

	CASE	ACCEPTED CLASS DEFINITIONS
1.	<i>Abdool v. Anaheim Manag`ement Ltd.</i>	was not addressed by court
2.	<i>Bosworth v. Jurock</i>	persons who <u>acquired ownership</u> in BCS 2210 by purchase from Roosevelt Apartments and who received a transfer of that unit either from Roosevelt Apartments Ltd. or Seal Cove Properties Ltd. in or around February or March 2007
3.	<i>Bunn v. Ribcor Holdings Inc.</i>	All persons, other than the defendants, who have, at any time <u>owned homes</u> in a subdivision in the Village of Port Perry in the Township of Scugog, in the Regional Municipality of Durham, known as the Victorian Village Subdivision, and more particularly described as: (a) Lots 1 to 52, both inclusive, Lots 54 to 86, both inclusive, according to Registered Plan Number 40M-1501 for the Regional Municipality of Durham; and (b) Lots 1 to 10, both inclusive, according to Registered Plan Number 40M-1702, for the Regional Municipality of Durham.
4.	<i>Campbell v. Flexwatt Corp.</i>	<ul style="list-style-type: none"> • the class of persons in respect of which this Order is made is the Plaintiff Class of those residents in British Columbia who <u>owned</u> Radiant Ceiling Heating Panels with the brand names Aztech-Flexel, Thermaflex or Flexwatt (hereinafter "<u>RCHPs</u>") at the date of the Orders of the Chief Electrical Inspector for British Columbia that such panels be disconnected • the sub-class of persons in respect of which this Order is made as against Canadian Standards Association is the Plaintiff sub-Class of those residents in British Columbia who <u>owned RCHPs</u> which were certified by Canadian Standards Association, at the date of the Orders of the Chief Electrical Inspector for British Columbia that such panels be disconnected
5.	<i>Chace v. Crane Canada Inc.</i>	All those persons who have suffered damage up to the date of this order as a result of the cracking of a toilet tank manufactured by the defendant Crane Canada Inc. ("the Defendant") at its B.C. Pottery plant between January 1, 1980 and January 1, 1991 ("the toilet tanks") except: (a) those claims or portions of claims that have been finally and fully settled; and (b) those subrogated claims or portions of subrogated claims covered by Claims Handling Agreements between one or more insurers and the Defendant for claims for damage from the cracking of a toilet tank.
6.	<i>Chadha v. Bayer Inc.</i>	none
7.	<i>Cheung v. Kings Land Developments Inc.</i>	all <u>purchasers of units</u> in the condominium project sold by Kings
8.	<i>Collette v. Great Pacific Management Co.</i>	not given in the reasons
9.	<i>Condominium Plan No. 0020701 v. Investplan Properties Inc.</i>	all those persons who <u>purchased</u> a condominium <u>unit</u> in Condominium Plan 0020701 directly from any one of the Defendants
10.	<i>Controltech</i>	Persons who responded to a request for proposals ("RFP") for Renewable Energy

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	<i>Engineering Inc. v. Ontario Hydro</i>	Technology ("RETs") projects issued by Ontario Hydro in May of 1995
11.	<i>Cooper v. Hobart</i>	All persons resident in British Columbia as of June 10, 1999, who <u>advanced funds</u> to Eron Mortgage Corporation ("Eron"), one of its related companies, or to a borrower arranged by Eron or a related company, for the purposes of lending monies to Eron, one of its related companies or a borrower arranged by Eron or a related company, and who have not received the return of those funds in full, together with interest thereon.
12.	<i>Crawford v. London</i>	no certification reasons
13.	<i>Curactive Organic Skin Care Ltd. v. Ontario</i>	no certification reasons
14.	<i>DeFazio v. Ontario (Ministry of Labor)</i>	[100] While it is possible to craft a much narrower, acceptable class definition, because I have concluded that the plaintiffs cannot succeed on this motion for other reasons, it was not necessary to do so.
15.	<i>Denis v. Bertrand & Frere Construction Co.</i>	<p>A) To establish class membership, five criteria must be met:</p> <ul style="list-style-type: none"> a) the homeowner is either an original or subsequent <u>owner</u> of their <u>home</u>; b) the foundations, footings or floors of the home were built with concrete manufactured at Bertrand's L'Orignal plant between May 28, 2986 and October 13, 1987 or between March 1, 1988 and May 31, 1988; c) the foundations, footings or floors were built with concrete containing fly ash; d) the foundations, footings or floors built between the specified time frames with concrete containing fly ash are exhibiting deterioration which is more specifically described in paragraph 2 of this Order; and e) the homeowners have complied with the litigation plan and the retainer agreement, as determined by the representative plaintiffs. <p>B) For the purpose of paragraph 1(A)(d) of this Order, the requirement that the foundations, footings or floors are exhibiting deterioration means that the foundations, footings or floors show the same characteristics as the deteriorating concrete examined in the <i>Alie et al.</i> actions, i.e. excessive efflorescence on the concrete walls, cracking and delaminating parging on exterior walls, crumbling and deteriorating concrete, unusually soft and dusty concrete, excessive moisture in the basement and mildew and mould forming on most inside walls, especially in finished basements.</p>
16.	<i>Ducharme v. Solarium De Paris Inc.</i>	All residents of Ontario who, since on or after the 12 th of November 2004, <u>purchased solarium models</u> 1012, 1019, 1214, 1219, 1221 and 1430 designed and manufactured by Solarium de Paris Inc. up to the date of notice of certification.
17.	<i>Elms v. Laurentian Bank of Canada</i>	those who <u>invested money</u> with the defendant Taylor Ventures Ltd. through the defendant 413975 B.C. Ltd..
18.	<i>Gariepy v. Shell Oil Co.</i>	[80] I am not satisfied that the plaintiffs have established that there is an identifiable class or that resolution of the common issues will significantly advance the litigation
19.	<i>Gary Jackson Holdings Ltd. v. Eden</i>	all persons who entered into written joint venture agreements with the defendant 0740783 B.C. Ltd., in the same or substantially the same form as the agreement [entered into by the plaintiff with that company] and who, pursuant to those

