



# MCKENZIE LAKE

LAWYERS

## What is a Class Action?

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A typical class proceeding (*also known as a class action*) involves a lawsuit brought by one person on behalf of a group of people (*known as the class*) against one or more defendants to recover losses suffered by the class. By advancing a claim on behalf of many people, claims that may not otherwise be financially viable can be pursued.

The key participants in class actions are the class members, the representative plaintiff and the defendant. The class members are all those people who fit within the class definition approved by the court. Classes must be clearly defined so that individuals can easily determine whether they are part of the class. The representative plaintiff is the individual who volunteers to represent the class members. It is possible for there to be multiple plaintiff sub-classes, each with its own representative. There will also be one or more defendants, with a representative defendant if there is a defendant class.

Class actions, like other legal actions, begin with the issuance of a statement of claim. This is a document wherein the plaintiffs set out the wrongs they allege were committed by the defendant, and ask the Court for relief (*generally monetary compensation*).

Early on, class counsel must bring a motion to have the action certified as a class proceeding. On this motion, the court must decide if a class action is the appropriate way to proceed. In making this determination the Courts apply the five-part test set out in the Class Proceedings Act. Each component of the test must be satisfied for an action to be certified.

Formation of the common issues is one of the key outcomes of certification. Common issues are those issues that the Court has decided are a substantial ingredient of the claims of all members of the class. The common issues are invariably phrased in the form of questions that a trial judge will answer, and, in doing so, make determinations about key aspects of the action.

Once certified, notice is provided to potential class members so that they can decide whether to exercise their right to opt out of the action. If a class member opts out, they will not participate in, and will not be bound by, any settlement or judgment which may result. Those who opt out remain free to pursue their legal rights individually. If a class member does not opt out, then they will be bound by the outcome of the action.

There are generally two outcomes in any given class action. First, the parties may agree to some form of settlement. Settlements often involve the payment of money by the defendant to the plaintiff in exchange for ending the lawsuit. The Class Proceedings Act imposes many safeguards to protect the rights of class members, including that any settlement reached must be approved by a Judge to ensure that it is fair and reasonable, and in the best interests of the class members as a whole. If a settlement cannot be reached, the parties will appear before a judge and have a trial in which the judge will determine the outcome of the dispute. The outcome, be it success or failure, binds the class members. The trial decision may be appealed by either party.

It is possible that the representative plaintiff may be ordered to pay part of the defendant's legal costs if the action is unsuccessful. However, the representative plaintiff can apply to various sources, including the Class Proceedings Fund, for protection from the possibility of an adverse cost award in exchange for a percentage of any monies ultimately recovered in the action. For class members, being part of a class proceeding is generally a low cost method of pursuing one's legal rights without significant financial risk.