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Price-fixing Class Actions: A Canadian Perspective

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Price-fixing Class Actions: A Canadian Perspective

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I. Introduction

Prior to the enactment of class proceedings legislation in Canada, there were virtually no price-fixing cases commenced. Prior to 1993, when Ontario's Class Proceedings Act[1] was proclaimed into force, the complexity and expense associated with pursuing price-fixing litigation had rendered the justice system in Canada largely inaccessible to all but a few select persons harmed by the conspiracies. Without specific class proceedings legislation, it is the authors' belief that Canadians would, like others around the world, have to rely on the U.S. courts to attempt to obtain recourse. Fortunately, Canadian courts have demonstrated that they have the ability to effectively provide justice for their citizens. In Canada, class proceedings provide those victimized by price-fixing conspiracies access to justice in an efficient manner. And, in 1999, the Siskinds firm[2] filed the first of many class actions that focused on price-fixing cartels and the harm they caused to Canadians.[3]

Recent attempts to have the rights of international claimants adjudicated in U.S. courts have the potential to provide an alternative and likely beneficial route for Canadians. Given Canada's unique situation, however, parallel proceedings with increased cooperation may be more appropriate. In the meantime, defendants seeking to

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[1] Class Proceedings Act, S.O., ch. 6 (1992) (Ont.).

[2] Siskinds is a full-service law firm with its head office in London, Ontario. The firm's class action department handles competition, products liability, and consumer cases for both plaintiffs and defendants.

[3] Ford v. F. Hoffman-LaRoche Ltd., et al., [2000] O.J. No. 1355 (S.C.J.).

resolve litigation and obtain an effective release should ensure that a Canadian court has blessed the settlement.

This article looks at the legal background of price-fixing class actions in Canada, the Siskinds firm's approach to class definition, the inclusion of Canadian class members in U.S. class actions, and the interaction between Canadian and U.S. class action proceedings.

II. Legal Background

The Competition Act[4] governs all aspects of competition law in Canada. Section 36 of the Act gives private parties the right to recover in courts any losses or damages suffered as a result of a breach of the criminal provisions of the Act:

> 36. (1) Any person who has suffered loss or damage as a result of
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> > (a) conduct that is contrary to any provision of Part VI, or
> >
> > (b) the failure of any person to comply with an order of the Tribunal or another court under this Act, may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.[5]

A conspiracy to enhance unreasonably the price of a product ("price-fixing") is one of the criminal provisions listed under Part VI of the Competition Act:

> 45. (1) Every one who conspires, combines, agrees or arranges with another person

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[4] Competition Act, R.S.C. 1985, ch. C-34 (1985) (Can.).

[5] R.S.C., ch. C-34. § 36.

> (a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,
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> (b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,
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> (c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation, or supply of a product, or in the price of insurance on persons or property, or
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> (d) to otherwise restrain or injure competition unduly, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten millions dollars or to both.[6]

Under Canadian law, there is no authority for the court to award treble damages. A defendant's ultimate exposure, however, is not significantly lessened given the presence of:

> (a) The English style costs regime (which is further enhanced by Section 36, above),[7]
>
> (b) The entitlement to pre-judgment interest at a commercial rate from the date when the damage first began,[8] and
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> (c) The potential for punitive damages.[9]

Where a defendant has paid a fine for a Section 45 offence, punitive damages may be difficult to obtain; but, in the absence of such proceedings, a class action for price-fixing would seem ideal for a

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[6] R.S.C., ch. C-34. § 45.

[7] Rules of Civil Procedure, R.R.O., Reg. 194 (1990) (Ont.).

[8] Courts of Justice Act, R.S.O., ch. C.43, § 128 (1990) (Ont.).

[9] Hill v. Church of Scientology of Toronto, [1995] 2 S.C.R. 1130.

large punitive damage award.[10]

The Competition Act references the recovery of damages and does not incorporate any guidelines that would limit recovery to direct purchasers or exclude intermediaries or consumers from recovery. Compensation, rather than deterrence (or perhaps both, but not the latter at the expense of the former) seems to have been the purpose of the legislation. On March 14, 1974, Herb Gray, then Canadian Minister of Consumer and Corporate Affairs, made the following comments in legislative debate about the proposed legislation:

> This bill reflects that all Canadians can benefit from having a marketplace subject to the stimulus and the pressures of the forces of competition. However, it places particular emphasis on measures to assist them as consumers and also as small businessmen.