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		agreements, <u>invested funds in</u> The Elyse
20.	<i>Gautam v. Canada Rapid Line Transit</i>	<ul style="list-style-type: none"> • All persons who have either <u>owned</u> <ul style="list-style-type: none"> (a) a <u>business</u> which operated from premises located within the business improvement area established pursuant to the Cambie Village Business Improvement Area designation by-law, City of Vancouver By-Law No. 9247, which business improvement area covers Cambie Street and its adjoining blocks between 2nd Avenue and King Edward Avenue, as set out particularly in Schedule "A" to By-Law No. 9247 (the "Cambie Village"); or (b) a <u>property</u> in Cambie Village occupied by such a business owner at any time from November 1, 2005 to the completion of the "Canada Line Construction in Cambie Village" (collectively, the "Class").
21.	<i>Gillespie v. Gesert</i>	a class who firstly <u>had</u> R.R.S.P. accounts with any one of C.W.T., Concentra or Olympia and, secondly, who <u>invested</u> from those accounts into the two prior described mortgages registered by way of a transfer of a fraction of the respective mortgage.
22.	<i>Haddad v. Kaitlin Group Ltd.</i>	All persons directly <u>purchasing</u> freehold <u>homes</u> on lands planned, marketed and/or developed by some or all of the Defendants, The Kaitlin Group Ltd. and/or 1138337 Ontario Inc. <u>within</u> a residential community known as the Port of Newcastle, located in Newcastle, in the Municipality of Clarington, in the Region of Durham, Ontario (the "Subdivision") on or before October 5, 2007, <u>excluding</u> , for clarity, condominium purchasers within the Subdivision and purchasers of homes and/or properties on adjacent land developed by Kylemore Homes Ltd. and/or Kylemore Communities (West Village) Ltd. and/or Kylemore By the Lake Ltd. and/or another related company operating under the name of Kylemore Communities.
23.	<i>Holmes v. Jastek Master Builder</i>	all persons who have <u>entered</u> into condominium purchase agreements with Jastek Valencia Project Inc. and/or Jastek Master Builder 2004 Inc., between November 2006 and March 2007, for the construction and sale of condominiums at 103 Wellman Crescent, Saskatoon, SK.
24.	<i>Hughes v. Sunbeam Corp. (Canada)</i>	no reported certification reasons
25.	<i>Jin v. Canada Everich Real Estate Group Inc.</i>	all persons who <u>subscribed for</u> Units pursuant to an Offering Memorandum of the Defendant Everich, dated April 25 th , 2007
26.	<i>Kimpton v. Canada (Attorney General)</i>	"[93] ... Ms. Kimpton has failed to demonstrate that she has a cause of action against any of the defendants. In the result, the application to certify the proceedings as a class proceeding fails and it is unnecessary for me to consider the other prerequisites to certification."
27.	<i>Lau v. Bayview Landmark Inc.</i>	all purchasers of condominiums in the Bayview Landmark development
28.	<i>Lewis v. Cantertrot Investments Ltd.</i>	<u>purchasers</u> of residential condominium <u>units</u> in a project known as "The Residence of Beauclaire" in Thornhill, Ontario.
29.	<i>MacDonald v. Dufferin-Peel</i>	none expressly accepted by court

	CASE	ACCEPTED CLASS DEFINITIONS
	<i>Catholic District School Board</i>	
30.	<i>Mackie v. Toronto (City)</i>	not addressed by Court
31.	<i>McDougall v. Collinson</i>	160 <u>investors</u> (6 who reside outside of British Columbia) who anticipate losing a significant portion of their investments in four syndicated mortgage funds.
32.	<i>McKinnon v. Martin & Moosomin (Rural Municipalities)</i>	has not yet been to certification
33.	<i>McMillan v. Canada Mortgage & Housing Corp.</i>	[113] ... the pleadings fail to disclose a cause of action. [114] It is therefore unnecessary to address the other issues regarding certification.
34.	<i>Metera v. Financial Planning Group</i>	all residents of Alberta who <u>invested in</u> Barclay Las Vegas Limited Partnership (excluding mutual funds salesmen and their families) (class was to initially include 55 persons who have made a contribution to the disbursement fund, with option for other 30 investors to join)
35.	<i>Nash v. CIBC Trust Corp.</i>	all persons who were <u>investors in</u> Maters Management Ltd. as of January 19, 1990 in which Morgan Trust acted as their trustee
36.	<i>Olsen v. Behr Process Corp.</i>	[sic] (a) who <u>purchased</u> and <u>applied</u> or caused to be applied, on or after January 1, 1991, the Defendants' products <i>Super Liquid Raw-Hide</i> or <i>Natural Seal Plus</i> (the "Products") to a natural wood exterior surface within British Columbia; or (b) who <u>have</u> a legal or beneficial interest in a natural wood exterior surface within British Columbia, to which the Products were applied on or after January 1, 1991.
37.	<i>Peppiatt v. Nicol</i>	All persons who <u>purchased</u> equity memberships <u>in</u> Eagle Creek Golf Club prior to December 31 st , 1990 but excluding the defendants in this action. subclasses were later created: 1) Those members of the Eagle Creek Golf Club who did not receive a copy of the membership information package; 2) Those club members who received the first version of the membership information package; 3) Those club members who received the second version of the membership information package; 4) Those club members who received the third version of the membership information package; 5) Those club members who received the fourth version of the membership information package; 6) Those club members whose letters of credit made no reference to "in trust"; 7) Those club members whose letters of credit identified an entity other than the bank as a beneficiary of the trust; 8) Those club members whose letters of credit identified as a beneficiary of the trust; 9) Those club members who are plaintiffs in the injunction proceeding commenced in December 1990; 10) Those club members who were customers at the bank; 11) Those club members who received investment advice from the bank;

	CASE	ACCEPTED CLASS DEFINITIONS
		<p>12) Those club members who were neither customers of the bank nor received investment advice from the bank;</p> <p>13) Those club members who sat on the Board of Governors of the club, or on any committee of the club that approved the quantum of construction costs;</p> <p>14) Those club members who acquired their membership in the club from the club itself;</p> <p>15) Those club members who acquired their membership in the club by way of transfer from another member of the club.</p>
38.	<i>Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.</i>	<p>2. The class of persons on whose behalf the action is brought (the "Class") is divided into a Resident Subclass and a Non-resident Subclass as defined in paragraphs 3 and 4 below. The members of the Resident Subclass and the Non-Resident Subclass collectively comprise the "Class".</p> <p>3. The "Owners" are the owners and former owners of strata lots in the Vancouver Airport Hilton Hotel (the "Hotel") who <u>purchased</u> their strata lots from the defendant, Vancouver Airport Centre Ltd. ("VAC"), pursuant to an Offering Memorandum and Disclosure Statement dated February 3, 1998 (as amended July 8, 1998) (the "Offering Memorandum") or are the assignees of such a purchaser. The Resident Subclass comprises all Owners resident in British Columbia who do not opt out of this proceeding.</p> <p>4. The Non-Resident Subclass comprises all Owners not resident in British Columbia who opt into this proceeding. The Court may hear further submissions from counsel on the creation of additional subclasses.</p>
39.	<i>Spencer v. Regina (City)</i>	all persons in Saskatchewan who <u>purchased</u> a Norlawn home from the corporate predecessors of the defendant Carma ... and any persons who <u>subsequently purchased</u> such homes whether from the original purchaser or otherwise and "all such original and subsequent purchasers of such homes that were inspected by the City of Regina.
40.	<i>Stachniak v. Jurock</i>	all persons who acquired Units from the defendant Carson Street Developments Ltd. ("Carson Street") (either directly or from Parkview Ventures Ltd.) from July 2007 to March 2008
41.	<i>Tampa Hall Ltd. v. Canadian Imperial Bank of Commerce</i>	All unpaid creditors who supplied materials or services to the defendant Cadillac Lumber Limited which were incorporated into improvements as defined by the <i>Construction Lien Act</i> which materials or services were paid for by the recipient to C.I.B.C. directly or through its agents.
42.	<i>Toronto Community Housing Corporation v. Thyssenkrupp Elevator (Canada)</i>	All persons in Ontario who <u>owned</u> or <u>owns</u> an <u>elevating device</u> that was fitted with a traction motor brake, known as a sheave jammer or sheave brake, designed, manufactured, sold or installed by any of the Defendants, that was <u>replaced</u> as required by TSSA Director's Order 207/06 with an alternative form of emergency ACO and UCM protection and incurred remediation expenses as a result.
43.	<i>Western Canadian Shopping Centres Inc. v. Dutton</i>	"[229 other] immigrant investors ... who each <u>invested</u> at least the sum of \$150,000.00 into a fund totalling \$34,065,000.00, the said sum to be managed, administered and secured by ... Western Canadian Shopping Centres Inc."

