



Kirk M. Baert*

Partner

Practice Area
Class Actions

Expertise
Appellate Court Practice

Called to the Bar
Ontario, 1990

Also member (occasional call) of the British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, Newfoundland and Labrador, Northwest Territories and Yukon Bars.

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Kirk is a partner at Koskie Minsky LLP and is head of the firm's class action group. He has been repeatedly recognized by Lexpert, Chambers Canada and Benchmark Canada as a leading Canadian practitioner in the field of class action litigation. Mr. Baert has appeared in courts across the country, including the Ontario Court of Appeal, Quebec Court of Appeal, Newfoundland Court of Appeal and the Supreme Court of Canada, on matters dealing with all aspects of class action litigation.

Mr. Baert was counsel for the plaintiff in *Cloud v. Canada*, the first Indian residential schools class action certified in Canada. A \$5 billion pan-Canadian settlement was reached in the case in 2007. Kirk was designated as lead counsel in Canada to handle the 9 settlement approval hearings across the country. The settlement was ultimately approved by all 9 provincial and territorial courts involved. The settlement is proceeding and over 90,000 class members have made claims.

Kirk is counsel for the plaintiffs in *Anderson v. Canada*, in which it was alleged that Canada failed to comply with its constitutional and fiduciary duties to Metis and Inuit people in Newfoundland and Labrador arising from the operation of 5 residential schools in that province after 1949. The case settled in 2016 for \$50 million after proceeding to a common issues trial.

Kirk was also counsel for the plaintiff in *Pearson v. Inco Ltd.*, the first common law environmental class action to be certified in Canada. The case broke new ground on issues related to public nuisance and aggregate damages.

Mr. Baert was counsel for the plaintiff in *Markson v. MBNA Canada Bank*, which was certified by the Ontario Court of Appeal. The court's decision expanded the situations where an aggregate assessment of damages may be used in a class action. The action settled in 2012 with class members receiving refunds of \$8 million.

Kirk was Canadian co-counsel for the Ontario Public Service Employees Union Pension Trust Fund, the lead

plaintiff in *Re Nortel Networks Corp Securities Litigation*. A worldwide settlement was reached in the case in late 2006 totalling over \$2.4 billion.

Mr. Baert is counsel in *Labourers Pension Fund v. Sino-Forest Corporation, Ernest & Young LLP et al.* The firm won a three way contested carriage motion in the case. In 2013 and 2014, Kirk helped successfully negotiate and obtain court approval of a \$117 million settlement with Ernst & Young LLP, one of the largest auditor settlements in world class action history and the largest ever in Canada. More recently, Kirk obtained court approval of the May 2015 settlement with 12 Canadian and American banks for more than \$32.5 million, believed to be the largest settlement with a group of underwriters in Canadian history. Further settlements were reached with a number of other defendants, including BDO, resulting in a further \$12 million for the class.

Kirk has also been counsel in a number of other securities cases, including *Atlas, Barrick, Valeant, Kinross, Celestica, Penn West* and *Martinrea*, amongst others and recovered close to \$100 million dollars for shareholders in those cases.

Kirk was counsel for the plaintiffs in *Dolmage v. Ontario*, and three other related cases. Each of these cases sought to hold the provincial government liable for abuses at the government-run institutions for the cognitively and developmentally challenged. These cases were all settled for more than \$107 million. He is also counsel for the plaintiff in *Seed v. Ontario*, a case which alleges that students at a government run school for the blind were abused. That case is scheduled to go to trial in April 2017.

Mr. Baert was counsel for the plaintiffs in *Taylor v. Canada*, which broke new ground in a 2012 Court of Appeal decision on the issue of when federal government regulators can be liable for injuries sustained by users of a defective product that the government failed to prevent from coming on the market.

Kirk is presently involved in a number of other important public law matters, including cases related to the Sixties Scoop as well as youth solitary confinement, overcrowding in provincial jails, overcrowding in immigrant detention centres and the solitary confinement in federal prisons of those with mental health challenges.

For many years, Kirk taught a course in class actions with Professor Garry Watson at Osgoode Hall Law School. He has been on the Planning Committee for the Osgoode Hall Law School National Symposium on Class Actions held annually since 2001. Kirk is also a regular speaker and author of papers for The Canadian Institute, CBA, OBA, LSUC and the Advocates' Society on class actions, complex litigation and other matters.

Mr. Baert was an Instructor in the Ontario Bar Admission Course in both the Advocacy and Civil Procedure sections from 1995 to 2001. Kirk has also been a guest Instructor in the Osgoode Hall Intensive Trial Advocacy Workshop.

Kirk is a former editor of *Carswell's Practice Cases*. He is currently a contributing editor of *Class Action*, a quarterly publication issued by Federated Press. Kirk was also a member of the CBA National Task Force on Class Actions. Kirk is the former Chair of the OBA Section on Class Actions. He sits on the Board of Directors for Pro Bono Law Ontario. His column, "Class Acts", appears in *The Canadian Lawyer* once a month. He is also a former member of the Advisory Group of the Law Reform Commission of Ontario's work on reforming the *Class Proceedings Act, 1992*.

