

# Ontario Court of Appeal Confirms that Class Members Lack Standing to Appeal Settlement Approval Decisions

03 décembre 2019

In its recent decision in [Bancroft-Snell v. Visa Canada Corporation](#), the Court of Appeal for Ontario confirmed that individual class members in a certified class proceeding lack standing to appeal a decision of the Superior Court approving a settlement in the proceeding.

The issue arose in the context of a longstanding class action alleging anticompetitive conduct by credit card networks and credit card issuing banks. After Visa, Mastercard, and one of the defendant banks entered settlements with the class members, Wal-Mart and Home Depot – large merchants who are class members but not representative plaintiffs – objected to settlements when they came before Perell J. for approval. [The settlements were approved](#) over the merchants' objections. Wal-Mart and Home Depot sought to appeal the approval order. The plaintiffs, Visa, Mastercard, and certain defendant banks moved to quash the appeal on the ground that the merchants, as class members, lacked standing to appeal. A five-judge panel of the Court of Appeal agreed with the moving parties and quashed the appeal.

Writing for a unanimous five-judge Court of Appeal panel, Chief Justice Strathy rejected the merchants' request to revisit a [line of jurisprudence](#) holding that class members' rights of appeal are limited to those found in the [Class Proceedings Act, 1992](#) ("CPA") and are not supplemented by the general rights of appeal found in the [Courts of Justice Act](#) ("CJA").

The court's starting point was the principle, established by the Supreme Court of Canada in [Carey v. Ontario](#) and [R. v. Meltzer](#), that "appeal rights are statutory". Canvassing the relevant statutory provisions, the court summarized the available rights of appeal in the following terms:

- Section 30 of the CPA divides the routes of appeal in class proceedings between the Court of Appeal and the Divisional Court in relation to matters expressly identified in the statute. The rights of appeal stipulated by s. 30 of the CPA belong to the parties, and are available as of right or with leave, as set out in the statute.

- Where s. 30 of the CPA does not specifically provide a route of appeal, s. 6(1)(b) of the CJA determines whether an appeal lies to the Court of Appeal or the Divisional Court. Appeals to the Court of Appeal from final orders on matters not specifically referred to in s. 30 of the CPA are available to parties.
- Class members who are not representative plaintiffs do not have a direct right of appeal under s. 30 of the CPA. They have only a limited right to seek leave to appeal under s. 30(5) of the CPA, if the representative plaintiff fails to bring, or abandons, an appeal of a judgment on common issues or a determination of aggregate damages provided by ss. 30(3)-(4) of the CPA.

The court went on to reject the merchants' argument that a settlement approval order was either a judgment on common issues or a determination of aggregate damages that could engage a class member's limited right to seek leave to appeal under s. 30(5) of the CPA.

The court also rejected the merchants' argument that access to justice and the protection of class members render it unreasonable to deny class members a right to appeal – particularly as most class actions are resolved through settlement. The court referred instead to policy reasons that support limiting the right of appeal to representative plaintiffs, including avoiding uncertainty in the negotiation and approval of settlements (which could pose an impediment to settlement), and avoiding abuses experienced in the United States, where class members are permitted to appeal.

## Conclusion

Settled law in Canada recognizes that “appeals are creatures of statute”. Bancroft-Snell supplies yet another example that this principle is as applicable to class actions as it is in any other context. The Divisional Court has reached the same conclusion in [LBP Holdings Ltd. v. Hycroft Gold Corp. et al.](#), and on a [motion to set aside](#) that decision.

**Par**

[Pierre N. Gemson](#)

**Services**

[Actions collectives, Litiges, Plaidoirie en appel, Services financiers](#)

## BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 725 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

[blg.com](http://blg.com)

### Bureaux BLG

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3  
  
T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9  
  
T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2  
  
T 604.687.5744  
F 604.687.1415

#### Montréal

1000, rue De La Gauchetière Ouest  
Suite 900  
Montréal, QC, Canada  
H3B 5H4  
  
T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3  
  
T 416.367.6000  
F 416.367.6749

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir soupesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à [desabonnement@blg.com](mailto:desabonnement@blg.com) ou en modifiant vos préférences d'abonnement dans [blg.com/fr/about-us/subscribe](http://blg.com/fr/about-us/subscribe). Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à [communications@blg.com](mailto:communications@blg.com). Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur [blg.com/fr/ProtectionDesRenseignementsPersonnels](http://blg.com/fr/ProtectionDesRenseignementsPersonnels).

© 2025 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.