	CASE	ACCEPTED COMMON ISSUES
1.	<i>Abdool v. Anaheim Management Ltd.</i>	[86] In this case there are common issues involving the question of whether the single letter was a misrepresentation. If so, there was a common issue as to whether it was negligently made and, finally, a common issue as to the effect of a disclaimer contained in that letter.
2.	<i>Bosworth v. Jurock</i>	<p>(a) Did the Defendants <u>owe a duty</u> of care to the Class Members?</p> <p>(b) Were the Defendants <u>required to</u> provide a Disclosure Statement to the Class Members?</p> <p>(c) Did the Defendants authorize, approve and file the Disclosure Statement?</p> <p>(d) If so, in respect of the Disclosure Statement, do the Defendants fall within the class of individuals referred to in s. 22(3)(b) of REDMA?</p> <p>(e) Do the Disclosure Statement Representations, as defined in the Statement of Claim, give rise to an implied representation of fact that the Units were "free from material defect"?</p> <p>(f) Do the Deficiencies, as defined in the Statement of Claim, constitute a "material fact" within the meaning of REDMA?</p> <p>(g) Were the Deficiencies, as alleged or otherwise, present in the Roosevelt Apartments buildings:</p> <ul style="list-style-type: none"> (i) Prior to the execution and filing of the Disclosure Statement; (ii) After the filing of the Disclosure Statement and before the close of the Class Members' acquisition of the Units; or (iii) As of the close of the Class Members' acquisition of the Units? <p>(h) Were the Defendants <u>aware</u> of the Deficiencies:</p> <ul style="list-style-type: none"> (i) Prior to the execution and filing of the Disclosure Statement; (ii) After the filing of the Disclosure Statement and before the close of the Class Members' acquisition of the Units; or (iii) As of the Close of the Class Members' acquisition of the Units? <p>(i) If not, should the Defendants have been aware of the Deficiencies prior to the close of the Class Member's acquisition of the Units?</p> <p>(j) If the answer to (h) or (i) is yes, does the failure to disclose the Deficiencies in the Disclosure Statement constitute a "misrepresentation" (by omission) within the meaning of REDMA?</p> <p>(k) Do the Disclosure Statement Misrepresentations constitute "misrepresentations" within the meaning of REDMA?</p> <p>(l) Are the Defendants entitled to rely upon s. 22(7) of REDMA as a defence to the statutory misrepresentation claim?</p> <p>(m) Are the Defendants entitled to rely upon s. 22(8) of REDMA as a defence to the statutory misrepresentation claim?</p> <p>(n) Did the Defendants make the Disclosure Statement Misrepresentations with <u>knowledge</u> that they were false?</p> <p>(o) Alternatively, did the Defendants make the Disclosure Statement Misrepresentations recklessly without knowing whether they were true or false?</p> <p>(p) If the answer to (n) or (o) is yes, was the failure to disclose the Deficiencies an omission made with an <u>intent</u> to deceive the Class Members?</p> <p>(q) Did the Defendants <u>breach</u> the duty of care they owed the Class Members by failing to be aware of the Deficiencies at the time the Disclosure Statement was provided to the Class Members?</p> <p>(r) Did the Defendants <u>breach</u> the duty of care they owed the Class Members by failing to be aware of the Deficiencies before the close of the Class Members' acquisition of the Units?</p> <p>(s) Does the deemed reliance under section 22 of REDMA also apply to common law claims of negligent or fraudulent misrepresentation, or both?</p>

	CASE	ACCEPTED COMMON ISSUES
		<p>(t) Subject to s. 22(5) of REDMA, was the deemed reliance of the Class Members reasonable on a class basis?</p> <p>(u) Should the Class Members' measure of <u>damages</u> be calculated as:</p> <ul style="list-style-type: none"> (i) the difference between the purchase price paid and the fair market value at the close of the Class Members' acquisition of the Units; (ii) the amounts assessed or to be assessed by the Strata Corporation against each of the Class Members for the repairs required to remedy the Deficiencies; (iii) some combination of (i) and (ii); or (iv) some other manner? <p>(v) Was the Defendants' conduct in making the Disclosure Statement Misrepresentations to the Class Members of a sufficient character to merit an award of <u>punitive damages</u>?</p> <p>(w) If so, what is the <u>quantum of punitive damages to be paid by the Defendants</u>?</p> <p>[81] I grant the order certifying this class proceeding. My intention is to certify the action and the common issues as set out in the notice of application. However, as the focus of the defendants' submission was on reasons to deny certification, they did not focus on the issue of the appropriate common issues, and I invite the parties to arrange to appear before me at a case management conference where I can hear submissions on that aspect...</p>
3.	<i>Bunn v. Ribcor Holdings Inc.</i>	<p>“[26] I am satisfied that the issues of liability against both Ribcor and Scugog are common issues. <u>Punitive and exemplary damages</u> would be common to all Ribcor homeowners respecting the two subdivisions. The misrepresentation issue would be common to those Ribcor homeowners who received the brochures. They would be identified by the first time buyers in the first subdivision.”</p>
4.	<i>Chace v. Crane Canada Inc.</i>	<ol style="list-style-type: none"> 1. Was the Defendant <u>negligent</u> in the manufacture and distribution of toilet tanks manufactured at the Defendant's B.C. Pottery Plant between January 1, 1980 and January 1, 1991? 2. Whether in the circumstances of this case, the appearance of a crack in a toilet tank raises <i>prima facie</i> evidence, in and of itself, of the negligent manufacture of a toilet tank by the Defendant? 3. Was the Defendant guilty of conduct in the manufacture or distribution of toilet tanks, or in the management of claims arising from cracked toilet tanks, which justifies an award of <u>punitive damages</u>? If so, what is the amount of punitive damages to be awarded?
5.	<i>Campbell v. Flexwatt Corp.</i>	<ol style="list-style-type: none"> 1. Are <i>RCHPs</i> manufactured by Flexwatt or Aztech-Flexel fit for their intended purpose or were they <u>defective</u> in design and/or manufacture? 2. Did <i>CSA</i> <u>fail in a duty</u> to the class of plaintiffs in negligently setting standards and negligently certifying the subject <i>RCHPs</i> as being fit and safe for their intended purpose? 3. Did <i>CSA</i> in certifying the subject <i>RCHPs</i> make negligent representations as to their fitness entitling the class of plaintiffs to damages, irrespective of whether each member of the class relied on such representations?
6.	<i>Chadha v. Bayer Inc.</i>	none
7.	<i>Cheung v. Kings Land Developments Inc.</i>	<p>Breach of Contract</p> <ol style="list-style-type: none"> 1. Did Kings <u>breach</u> the agreements of purchase and sale ("agreements") and are the deposits contractually required to be <u>repaid</u> to the class members?