The Minister continued on and stated:

> Equally new is the proposal that anyone injured by a violation of the act would be able to sue for full damages and costs. As I have said previously, I believe that to be meaningful this right should be exercisable not only by an individual citizen or government but also by citizens through class or representative actions.
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> It is my hope that the bill in the form in which it is finally approved by parliament will enable class actions to take place for damages caused by violations of it, in so far as the federal parliament has the authority to make such a decision.[11]

Indeed, in *Chadha v. Bayer*,[12] the Ontario Court (General Division) rejected a motion for summary judgment that sought to apply the U.S. Supreme Court authorities in *Hanover Shoe v. United Shoe Machinery*[13] and *Illinois Brick Co. v. Illinois*.[14] These U.S. decisions

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[10] Whiten v. Pilot Ins. Co., [2002] 1 S.C.R. 595.

[11] 1974 Legislative Session: 4th Session, 30th Parliament.

[12] Chadha v. Bayer, Inc., [1999] 45 O.R.3d 29, O.J. No. 3773 (Gen. Div.), *cert. granted*, [2001] 54 O.R.3d 520, 549, O.J. No. 1844 (Div. Ct.), *cert. denied, appeal dismissed*, [2003] 63 O.R.3d 22, O.J. No. 27 (C.A.).

[13] Hanover Shoe, Inc. v. United Shoe Mach. Corp., 392 U.S. 481 (1968).

stand for the proposition that only direct purchasers, and not intermediaries or consumers, are able to recover damages as a result of price-fixing conspiracies.[15] This limitation can create a windfall for direct purchasers who are able to pass on an overcharge in whole or in part to an indirect purchaser, yet would be entitled to recover the entire amount of the "damages," and potentially three times that amount.[16] On the other hand, an indirect purchaser, who may have suffered the true loss, is barred from any recovery. Justice Sharpe of the Ontario Court (Gen. Div.) stated:

> [W]hile the decisions of the Supreme Court of the United States deserve serious consideration by this court, they are plainly not binding. Moreover, it appears that the two decisions relied on are based significantly upon policy considerations relating to the enforcement of American antitrust laws. Those policies may well differ from the values underlying Canadian competition law. One needs to look no further than the treble damage remedy that played a significant role in the Supreme Court decisions referred to above.[17]

Although the Competition Act has made available a private remedy for price-fixing conspiracies in Canada since 1976, it was the advent of the Class Proceedings Act[18] that made pursuing a price-fixing remedy feasible. Section 5 of the Class Proceedings Act provides that an action shall be certified if:

> (a) the pleadings or the notice of application discloses a cause of action;
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> (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;
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> (c) the claims or defences of the class members raise

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[14] Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977).

[15] Chadha v. Bayer, Inc., [1999] 45 O.R.3d 29 (Gen. Div.).

[16] Sherman Act, 15 U.S.C. § 1 (2004).

[17] *Chadha*, 45 O.R.3d at 29.

[18] Class Proceedings Act, S.O., ch. 6 (1992) (Ont.).

common issues;

(d) a class proceeding would be the preferable procedure for the resolution of the common issues; and

(e) there is a representative plaintiff or defendant who,

(i) would fairly and adequately represent the interests of the class,

(ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and

(iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.[19]

Note that, in contrast to actions brought in the United States, no predomination test is incorporated in the test for certification in Canada. In this respect, Canadian courts may be somewhat more inclined to certify classes. The class proceedings legislation has been interpreted with the intent of carrying out the three principle objectives of class proceedings in Canada: access to justice, judicial economy, and behavior modification.[20]

III. The Siskinds Firm's Approach To Class Definition

The Siskinds firm has been retained by plaintiffs at various levels in the stream of commerce to commence proceedings. These actions have been brought on behalf of all levels of purchasers, both direct purchasers and subsequent "downstream" purchasers. This approach ensures complete disgorgement by taking from the defendant its primary weapon, the pass-on defense. This firm also takes the view that in Canada, as a result of this system, damages are more often paid to those plaintiffs who have actually suffered harm than under the U.S. system. From a policy perspective, defendants

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[19] S.O., ch. 6, § 5.

[20] Bendall v. McGhan Med. Corp., 1993 Ont. Sup. C.J. LEXIS 1348.

facing proceedings can at least take solace in the fact that they will not face multiple actions from different levels of purchasers.

