right of appeal from the settlement approval decisions because:
  - *They were not parties to the litigation;*
  - *Settlement approval is not a "judgment on common issues" nor "a determination of aggregate damages"; and*
  - *It would be problematic, policy-wise, should class members have a right of appeal.*

HOME DEPOT OF CANADA INC. V HELLO BABY EQUIPMENT INC.

The Court of Appeal for Saskatchewan's Decision

- Before the Court of Appeal for Saskatchewan, Wal-Mart and Home Depot argued that they had a right of appeal because:
  1) They were "parties" for the purposes of the appeal provisions;
  2) They could exercise the general rights of appeal in *The Court of Appeal Act*, because those under *The Class Actions Act* were not exhaustive; and
  3) They should be granted leave to act as representative plaintiffs for the purposes of bringing an appeal.

HOME DEPOT OF CANADA INC. V HELLO BABY EQUIPMENT INC.

The Court of Appeal for Saskatchewan's Decision

- The Court of Appeal for Saskatchewan reached a similar conclusion. It found:

  •Class members are not "parties" for the purposes of the appeal provisions;

  •While Home Depot and Wal-Mart relied on the definition of "party" in *The Queen's Bench Act, 1998*, this definition did not apply to class members because they were not persons served, or entitled to be served;

  •Even if Home Depot and Wal-Mart were parties, a settlement approval order is not a "judgment on common issues" from which parties have a right to appeal;

  •Section 39 of *The Class Actions Act* specifies and limits the appeal rights of class members such that the general rights of appeal contained in *The Court of Appeal Act*, *2000* do not apply; and

  •Wal-Mart and Home Depot should not be granted leave to act as the representative plaintiff for the purposes of the appeal pursuant to s. 39(4) of *The Class Actions Act*, because representative plaintiffs can appeal "judgments on common issues" – which the order approving the settlement was not.

HOME DEPOT OF CANADA INC. V HELLO BABY EQUIPMENT INC.

The Court of Appeal for Saskatchewan's Decision

- Echoing the Ontario Court of Appeal, Richards C.J.S. wrote:

> …The design of *The Class Actions Act* sees the interests of class members being protected by giving them opt-out rights, requiring court approval of any settlement, and providing the court with the discretion to hear submissions from class members at settlement hearings. Allowing individual class members to appeal a settlement proposed by a representative plaintiff and approved by the Court of Queen's Bench in circumstances such as those in issue here would introduce uncertainty into the negotiation and approval of settlements, undermine the authority of the representative plaintiffs and of class counsel, and impede settlement. See: *Ontario Decision* at para 22.

HOME DEPOT OF CANADA INC. V HELLO BABY EQUIPMENT INC.

Appeal to the Supreme Court

- Leave to appeal the decisions in the other jurisdictions has been sought: See Supreme Court of Canada Docket Nos. 38872, 38873, 38874, 38875, 39963, and 38965
- Whether leave to appeal will be sought from the Saskatchewan decision remains to be seen.

ONTARIO LAW REFORM INITIATIVE:

Possible Ramifications in Saskatchewan

ONTARIO LAW REFORM COMMISSION REPORT

- In July 2019, the Law Commission of Ontario released a comprehensive report regarding Ontario's experience with class actions since the enactment of the *Class Proceedings Act, 1992*.

- In this report, the Law Commission recommended significant changes to the Ontario class action legislation.

ONTARIO LEGISLATIVE AMENDMENTS

- Then, on December 9, 2019, the Ontario legislature introduced Bill 161, which amend Ontario class action legislation.
- Proposed amendments in this Bill include:
  - *Registration*: A representative plaintiff must register the class proceeding.
  - *The test for certification:* The amendment provides that a class proceeding will only meet the test of being a "preferable procedure" if:

    (i) a class proceeding is "superior to all reasonably available means of determining" class members' entitlement, including case management of individual claims, and administrative proceedings; and

    (ii) common factual and legal issues must predominate over questions affecting only individual class members.

  It also includes a requirement that the existence of multi-jurisdictional actions be considered.

ONTARIO LEGISLATIVE AMENDMENTS

- *The timing of dispositive motions and motions which narrow the issues*: The proposed s. 4.1 mandate courts to hear such motions in advance of or in conjunction with certification.
- *Notice*: The representative plaintiff in Ontario must notify the representative plaintiff in any other similar case in Canada. Further, a number of provisions respecting notice to the class itself are being amended – including a requirement that notice be given in French and English.
- *Carriage Motions*: The proposed amendments will introduce detailed procedures for carriage motions, including a requirement that a carriage motion be brought within 60 days of the commencement of the first of the proceedings and that any decision is final, with no right of appeal.
- *Settlement*: The proposed amendment details the evidentiary and other requirements when seeking court approval of a settlement.

ONTARIO LEGISLATIVE AMENDMENTS

- *Best Venue*: Parties may seek an order staying an Ontario class proceeding where the Court determines it is preferable for some or all of the claims to be resolved in a similar class proceeding in another Canadian jurisdiction.
- *Appeals:* Defendants and plaintiffs must appeal certification orders directly to the Court of Appeal. On appeal, a plaintiff may not materially amend the notice of certification motion or pleadings except with leave of the Court in exceptional circumstances.
- *Dormant Proceedings*: The amendments provide a mechanism by which defendants may apply to dismiss dormant proceedings. Parties have only one year to complete certain steps, or a court is required to dismiss the proceedings following a motion.

Note that these amendments will apply only to cases commenced after they come into force – **except** for the dormant proceedings provisions.

POSSIBLE AMENDMENTS IN SASKATCHEWAN?

- To date, the Law Reform Commission of Saskatchewan has not announced a similar project to that undertaken in Ontario.

- However, given that the Ontario report was only recently released and the amendments introduced only in the last three months, it remains to be seen whether a similar project will be undertaken here – or similar amendments introduced.

Q&A

THANK YOU

Jason Mohrbutter
T: (306) 347.8484
jmohrbutter@mltaikins.com

Allison Graham
T: (306) 347.8432
agraham@mltaikins.com