	CASE	ACCEPTED COMMON ISSUES
		<p>Breach of Trust</p> <p>2. Are the Beber and Kings Land defendants liable to the members of the class on the following grounds:</p> <ul style="list-style-type: none"> (i) breach of trust simpliciter; (ii) as a constructive trustee for the trust funds and thereafter taking action inconsistent with that obligation; (iii) by being in knowing receipt of trust funds; (iv) by knowingly assisting in a dishonest and fraudulent plan designed to deprive the class of the deposits? <p>3. Is Living Realty liable to the members of the class on the following grounds:</p> <ul style="list-style-type: none"> (i) as a constructive trustee for the trust funds and thereafter taking action inconsistent with that obligation; (ii) by knowingly assisting in a dishonest and fraudulent plan designed to deprive the class of the deposits? <p>Negligence</p> <p>4. Do the Kings Land defendants, the Beber defendants and Living Realty owe the class members a duty of care based on the nature of the relationship between these defendants and the class?</p> <p>5. Were the Beber defendants, as trustees, <u>negligent</u> in the release of the deposits?</p> <p>6. Were the Kings Land defendants and Living Realty <u>negligent</u> in the representations made to the class members, or in failing to disclose material information to the class members before they signed the agreements?</p> <p>Fraud and Piercing the Corporate Veil</p> <p>7. Do the actions of the Lams and Kings constitute fraud, deceit, and a basis for piercing the corporate veil?</p> <p>Punitive, Exemplary and Aggravated Damages</p> <p>8. Should there be an award of <u>punitive</u>, exemplary or aggravated damages against the defendants or any one or more of them?</p>
8.	<i>Cooper v. Hobart</i>	<p>i. whether the defendant Robert Hobart <u>owed</u> a duty of care to the class members;</p> <p>ii. if the defendant Hobart owed a duty of care to the class members, did he <u>breach</u> that duty by acting negligently or in bad faith;</p> <p>iii. if the defendant Robert Hobart breached a duty of care owed, is legal action against him statutorily barred by reason of section 20 of the <i>Mortgage Brokers Act</i> ... ;</p> <p>iv. whether the defendant her Majesty the Queen in Right of the Province of British Columbia is vicariously liable for the actions of the defendant Robert Hobart in connection with this lawsuit; and</p> <p>v. if the defendant her Majesty the Queen in Right of the Province of British Columbia is vicariously liable for the actions or omissions of the defendant Hobart, is legal action against her Majesty the Queen in Right of the Province of British Columbia statutorily barred by reason of section 20 of the <i>Mortgage Brokers Act</i>.</p>
9.	<i>Collette v. Great Pacific Management Co.</i>	<p>1. Did the Defendants, or any of them, <u>owe</u>, to the class members with whom they dealt, a duty in contract, tort, or both, to evaluate the Multimetro Mortgages by a standard of due diligence and not to offer units in the mortgages for sale to class members if the investments did not meet the standard of due diligence?</p> <p>2. If the answer to question 1 is "yes", did the Defendants, or any of them, <u>breach</u> that</p>

	CASE	ACCEPTED COMMON ISSUES
		duty? 3. If the answers to questions 1 and 2 are "yes", did the breach of duty cause damage to the class members?
10.	<i>Condominium Plan No. 0020701 v. Investplan Properties Inc.</i>	a. Who was the developer within the meaning of the <i>Condo Act</i> and common law? b. What <u>representations</u> were made in respect of the common property during the process of conversion and marketing of the units? By whom were the representations made? c. What, if any, <u>representations</u> were incomplete, untrue or misleading? If so, were the misrepresentations made innocently or did they constitute negligent or fraudulent misstatement? d. To what extent did the Alleged Developers <u>have a duty</u> to hold in trust, for the benefit of purchasers, the money necessary substantially to complete the repairs and restoration of the common property? e. Did the Defendants who were directors of the Corporation prior to the transfer of control to the owners of units <u>breach</u> their fiduciary duty to the purchasers of the units? f. Did the Defendants <u>have</u> either a common law or statutory <u>duty</u> to disclose the actual state of the property to prospective purchasers? If yes, was the duty <u>breached</u> ? g. What was the actual condition of the common property when the units were sold to purchasers? h. Did the cash flow projections given to prospective purchasers accurately or fairly reflect the RFS that has been done and did they accurately reflect the condition of the common property? i. To what extent did each of the Defendants <u>owe a duty</u> of fair dealing under s. 11 of the <i>Condo Act</i> ? j. What damages were suffered in relation to the common property? Was the need for the repairs to the common property done by the Corporation occasioned or contributed to by the Defendants' conduct? k. Generally, what common law and statutory <u>duties</u> did each of the Defendants <u>owe</u> to purchasers of units in the condominium project? Were these duties <u>breached</u> ?
11.	<i>Controltech Engineering Inc. v. Ontario Hydro</i>	none
12.	<i>Crawford v. London</i>	no certification reasons
13.	<i>Curactive Organic Skin Care Ltd. v. Ontario:</i>	no certification reasons
14.	<i>DeFazio v. Ontario (Ministry of Labor)</i>	[105] The <u>existence of a duty</u> of care is a common issue. Whether the duty of care was breached may be a common issue, although the reasonableness of the measures taken by the TTC may have to be viewed in relation to the proximity of the class member to activity resulting in the alleged exposure. Causation and damages are not.
15.	<i>Denis v. Bertrand & Frere Construction Co.</i>	none listed
16.	<i>Ducharme v. Solarium De Paris</i>	(a) Do model numbers 1012, 1019, 1214, 1219, 1221 and 1430 as designed and manufactured by the defendant pose a risk to the health and safety of the class

	CASE	ACCEPTED COMMON ISSUES
	<i>Inc.</i>	<p>members?</p> <p>(b) Did the defendant <u>owe a duty</u> of care to the class members? If so, what was the standard of care? Did the defendant <u>breach</u> the standard of care?</p> <p>(c) Was the defendant negligent in the design and manufacture of the solarium model numbers 1012, 1019, 1214, 1219 1221 and 1430?</p> <p>(d) If the answer to (c) is yes, did the defendant manufacture and/or distribute and/or sell the models after the 12th November 2004 when it <u>knew</u> or ought to have known that the models were unsafe?</p> <p>(e) If the answer to (c) is yes, are the plaintiff and class members entitled to <u>damages</u>?</p> <p>(f) If the answers to (d) is yes, are the plaintiff and class members entitled to <u>punitive damages</u> and if so, in what amount as a result of the defendant's conduct?</p> <p>(g) Can the damages be assessed in an aggregate amount?</p> <hr/> <p>[29] My review of the proposed common issues leads me to conclude that they constitute a substantial ingredient of each class member's claim and their resolution will significantly advance the action. However, the defendant has asked to be allowed to make further submissions on the exact wording of the issues after I have dealt with his other objections. Mr. Sammon has also indicated that he is amenable to further discussion and directions from the court on the wording of the common issues.</p> <p>[31] The parties may therefore make further submissions in the context of a case conference on those topics.</p>
17.	<i>Elms v. Laurentian Bank of Canada</i>	<p>(a) Is there a duty of care and a fiduciary <u>duty owed</u> by the defendant Oliver to the plaintiffs?</p> <p>(b) Did Oliver <u>know</u> that the loans were undersecured?</p> <p>(c) If so, when did Oliver <u>know</u> that the loans were undersecured?</p> <p>(d) What information about the financial transaction was given to Oliver by the defendant Taylor Ventures and when was that information given?</p> <p>(e) Were the loans, in fact, undersecured at the time the loans were made?</p> <p>(f) Was Taylor Ventures perpetuating a fraud on the investors and, if so, did Oliver <u>know</u> about it, and when did Oliver know?</p> <p>(g) Did the Bank have <u>knowledge</u> that the investments were undersecured?</p> <p>(h) If either the Bank or Oliver breached a duty to the plaintiffs, what <u>damages</u> or compensation are the plaintiffs entitled to?</p> <p>(i) What interest rate runs on the investors' loss?</p> <hr/> <p>[31] ... I rule that a class action should be certified subject to further discussion and submissions by counsel on the procedure and the common questions to be tried.</p>
18.	<i>Garipey v. Shell Oil Co.</i>	<p>[80] I am not satisfied that the plaintiffs have established that there is an identifiable class or that resolution of the common issues will significantly advance the litigation</p>
19.	<i>Gary Jackson Holdings Ltd. v. Eden</i>	<p>c) Did the JV Agreements create a trust or trusts in favour of the proposed class members?</p> <p>d) If so, with respect to what property did the trust(s) apply?</p> <p>e) Did 0740783 B.C. Ltd. <u>breach</u> the JV Agreements?</p> <p>g) Did 0740783 B.C. Ltd. commit a <u>breach</u> of trust?</p> <hr/> <p>i) If 0740783 B.C. Ltd. did commit a <u>breach</u> of trust; did [either or both of the Bancorp defendants] knowingly assist in that breach of trust?</p> <p>j) If [either or both of the Bancorp defendants] did knowingly assist in such a breach of trust, what if any <u>damages</u> did the proposed class members suffer as a result of that</p>