The litigation under the Siskinds firm's approach allows the action to proceed in two separate steps. The first step consists of establishing liability and determining aggregate damages. All class members, regardless of what level of purchaser, have a common interest in establishing liability and maximizing aggregate damages. The second step involves the distribution of damages amongst the purchasers based on the class of purchaser. The Ontario Superior Court of Justice has endorsed this approach to price-fixing class actions. In *Vitapharm v. F. Hoffmann-LaRoche Ltd.*, Justice Cumming stated:

> It is not difficult to understand why a global assessment is necessary in the case at hand. The starting point to any quantification of damages must be to determine the difference between the economic rents generated due to the alleged conspiracy, and what the normative economic rents would have been had a competitive market prevailed.
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> ...
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> It seems probable that due to varying economic factors persons at different levels in the overall distribution process suffered different losses. There may well be different interests and perspectives as between different users. Claimants at any given level of user in the distribution chain, such as retail purchasers, may well require separate counsel at that point in time to properly represent their interests. Separate subclasses can be formed if appropriate: see ss. 8(2), (3), 11(1)(b), 12, 25 and 26 of the *CPA*.
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> ...
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> In the United States the courts in some circumstances involving private treble-damage actions under the federal anti-trust legislation (the *Sherman Act*) have denied recovery to end users. See the majority decision of the United States Supreme Court in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) per White J. (Brennan and Blackmun JJ. dissenting). In my view, this and like authority is not relevant to the case at hand. Section 36 of the *Competition Act* says that "any person who has suffered loss or damage" may bring an action, including it would seem, retail purchasers.

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> Until the point of a determination of the common issues, including the assessment of global damages on a product by product basis, there is no divergence of interests between class members. The contrary seems true. Through the common pursuit of the common issues, all class members are more likely to maximize the quantification of their overall, global damages and achieve their ultimate, shared goal of a fair and just resolution of the claims of all class members.[21]

The authority for assessing damages in the aggregate and paying monies out on a *cy près* basis are outlined in the Class Proceedings Act.[22] Section 24 of the Class Proceedings Act gives directions to the courts on using aggregate assessments of monetary relief:

> 24. (1) The court may determine the aggregate or a part of a defendant's liability to class members and give judgment accordingly where,
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> (a) monetary relief is claimed on behalf of some or all class members;
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> (b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and
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> (c) the aggregate or a part of the defendant's liability to some or all class members can reasonably be determined without proof by individual class members.
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> (2) The court may order that all or a part of an award under subsection (1) be applied so that some or all individual class members share in the award on an average or proportional basis.

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[21] Vitapharm Canada Ltd. v. F. Hoffmann-LaRoche Ltd., [2000] O.T.C. 877 (S.C.J.).

[22] S.O., ch. 6.

> (3) In deciding whether to make an order under subsection (2), the court shall consider whether it would be impractical or inefficient to identify the class members entitled to share in the award or to determine the exact shares that should be allocated to individual class members.[23]

The Siskinds firm has resolved six cases since 2000 for classes composed in the manner described above.[24] Typically, the settlements are approved in Ontario and Quebec (Canada's two most populous provinces) at a minimum, with a national class being certified in the Ontario courts.

Although it is beneficial to have intermediary purchasers and consumers represented in the action to ensure that the ill-gotten profits derived from wrongdoing are disgorged, there are significant practical problems in identifying these class members and appropriately distributing proceeds. Depending on the type of price-fixing conspiracy, intermediate purchasers and consumers could number in the millions and their respective share of the settlement proceeds on an individual basis could be nominal. The solution to this problem has been to distribute the proceeds allocated to these groups, which is determined using expert economic models, by way of a *cy près* distribution. Such a distribution allows the proceeds to be used for the indirect benefit of class members, through payments to relevant organizations or groups, where distribution to individual class members would be impracticable.

Section 26 of the Class Proceedings Act governs the distribution of a judgment and specifically authorizes a *cy près* distribution:

> 26. (1) The court may direct any means of distribution of amounts awarded under section 24 or 25 that it considers appropriate.

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[23] S.O., ch. 6, § 24.