	CASE	ACCEPTED COMMON ISSUES
		<p>assistance?</p> <p>k) Did [either of the Bancorp defendants] knowingly receive trust property belonging to the proposed class members?</p> <p>n) If 0740783 B.C. Ltd. did commit a <u>breach</u> of trust, did [one or more of the Eden defendants] knowingly assist in that breach of trust?</p> <p>p) Did [one or more of the Eden defendants] knowingly receive trust property belonging to the proposed class members?</p> <p>r) Are the proposed class members entitled to an order that [one or more of the Eden defendants] <u>disgorge</u> any amounts they received as a result of any breach of trust by 0740783 B.C. Ltd.?</p> <p>s) Did the defendant William J. Eden and 0740783 B.C. Ltd. <u>owe</u> fiduciary duties to the proposed class members?</p> <p>t) If so, did the defendant William J. Eden and 0740783 B.C. Ltd. <u>breach</u> those duties?</p> <p>u) If the defendant William J. Eden and 0740783 B.C. Ltd. did breach those fiduciary duties, what <u>relief</u> are the proposed class members entitled to as a result of that breach?</p>
20.	<i>Gautam v. Canada Rapid Line Transit</i>	<p>1. Did the cut and cover tunnel construction of the Canada Line substantially interfere with the use and enjoyment of property by owners or by business proprietors on Cambie Street from 2nd Avenue to King Edward Avenue?</p> <p>2. If the answer to Question 1 is Yes, was there statutory authority for the interference with the use and enjoyment of any property in Cambie Village thereby absolving the defendants of any liability for economic loss resulting from nuisance?</p> <p>3. If the answer to Question 1 is Yes, and the answer to Question 2 is No, are the members of the class entitled to waive any claim for damages for nuisance and to claim <u>restitution</u> from the defendants of an amount equal to the benefit derived from the use of the cut and cover, rather than the bored tunnel, method of construction?</p> <p>4. If the answer to Question 2 is Yes, did the interference nonetheless result in injurious affection for which <u>compensation</u> may be claimed by any owner or tenant?</p>
21.	<i>Gillespie v. Gesert</i>	“[49]...plaintiff has failed to satisfy the Court that there are common issues...”
22.	<i>Holmes v. Jastek Master Builder</i>	<p>(a) Breach of the condominium purchase agreement and agency</p> <p>(i) Did Jastek Valencia Project Inc., as principal or agent for the other named Defendants, <u>breach</u> the condominium purchase agreement by failing to discharge its duty of good faith when attempting to obtain the building permit?</p> <p>(b) Inducement of breach of contract</p> <p>(i) Did Jastek Master Builder 2004 Inc. induce Jastek Valencia Project Inc. to breach the condominium purchase agreements?</p> <p>(ii) Did 585323 Saskatchewan Ltd. or Randall Pichler, 626040 Saskatchewan Ltd., and/or Glenn Pichler induce Jastek Valencia Project Inc. and/or Jastek Master Builder 2004 Inc. to breach the condominium purchase agreements?</p> <p>(c) Conspiracy</p> <p>(i) Did Jastek Master Builder 2004 Inc., 585323 Saskatchewan Ltd., Randall Pichler, GDP Construction Corp., 626040 Saskatchewan Ltd. and Glenn Pichler conspire and combine together to induce Jastek Valencia Project Inc. and/or Jastek Master Builder 2004 Inc. to breach the condominium purchase agreements?</p>

	CASE	ACCEPTED COMMON ISSUES
23.	<i>Haddad v. Kaitlin Group Ltd.</i>	<p>(a) Did The Kaitlin Group Ltd. or 1138337 Ontario Inc. represent that a golf course was to be built within the Subdivision?</p> <p>(b) Did The Kaitlin Group Ltd. or 1138337 Ontario Inc. represent that Class Members would be entitled to an absolutely free lifetime membership at a clubhouse/Country Club facility within the Subdivision?</p> <p>(c) If either or both of the above representations were made, did The Kaitlin Group Ltd. or 1138337 Ontario Inc. <u>have a duty</u> of care to the Class Members with respect to those representations?</p> <p>(d) If The Kaitlin Group Ltd. or 1138337 Ontario Inc. made either or both of the above representations, did The Kaitlin Group Ltd. or 1138337 Ontario Inc. <u>know</u> or ought to have known that the representations were false, deceptive or misleading?</p> <p>(e) If The Kaitlin Group Ltd. or 1138337 Ontario Inc. made either or both of the above representations, did The Kaitlin Group Ltd. or 1138337 Ontario Inc. make the representations intentionally and with the <u>intent</u> to deceive Class Members and/or did The Kaitlin Group Ltd. or 1138337 Ontario Inc. intentionally withhold information from Class Members about the representations and/or fail to correct the representations?</p> <p>(f) Assuming that The Kaitlin Group Ltd. or 1138337 Ontario Inc. are liable to the Class Members are the Class Members entitled to <u>restitution</u> from these Defendants and, if so, what is the measure of such restitution? and,</p> <p>(g) Should aggravated, exemplary or <u>punitive damages</u> be awarded against The Kaitlin Group Ltd. or 1138337 Ontario Inc. and, if so, in what amounts?</p> <p>*This list of common issues was taken from the certification order</p>
24.	<i>Hughes v. Sunbeam Corp. (Canada)</i>	no reported certification reasons
25.	<i>Jin v. Canada Everich Real Estate Group Inc.</i>	[26] ... I direct a further Case Management Meeting with counsel in order to finalize matters including the statement of common issues...
26.	<i>Kimpton v. Canada (Attorney General)</i>	“[93] ... Ms. Kimpton has failed to demonstrate that she has a cause of action against any of the defendants. In the result, the application to certify the proceedings as a class proceeding fails and it is unnecessary for me to consider the other prerequisites to certification.”
27.	<i>Lau v. Bayview Landmark Inc.</i>	<p>(1) <u>What</u> were the <u>terms</u> of the trust created by the provisions of the Agreement of Purchase and Sale?</p> <p>(2) Did the defendants, or any of them, commit a <u>breach</u> of the trust created by the Agreement of Purchase and Sale, either through:</p> <ul style="list-style-type: none"> (a) breach of trust <i>simpliciter</i>; or (b) through becoming a constructive trustee for the trust funds and thereafter taking action inconsistent with that obligation; (c) by being in knowing receipt of trust funds; or (d) by knowingly assisting in a dishonest and fraudulent design on the part of the trustees. <p>(3) Are the defendants Levitt, Beber and Jeffrey Levitt, personally, entitled to rely on the liability exclusion clause of Article 2.7 of the Agreements of Purchase and Sale?</p> <p>(4) If the defendants, or any of them, are found to be liable the plaintiffs, should there be an award of <u>punitive</u> or exemplary <u>damages</u>? If so, in what amount?</p>
28.	<i>Lewis v. Cantertrot</i>	(a) Did the defendants, or any of them, <u>breach a duty</u> of care <u>owed</u> to members of the

	CASE	ACCEPTED COMMON ISSUES
	<i>Investments Ltd.</i>	<p>Class;</p> <p>(b) Did the defendants, or any of them <u>know</u> — or ought they to have known — that the information with respect to the maintenance fees and monthly assessments in the disclosure statement, budget and flyer were inaccurate, false, deceptive, misleading and did not contain material statements or information?</p> <p>(c) Did the defendants, or any of them, misrepresent in the disclosure statement, budget and flyer the amount of maintenance fees and common expenses?</p> <p>(d) Did the defendants, or any of them, make such misrepresentations intentionally and with the <u>intent</u> to deceive Class members?</p> <p>(e) Absent any other material representations, or material facts within the knowledge of a Class member, would it have been reasonable for such member to have relied on such misrepresentations in making the decision to purchase a unit?</p> <p>(f) If the answer to question (a), (b), (c) or (d) is yes, what would be the appropriate methodology to be applied in computing the losses, if any, suffered by Class members who relied reasonably on such misrepresentations? [see para. 12 of 24 C.P.C. 96th 49.]</p> <p>(f.1) If the answer to question (a), (b), (c) or (d) is yes, did the defendants, or any of them thereby <u>breach</u> contractual obligations owed to the members of the class? [2006 CarswellOnt 2737 (S.C.J.), ¶13]</p> <p>(f.2) If so how are the defendants, or any of them, liable in <u>damages</u> and how are such damages to be computed? [2006 CarswellOnt 2737 (S.C.J.), ¶13]</p> <p>(f.3) If the answer to question (a) (b) (c) or (d) is yes, are the members of the class entitled thereby to a <u>restitution</u> of benefits obtained by the defendants, or any of them? [2006 CarswellOnt 2737 (S.C.J.), ¶13]</p> <p>(f.4) If the answer to question (f.3) is yes, what would be the measure of such <u>restitution</u>? [2006 CarswellOnt 2737 (S.C.J.), ¶13]</p> <p>(h) Did the defendants, or any of them, fail to comply with the statutory disclosure requirements of the <i>Condominium Act</i>?</p> <p>(i) Did the defendants, or any of them, deliberately withhold information from the Class that the maintenance fees were likely to be substantially higher than as represented in the disclosure statement, budget and flyer?</p> <p>(j) Did the defendants, George Hofstedter, Larry Froom and Alex Lewin, or any of them, <u>owe</u> fiduciary duties to the Class and, if so, did they <u>breach</u> those duties?</p> <p>(k) Did the defendants, or any of them, take steps to remove all the assets from Cantertrot, rendering it judgment proof?</p> <p>(l) Were the acts or omissions of the defendants, or any of them, oppressive or unfairly prejudicial or in disregard of the interests of the Class for the purposes of section 248 of the OBCA?</p> <p>(m) Should <u>punitive damages</u> be awarded against the defendants or any of them?</p>
29.	<i>MacDonald v. Dufferin-Peel Catholic District School Board</i>	whether the defendants' portable classrooms are contaminated with mold, the type of mold, the level of contamination and whether it occurred in circumstances that would justify a finding of liability against the defendant.
30.	<i>Mackie v. Toronto (City)</i>	not addressed by Court
31.	<i>McDougall v. Collinson</i>	[122] ...there are no identifiable common issues...
32.	<i>McKinnon v. Martin & Moosomin (Rural</i>	has not yet been to certification

	CASE	ACCEPTED COMMON ISSUES
	<i>Municipalities)</i>	
33.	<i>McMillan v. Canada Mortgage & Housing Corp.</i>	[113] ... the pleadings fail to disclose a cause of action. [114] It is therefore unnecessary to address the other issues regarding certification.
34.	<i>Metera v. Financial Planning Group</i>	(a) What happened factually with the Barclay Apartments and the LLP from beginning to end, and what was the involvement of the Promoters, the various Defendants, the salesmen, the Franzidis Group, and others? (b) Did the Defendants conduct any assessment as to the viability of the Barclay Las Vegas LLP as an investment, or as the Plaintiffs put it, did they do any "due diligence"? (c) As a matter of law, are intermediaries such as the Defendants <u>required to</u> do due diligence on an investment they are selling? (d) Were there any misrepresentations in the Offering Memorandum, or at the promotional meetings, or in the written material that Height of Excellence distributed with respect to the investment? If so, were those errors innocently made or negligently made? (e) Are intermediaries such as the Defendants legally liable for any misrepresentations that may be contained in the Offering Memorandum and other material produced by the Promoters? (f) Is a mutual fund dealer such as Height of Excellence vicariously liable or otherwise legally responsible for the conduct of mutual fund salesmen sponsored by it, who may be employees or independent contractors, or who may have a <i>sui generis</i> statutory relationship to the mutual fund dealer? (g) Are intermediaries such as the Defendants legally responsible for monitoring an investment after they have sold the investment to individual clients? (h) Assuming there is a duty as just stated, did Height of Excellence monitor the performance and management of the Barclay Las Vegas LLP adequately or at all? (i) Did the Defendants receive any secret commission from the Promoters, and if so did the receipt of that commission put the Defendants in a position where their self-interest conflicted with their duty to the investors? (j) Does a breach of A.S.C. policies or orders by a mutual fund dealer or salesman give rise to civil <u>remedies</u> beyond those specifically set out in the <i>Act</i> ? Here the investors were required by the A.S.C. to acknowledge that their civil rights were limited because this was an exempt offering. (k) Was there a release of the General Partner by some investors, and if so what effect does it have on the liability of any person jointly liable for the Plaintiffs' losses. (l) Does the conduct of the Defendants justify punitive damages?
35.	<i>Nash v. CIBC Trust Corp.</i>	none listed
36.	<i>Olsen v. Behr Process Corp.</i>	(a) Did the Defendants <u>owe a duty</u> of care to the Plaintiffs and the Class Members to ensure that the Products were not defective and would not result in damage or injury to the exterior wood surfaces to which they were applied? (b) Did the Defendants <u>breach</u> the standard of care in designing, manufacturing and testing the Products, and if so, when did the breaches begin? In relation to this issue, the following sub-issues will be considered: (i) Did the Products contain ingredients that were chemically incompatible or unstable, such as to promote mildew growth and discolouration and degradation of the Products and the wood surfaces to which they were applied?

	CASE	ACCEPTED COMMON ISSUES
		<p>(ii) Did the Products contain insufficient concentrations of mildewcide or an improper type of mildewcide so as to cause mildew growth and discoloration and degradation of the Products and the wood surfaces to which they were applied?</p> <p>(iii) Did the Defendants ignore warnings provided by their mildewcide suppliers to the effect that the suppliers' mildewcide should not be used with the Products?</p> <p>(iv) Did the Products contain ingredients that would not dry completely, leaving a finish that would attract dirt and debris and promote mildew growth and discoloration?</p> <p>(v) Did the Defendants fail to properly test the performance of the Products either before or after distribution, or, alternatively, did they ignore, conceal, destroy or lose the results of such tests?</p> <p>(c) Did the Defendants <u>owe a duty</u> of care to the Plaintiffs and the Class Members to warn them that the Products could cause damage to exterior wood surfaces by promoting mildew growth, discoloration and degradation?</p> <p>(d) Did the Defendants <u>breach</u> the standard of care in failing to adequately warn the Plaintiffs and the Class Members that the Products could cause damage to exterior wood surfaces, and if so, when did the breaches begin?</p>
37.	<i>Peppiatt v. Nicol</i>	<p>The following issues were stated at para. 24 of the trial reasons:</p> <ol style="list-style-type: none"> 1. Was R.J. Nicol Homes Limited in <u>breach</u> of their contract with the various individual investors? 2. If so, what damages were suffered by the investors? 3. Is there any <u>duty owed</u> by the Royal Bank of Canada to the investors? 4. Were the letters of credit held in trust? 5. What were the terms or conditions of the trust? 6. Did R.J. Nicol fulfil all of the terms of the trust? 7. Was R.J. Nicol entitled to draw down on the letters of credit in December 1990? 8. Was the Royal Bank bound by the trust conditions of the letters of credit? 9. Did the Royal Bank turn a blind eye to the trust conditions? 10. Did the Royal Bank participate in accelerating the meeting of the threshold conditions by R.J. Nicol in that they provided funding support for the draw down of the letters of credit? 11. Was the Royal Bank entitled to the proceeds of the letters of credit to be applied to the construction loans? 12. Was Soloway Wright in a conflict position in acting for R.J. Nicol Homes, Township of West Carleton and the Royal Bank? 13. If they were in a conflict position, did the Royal Bank suffer any financial liability as a result of the conflict? 14. Did the Royal Bank rely upon the following: <ol style="list-style-type: none"> (a) the sale of 260 memberships at the time of draw down? (b) the opinion by Lawrence Soloway in February 1988 as to the ability of R.J. Nicol to purchase a short-fall in memberships and if so, was that opinion wrong? (c) the opinion of Lynn Ratushny of July 5, 1989 at the time that R.J. Nicol drew down the letters of credit? (d) the influence of that opinion on the ability of Royal Bank to draw down on the letters of credit? (e) that the opinion was conditional? (f) that the conditions were met? (g) that at the time of the draw down of the letters of credit by R.J. Nicol,