[24] *See* Alfresh Beverages Can. Corp. v. Archer Daniels Midland Co., et al., [2001] O.J. No. 6028 (Citric Acid); Alfresh Beverages Can. Corp. v. Hoechst AG, [2002] O.J. No. 79 & Alfresh Beverages Can. Corp. v. Chisso Corp., Order of Cumming J. (4 November, 2003) (unreported) (Sorbates); Bona Foods, Ltd. v. Pfizer Inc., [2002] O.J. No. 5553 (Sodium Erythorbate); Minnema v. Archer Daniels Midland, et al., Order of McKinnon J. (28 February, 2003) (unreported) (lysine); Newly Weds Foods Co. v. Pfizer, Inc., Endorsement of Winkler J. (7 April, 2003) (unreported) (Maltol); and A&M Sod Supply, Ltd. v. Akzo Nobel Chemicals B.V., et al., Order of Nordheimer J. (22 December, 2003) (unreported) (MCAA).

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(4) The court may order that all or a part of an award under section 24 that has not been distributed within a time set by the court be applied in any manner that may reasonably be expected to benefit class members, even though the order does not provide for monetary relief to individual class members, if the court is satisfied that a reasonable number of class members who would not otherwise receive monetary relief would benefit from the order.

(5) The court may make an order under subsection (4) whether or not all class members can be identified or all of their shares can be exactly determined.

(6) The court may make an order under subsection (4) even if the order would benefit,

(a) persons who are not class members; or

(b) persons who may otherwise receive monetary relief as a result of the class proceeding. [25]

In *Alfresh Beverages Canada Corp. v. Hoechst AG et al.*,[26] Justice Cumming reviewed the manner in which the settlement fund would be paid out and endorsed a *cy près* distribution:

The plaintiff commenced this proceeding March 28, 2000, alleging that the defendants conspired to fix the prices and allocate the market share of sorbates between 1979 and 1996. Sorbates (including potassium sorbate and sorbic acid) are chemical preservatives used primarily as a mould inhibitor in high moisture and sugar foods such as, for example dairy and bakery products.

...

The distribution protocol provides for the distribution of monies as between four different categories of class

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[25] S.O., ch. 6, § 26.

[26] Alfresh Beverages Can. Corp. v. Hoechst AG, [2002] O.J. No. 79 (S.C.J.).

> members. Class members include "distributors", being those who purchased and resold sorbates to a further purchaser; "manufacturers", who purchased sorbates and manufactured a product of which the sorbates was a component part; "intermediaries", who purchased products which contain sorbates as a component part, and resold the same or virtually the same product to a further purchaser; and "consumers" who purchased products which contain sorbates as a component part, and consumed the product.
>
> ...
>
> A Distributors and Manufacturers Settlement Fund is established for entities across Canada who purchased sorbates in raw form. The payments from this fund will be made *pro rata* to all entities who file timely claims based upon verified purchases.
>
> ...
>
> There are significant problems in identifying possible claimants below the manufacturer level. Hence, the monies allocated to intermediaries such as wholesalers and consumers are to be paid by a *cy près* distribution to specified not-for-profit entities, in effect as surrogates for these categories of claimants, for the general, indirect benefit of such class members. The *CPA* provides the flexibility for this approach: see ss 24 and 26.[27]

IV. Inclusion of Canadian Class Members in U.S. Class Actions

There has been a recent trend in the United States to attempt to include class members who reside outside the United States, including Canadians, in class definitions. In a class action filed against two auction houses, Christie's International PLC and Sotheby's Holdings, Inc., the plaintiffs alleged that the defendants participated in illegal and secretive meetings and entered into a conspiracy to unlawfully fix seller's and buyer's premiums.[28] The

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[27] *Id.*

[28] Kruman v. Christie's Int'l PLC, 284 F.3d 384 (2d Cir. 2002), *cert. dismissed*, 124 S. Ct. 27 (2003).

plaintiffs had all either sold or purchased goods in auctions occurring outside of the United States and claimed that they paid inflated commissions as a result of the conspiracy between the two auction houses.[29]

The United States Court of Appeals for the Second Circuit held that, even though the conspiracy to fix prices was in a foreign market, the defendants could not escape scrutiny under U.S. antitrust law if the plaintiffs could show the conspiracy had an effect on U.S. commerce.[30] The class action was resolved before the U.S. Supreme Court determined whether it would grant *certiorari.* This same jurisdictional issue, however, is currently being raised in *Empagran S.A., et al. v. F. Hoffman-LaRoche, Ltd., et al.,*[31] and will be pronounced upon by the U.S. Supreme Court in that case.