	CASE	ACCEPTED COMMON ISSUES
		<p>they were able to deliver a 18-hole world class golf course within 6 months?</p> <p>15. Did the Royal Bank deliberately avoid asking either Soloway Wright or Gowlings for an opinion relating to the ability to draw down and whether all the conditions of the trust had been met?</p> <p>16. What damages did the investors suffer as a result of the conduct of the Royal Bank?</p> <p>17. Is the Royal Bank entitled to indemnification from Soloway Wright for these damages?</p>
38.	<p><i>Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.</i></p>	<p>(a) <i>Trust Relationship: VAC and HMS</i></p> <p>(i) Was VAC constituted a trustee for the Class of the revenues collected pursuant to s. 7.1 of the Hotel Asset Management Agreement (the "HAMA")?</p> <p>(ii) If the answer to (i) is "yes", what is the scope of VAC's obligation to account for the trust funds received and expended in the management of the Airport Hilton Hotel (the "Hotel")?</p> <p>(iii) Was HMS, by reason of its appointment by VAC under s. 3.2 of the HAMA as its sub-agent, constituted a trustee for the Class of the funds in the operating account?</p> <p>(iv) If the answer to (iii) is "yes", what is the scope of the obligation of HMS to account for the trust funds received and expended in the management of the Hotel?</p> <p>(b) <i>Fiduciary Duties: VAC and HMS</i></p> <p>(i) Does VAC <u>owe</u> the Class <u>fiduciary duties</u> in respect of the operation of the Hotel?</p> <p>(ii) If the answer to (i) is "yes", do those fiduciary duties conflict with VAC's interests concerning the Airport Marriott Hotel or its duties to the unit owners of that hotel?</p> <p>(iii) Has VAC <u>breached</u> its fiduciary duties to the Class?</p> <p>(iv) Does HMS, by reason of its appointment under s. 3.2 of the HAMA as VAC's sub-agent, <u>owe</u> the Class the same <u>fiduciary duties</u> as VAC?</p> <p>(v) If the answer to (iv) is "yes", do those fiduciary duties conflict with the interests of HMS concerning the Airport Marriott Hotel or its duties to the unit owners of that hotel?</p> <p>(vi) Has HMS <u>breached</u> its fiduciary duties to the Class?</p> <p>(c) <i>Misrepresentation: VAC</i></p> <p>(i) Did VAC <u>owe a duty of care</u> to the Class in respect of the representations contained in the Offering Memorandum?</p> <p>(ii) Did the Offering Memorandum misrepresent the conflict of interest and the agreements between VAC and the unit owners of the Airport Marriott Hotel as alleged in the amended statement of claim?</p> <p>(iii) Did the Offering Memorandum misrepresent that the financial projections contained in the Offering Memorandum were based on reasonable assumptions, as alleged in the amended statement of claim?</p> <p>(iv) Were the representations described in (ii) and (iii) (the "impugned representations") material?</p> <p>(v) If the impugned representations were material, was VAC fraudulent or <u>negligent</u>?</p> <p>(iv) Are the members of the Class deemed to have relied on the impugned representations of VAC pursuant to s. 75(2) of the <i>Real Estate Act</i>?</p> <p>(v) With respect to the purchase by Tevan Trading Ltd. of nine (9) units in the Hotel, is VAC exempt from Part 2 of the <i>Real Estate Act</i>?</p> <p>(vi) What is the effect, if any, of the repeal of the <i>Real Estate Act</i> on the misrepresentation claims of the Class against VAC?</p> <p>(vii) What is the effect, if any, of s. 22 of the <i>Real Estate Development Marketing</i></p>

	CASE	ACCEPTED COMMON ISSUES
		<p><i>Act</i>, S.B.C. 2004, c. 41 on the misrepresentation claims of the Class against VAC?</p> <p>(d) <i>Misrepresentation: MM&R</i></p> <p>(i) Did MM&R <u>owe a duty of care</u> to the Class in respect of representations contained in the Offering Memorandum?</p> <p>(ii) Did MM&R represent to the Class that the projected occupancy rates and average daily room rates were reasonable?</p> <p>(iii) Were MM&R's representation material?</p> <p>(iv) Was MM&R <u>negligent</u>?</p> <p>Remedies</p> <p>(a) Subject only to any individual defences, are the Owners in the Class entitled to the following remedies as against Vancouver Airport Centre Ltd ('VAC') as a result of VAC's misrepresentations and breach of fiduciary duty:</p> <p>(i) Rescission of the Owners' purchases of their strata lots?</p> <p>(ii) An accounting of the amounts owing to the Owners in consequence of the order for rescission?</p> <p>(iii) Damages or statutory compensation pursuant to s 75(2)(h) of the <i>Real Estate Act</i>?</p> <p>(iv) A declaration that VAC is not entitled to receive management fees while it participates in the management and operation of the Vancouver Airport Marriott?</p> <p>(v) An accounting of management fees received by VAC and an order for the payment of money owing to the Owners?</p> <p>(vi) An accounting of financial benefits obtained by VAC through its breach of fiduciary duty and an order for the payment of money owing to the Owners?</p> <p>(b) If the Class or the individual Owners are entitled to damages or statutory compensation, what is the measure of the claim and how is it to be calculated?</p> <p>(c) If the measure of damages or statutory compensation depends in whole or in part on the fair market value of the strata lots in the Hotel at a given time, what was the fair market value of the strata lots at the relevant time(s)?</p> <p>(d) Are there individual defences and, if so, what are they?</p> <p>(e) Are the Owners entitled to an aggregate award of monetary relief pursuant to s 29 of the <i>Class Proceedings Act</i>?</p>
39.	<i>Spencer v. Regina (City)</i>	none listed
40.	<i>Stachniak v. Jurock</i>	<p>REDMA and Misrepresentation Claim</p> <p>1. Were some or all of the Jurock Defendants, as defined in the Amended Notice of Civil Claim, <u>required</u> to provide a disclosure statement to the Class members?</p> <p>2. Did some or all of the Jurock Defendants authorize, approve and file the Disclosure Statement as defined in the Amended Notice of Civil Claim?</p> <p>3. If so, in respect of the Disclosure Statement, which of the Jurock Defendants fall within the class of individuals referred to in s. 22(3)(b) of the <i>Real Estate Development and Marketing Act</i>, S.B.C 2004, c. 41 ("REDMA")?</p> <p>4 Does the Building Quality Representation, as defined in the Amended Notice of Civil Claim, give rise to an implied representation of fact that there were no issues or deficiencies with the structures of the Strata that would affect or could reasonably be expected to affect the value or price of the Units?</p>