During the auction houses litigation, a claim had also been commenced in Ontario. As part of the resolution of the U.S. case, Canadian plaintiffs agreed to dismiss their case. The Ontario court was presented with evidence concerning the fairness of the settlement. Only then did the Ontario court approve the dismissal.

There is developing jurisprudence suggesting that defendants who negotiate the settlement of Canadian claims with U.S. counsel, and seek to bar future Canadian claims through U.S. court orders do so at their own peril. In some earlier litigation that addressed this issue, Canadian counsel intervened in U.S. courts where Canadian women were apportioned unequal benefits under breast implant settlements.[32] Due to some changes to those settlements, Canadian courts did not have to consider what impact, if any, the orders issued in U.S. courts had on pending Canadian class actions.

However, Canadian courts did become involved in the Dalkon Shield litigation.[33] Quebec women sought relief after the deadline for making claims had passed in the United States. The Canadian court found the notice given to Quebec residents to be inadequate, and

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[29] *Id.*

[30] *Id.*

[31] Empagran S.A. v. F. Hoffman-LaRoche, Ltd., 315 F.3d 338 (D.C. Cir. 2003), *cert. granted,* 124 S. Ct. 966 (Dec. 15, 2003) (No. 03-724).

[32] *In re* Silicone Gel Breast Implant Products Liab. Litig., No. 926 (J.P.M.L.); Lindsey v. Corning Corp., No. CV 94-P-11558-S, 1994 U.S. Dist. LEXIS 12521 (N.D. Ala. Sept. 1, 1994). *See also In re* Dow Corning Corp., 194 B.R. 121 (Bankr. E.D. Mich. 1996).

[33] Tremaine v. A.H. Robins Can., Inc., [1990] 23 A.C.W.S.J. 1026 (C.A. Que.).

ultimately, the parties entered into a separate class action settlement. Also, most recently, in *Parsons v. McDonald's*,[34] an Ontario court allowed a class action to proceed on the basis that the U.S. settlement did not bar Canadian claims. The court held that the U.S. court decision was not binding on the Canadian court because it offended natural justice.

Defendants seeking closure in Canada are well advised to obtain court approval in Canada, either in the manner pursued in the auction houses litigation, or by getting full-fledged approvals regarding notice and fairness from the Canadian courts. This approach is currently being employed in a class action involving defective Entran II tubing used as a conduit for fluid for radiant heating or snow melting.[35] In the Entran II case, one settlement, which treats U.S. and Canadian class members equally, is in the process of being approved in both countries. Obtaining approval by the courts in both countries is necessary to ensure a truly effective release. These settlement approvals avoid the expense of multiple negotiations and settlement agreements as well as the uncertainty of whether a Canadian plaintiff who did not opt out of a U.S. proceeding, would be bound by the result of that proceeding in Canada.

Other jurisdictions around the world, such as that of the European Union, have also made strides in developing a multi-jurisdictional approach to address private antitrust actions.[36] While inclusion in an international class might benefit plaintiffs in jurisdictions where there is no viable tort system, to ignore Canada or any other jurisdiction that has a viable class proceedings regime in place and attempt to settle on a world-wide basis in the United States is a dangerous proposition for defendants.

V. Interaction Between Canadian and U.S. Class Action Proceedings

Increasingly, parallel antitrust class actions are being commenced in the United States and Canada. Although obvious

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[34] Parsons v. McDonald's Rest. of Can. Ltd., [2004] O.J. No. 83 (S.C.J.).

[35] Galanti v. Goodyear Tire & Rubber Co., No. 03-CV-00209 (D.N.J.) (order granting motion for preliminary approval of settlement entered Oct. 14, 2003); Kelman v. The Goodyear Tire & Rubber Co. (Ont. S.C.J.) (unreported).

[36] Jonathan Sinclair, *Damages in Private Antitrust Actions in Europe*, 14 LOY. CONSUMER L. REV. 547, 548 (2002).

efficiencies can be realized where counsel in multiple jurisdictions share information and coordinate activities, defendants in these proceedings tend to erect barriers to ensure plaintiffs *cannot* share information. Even though, as a general rule, discovery in the United States takes place in the public domain, it appears to have become standard procedure of defendants to get courts in the United States to issue protective orders to restrict public access to the documents that are produced, which in turn restricts access to plaintiffs in Canada.

In *Vitapharm v. F. Hoffmann-LaRoche Ltd.*,[37] where the plaintiffs allege a world-wide price-fixing conspiracy in the market for certain vitamins, the Canadian plaintiffs moved before the United States Court for the District of Maryland, under U.S. rules, in an attempt to intervene in the litigation and gain access to evidence that was under a protective order. Immediately thereafter, the defendants brought a motion in the Canadian courts, seeking to prevent the plaintiffs from pursuing the U.S. orders. Justice Hogan, the presiding judge in the U.S. litigation, granted the Canadian plaintiffs' motion to intervene in the U.S. proceedings. However, he deferred his decision to modify the protective order pending the conclusion of the defendants' motion in Canada to stop the plaintiffs from proceeding with the motion in the United States.[38]

In the Canadian motion, the judge of first instance, Justice Cumming, ruled that the plaintiffs were merely seeking access to discovery and not discovery itself, and ruled the U.S. motion could proceed. Justice Cumming went on to state that:

> As a result of the inexorable forces of globalization and expanding international free trade and open markets, there will be an ever-increasing inter-jurisdictional presence of corporate enterprises. This is seen particularly in respect of American and Canadian business activity, given the extent of cross-border trade. If both societies are to maximize the benefits of expanding free trade and open markets, the legal systems of both countries must recognize and facilitate an expeditious, fair and efficient regime for the resolution of litigation that arises from disputes in either one or both countries.

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[37] *In re* Vitamins Antitrust Litig., MDL No. 1285, 2001 U.S. Dist. LEXIS 25068, *18 (D.D.C. Mar. 19, 2004) (Memorandum Opinion re: Canadian Plaintiffs' Motion to Intervene).

[38] Vitapharm Can. Ltd. v. F. Hoffman-LaRoche Ltd., [2001] 11 C.P.R.4th (S.C.J.).

...

> The Plaintiffs are not seeking discovery in the U.S. through their U.S. Motion. Rather, they are only seeking *access* to the discovery of the litigants in the U.S. Litigation. From a legal standpoint, the U.S. Motion is only necessary because of the Protective Order.
>
> If there was no Protective Order and the plaintiffs were simply given access to discovery documents and depositions generated in the U.S. Litigation, the defendants could not take objection.[39]

On appeal, the Ontario Divisional Court affirmed that the Canadian plaintiffs were attempting to secure access to the fruits of discovery conducted by the parties in the U.S. litigation that might be of probative value in the Canadian action. They were not seeking the right to examine any person or compel production of any documents in the United States.[40] The Ontario Court of Appeal also upheld the decision, properly characterizing the situation as the plaintiffs merely attempting to gather evidence in a foreign jurisdiction in accordance with the rules of that jurisdiction.[41] If there were no protective order, the evidence would be freely available to plaintiffs and defendants would have no ground to object. Leave to appeal to the Supreme Court of Canada was denied on November 27, 2003.[42]

It is our hope that the decisions regarding procedure, such as those in the vitamins litigation, can assist in increasing coordination amongst plaintiffs' counsel in Canada and the United States, and potentially beyond. Plaintiffs in these price-fixing cases have the challenge of litigating against large, well-financed corporations. For this reason, which is a major reason class actions exist in the first place, reasonable sharing amongst plaintiffs should be allowed.

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[39] Vitapharm Can. Ltd. v. F. Hoffman-LaRoche Ltd., [2000] O.T.C. 877 (S.C.J.).

[40] Vitapharm Can. Ltd. v. F. Hoffman-LaRoche Ltd., [2002] O.J. No. 1400 (Div. Ct.).

[41] Vitapharm Can. Ltd. v. F. Hoffman-LaRoche Ltd., [2003] O.J. No. 868 (C.A.).

[42] The U.S. motion deferred by Justice Hogan was never decided.

VI. Conclusion

Although the law in many respects is still evolving, Canada has developed into a jurisdiction with a viable method for resolving price-fixing class actions. Cooperation among class counsel from different jurisdictions is and will become even more necessary in the future. Otherwise, attempting to settle price-fixing class proceedings on a world-wide basis will continue to be a dangerous proposition that may not result in true finality. As many price-fixing conspiracies extend across international borders, it is imperative to have a proper understanding of the different regimes to best ensure a proper resolution for both plaintiffs and defendants.