	CASE	ACCEPTED COMMON ISSUES
		<p>5. If so, does the Building Quality Representation constitute a "misrepresentation" within the meaning of REDMA?</p> <p>6. Do the Prior Sales Omissions, as defined in the Amended Notice of Civil Claim constitute a "material fact" within the meaning of REDMA?</p> <p>7. If so, do the Prior Sales Omissions constitute a "misrepresentation" within the meaning of REDMA?</p> <p>8. Do the Deficiencies, as defined in the Amended Notice of Civil Claim, constitute a "material fact" within the meaning of REDMA?</p> <p>9. Were the Deficiencies, as alleged or otherwise, present in the Crestwood Estates buildings:</p> <ul style="list-style-type: none"> a. Prior to the filing of the Disclosure Statement; or b. After the filing of the Disclosure Statement and before the close of the Class members' acquisition of the Units; or c. As of the close of the Class members' acquisition of the Units? <p>10. Were the Jurock Defendants <u>aware</u> of the Deficiencies:</p> <ul style="list-style-type: none"> a. Prior to the execution and filing of the Disclosure Statement; b. After the filing of the Disclosure Statement and before the close of the Class members' acquisition of the Units; or c. As of the close of the Class members' acquisition of the Units? <p>11. If not, should the Jurock Defendants have been <u>aware</u> of the Deficiencies prior to the close of the Class member's acquisition of the Units?</p> <p>12. If the answer to 10 or 11 is yes, does the failure to disclose the Deficiencies in the Disclosure Statement constitute a "misrepresentation" within the meaning of REDMA?</p> <p>13. Subject to s. 22(5) of REDMA, was the deemed reliance of the Class members reasonable on a class basis?</p> <p>14. Are the Jurock Defendants entitled to rely upon s. 22(7) of REDMA as a defence to the statutory misrepresentation claim?</p> <p>15. Are the Jurock Defendants entitled to rely upon s. 22(8) of REDMA as a defence to the statutory misrepresentation claim?</p> <p>16. Did the Jurock Defendants <u>owe</u> a common law duty of care to the Class members?</p> <p>17.(a) Did the Marketing Materials contain the Representations as alleged in the notice of civil claim?</p> <p>17.(b) Did the Disclosure Statement contain the Representations as alleged in the notice of civil claim?</p> <p>18. If so, were the Budget Representation, Discount Representation, Upgrade Representation, Building Quality Representation and/or the Prior Sales Omissions false?</p> <p>19. If so, did the Jurock Defendants make the Budget Representation, Discount Representation, Upgrade Representation, Building Quality Representation and/or the Prior Sales Omissions knowingly, recklessly without knowing whether they were true or false, or negligently?</p> <p>20. If so, were those statements or omissions made with an intent to deceive the Class members?</p> <p>21. Did the Jurock Defendants <u>breach</u> the duty of care the deficiencies [sic]?</p> <p>22. Did the Jurock Defendants <u>breach</u> the duty of care they owed to the class</p>

	CASE	ACCEPTED COMMON ISSUES
		<p>members by fraudulently, recklessly or negligently making the Budget Representation, Discount Representation and/or the Upgrade Representation to the Class members?</p> <p>23. If the Jurock Defendants have breached their statutory or common law duties to the Class, have the Class members suffered loss or damage by reason of those breaches?</p> <p>BPCPA Claim</p> <p>24. Were the Class member's purchases of the Units "consumer transactions" subject to the <i>Business Practices and Consumer Protection Act</i>, S.B.C. 2004, c. 2 ("BPCPA")?</p> <p>25. If the answers to 17 and 18 are yes, in making the Budget Representation, Discount Representation, Upgrade Representation, Building Quality Representation and/or the Prior Sales Omissions, did the Jurock Defendants <u>contravene</u> ss. (4)(3) of the BCPCA?</p> <p>26. If so, by reason of any of those contraventions, have the Class members suffered loss or damage?</p> <p>Competition Act Claim</p> <p>27. Was the Jurock Defendants' promotion and sale of the Units <u>subject to the Competition Act</u>, R.S.C. 1985, c. C-34?</p> <p>28. If so and the answer to 17 is yes, were the Budget Representation, Discount Representation, Upgrade Representation or the Building Quality Representation representations to the public that were false or misleading in a material respect within the meaning of s. 52(1) of the <i>Competition Act</i>? ssly [sic] make or permit to be made any or all of those representations to the Class?</p> <p>30. If so, by reason of any of those contraventions, have the Class members suffered loss or damage?</p> <p>Waiver of Tort Claim</p> <p>31. If the answers to 17 and 18 are yes, and those representations were fraudulently or recklessly made, did the Jurock Defendants, or one or more of them, <u>profit</u> by making those statements?</p> <p>32. If so, what was the amount of that <u>profit</u>?</p> <p>Appraiser Claim</p> <p>33. Did the Appraiser <u>owe</u> a duty of care to the Appraisal Subclass?</p> <p>34. Did the Appraiser <u>breach</u> that standard of care in preparing the Kohlen Appraisals, as defined in the Amended Notice of Civil Claim?</p> <p>35. Were the Kohlen Appraisals misleading?</p> <p>Damages</p> <p>36. In the event that the Jurock Defendants are held liable to the Class in regards to the Upgrade Representation, are the Class members entitled to <u>damages</u> based on the cost it would take to upgrade their Units to the condition of the show suite or some oilier [sic] standard? If the latter, what is that standard?</p> <p>37. Should the Class members' measure of <u>damages</u> as against the Jurock Defendants or the Appraiser be calculated as:</p> <ul style="list-style-type: none"> a. the profits obtained by the Jurock Defendants in respect to the marketing and sale of the Units; b. the difference between the purchase price paid and the fair market value at the close of the Class members' acquisition of the Units;

	CASE	ACCEPTED COMMON ISSUES
		<p>c. the amounts assessed or to be assessed by the Strata Corporation against each of the Class members for the repairs required to remedy the Deficiencies;</p> <p>d. the cost to improve the respective Class members' Unit to the standard set out by the Court above in 36;</p> <p>e. a combination of (b) through (d); or</p> <p>f. some other fashion as this court should determine.</p> <p>38. Is the Jurock Defendants' conduct of a sufficient character to merit an award of <u>punitive damages</u>?</p>
41.	<i>Tampa Hall Ltd. v. Canadian Imperial Bank of Commerce</i>	[31] ...I cannot see that there is any identifiable common issue...
42.	<i>Toronto Community Housing Corporation v. Thyssenkrupp Elevator (Canada)</i>	<ul style="list-style-type: none"> ● Was the sheave jammer dangerous and defective? ● Did the defendants, or either of them, <u>owe a duty</u> of care to the members of the Class to take reasonable care in the design, manufacture, sale or installation of the sheave jammer? ● Did the defendants <u>breach the duty</u> of care by designing, manufacturing, selling and/or installing a sheave jammer that was dangerous and defective and/or a sheave jammer that was dangerous to rely upon? ● Were the members of the Class damaged by the breach of duty of care of the defendants, or either of them? ● Did TKE <u>breach</u> the standard form maintenance contracts with the Maintenance Contract Class Members by not replacing the sheave jammer at no additional charge? ● Is the Class entitled to <u>damages</u> in respect of the costs associated with the replacement of the sheave jammers due to the negligence of the defendants (or either of them) or breach of contract by TKE? Does the doctrine of betterment apply to the damages assessment in this case? What is the quantum of damages?
43.	<i>Western Canadian Shopping Centres Inc. v. Dutton</i>	not listed by the court