Kirk is a Fellow of the Litigation Counsel of America. The Litigation Counsel of America is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. He has also been recognized by Lexpert, Best Lawyers in Canada, Chambers Canada, Chambers Global, Benchmark Canada and the Lexpert/American Lawyer Leading 500 Lawyers in Canada as a leading lawyer in class action litigation.

* Practicing through a professional corporation

Experience

Cloud v. The Attorney General of Canada

Huron Regional Centre

Sino-Forest Corporation

Education

LL.B., 1988, Queen's University at Kingston

B.A., 1985, Queen's University at Kingston

Member/Affiliations

Member, Law Society of Upper Canada

Member, Canadian Bar Association

Member, Ontario Trial Lawyers Association

Member, Advocates' Society

Member, American Bar Association

Member, American Association for Justice

Member, Litigation Counsel of America

Member, National Lawyers Guild

Member, International Bar Association

Member, National Trial Lawyers

Kirk's Publications

- "Fee Approval Hearings in Class Proceedings", by Kirk Baert and Jonathan Bida, 7th Annual Symposium on Class Actions (Toronto: Osgoode Hall Law School of York University, 2010).
- "Innovative Class Proceedings – Recent trends", by Kirk Baert and Sarah Mason-Case, 6th Annual Symposium on Class Actions (Toronto: Osgoode Hall Law School of York University, 2009).
- "Costs in Class Proceedings: An Overview of the Statutory Regime in Canadian Common Law Provinces", by Kirk Baert, 6th Annual Symposium on Class Actions (Toronto: Osgoode Hall Law School of York University, 2009).
- "Taking Hollick to The Next Level: Cloud and Beyond", by Kirk Baert, 5th Annual Symposium on Class

- Actions (Toronto:Osgoode Hall Law School of York University, 2008).
- "Aggregate Damages under the Class Proceedings Act, 1992 Ensuring a Wrong Doesn't Elude a Remedy", by Kirk Baert, 5th Annual Symposium (Toronto:Osgoode Hall Law School of York University, 2008).
 - "Class Proceedings Fund : fifteen years in review", by Kirk Baert, 5th Annual Symposium on Class Actions (Toronto:Osgoode Hall Law School of York University, 2008).
 - "Class Actions and The Real and Substantial Connection" by Kirk Baert, 3rd Annual Symposium on Class Actions (Toronto:Osgoode Hall Law School of York University, 2006).
 - "Handling a certification motion, by Kirk Baert, Symposium: Your first class action : get the nuts and bolts from top practitioners and judges (YLD) (Toronto, Ont.:Ontario Bar Association, 2005).
 - "Costs award against counsel in tobacco litigation denied by judge" (The Lawyers Weekly, Volume 25, No. 8 , June 24, 2005 - Lexis Nexis Publications).
 - "Jurisdiction of provincial courts in national class action proceedings", by Kirk Baert, 2nd Annual Symposium on Class Actions (Toronto:Osgoode Hall Law School of York University, 2005).
 - "Effectively handling a certification motion", by Kirk Baert, 2nd Annual Symposium on Class Actions (Toronto:Osgoode Hall Law School of York University, 2005).
 - "Pension and benefits class actions : a growth area the plaintiffs' perspective", by Kirk Baert, Symposium: 5th annual national forum on litigating class actions : the roadmap for bringing and defending class actions in Canada (Toronto, Ont. : Canadian Institute, 2004).
 - "Costs in class proceedings", by Kirk Baert, Symposium: Brave new world : securities litigation & enforcement (Toronto, Ont.:Continuing Legal Education, Ontario Bar Association, 2003).
 - "Cost in class proceedings", by Kirk Baert, Symposium: Class actions : the 2nd annual litigators' conference (Toronto, Ont. : Insight Information, 2003).
 - "Real estate class actions : a concept whose time has come" by Kirk Baert and Jessica Kimmel, Symposium: Gravel to gavel IV : new developments in real estate litigation (Toronto, Ont. : Continuing Legal Education, Law Society of Upper Canada 2002).
 - "The Road less traveled by: certification of actions under the Ontario Class Proceedings Act, 1992", by Kirk Baert; in: Annual Review of Civil Litigation 2001 / ed. Todd Archibald and Michael Cochrane (Toronto: Carswell, 2002p. 115-140; 2002).
 - "Strike suits' : an emerging threat or protecting shareholder rights?" by Kirk Baert and Barnes, Lyndon. Symposium: Class actions : the litigators' conference (Toronto, Ont. : Insight Information, 2002).
 - "Certification of actions under the Ontario Class Proceedings Act, 1992", by Kirk Baert, Symposium: Class actions : the litigators' conference (Toronto, Ont. : Insight Information, 2002).
 - "The proper approach to the certification of actions under the Class Proceedings Act, 1992," by Kirk Baert, Symposium on Class Actions (Toronto:Osgoode Hall Law School of York University, 2001).
 - "Appeal routes in Ontario, Quebec and B.C. : an outline of where to go", by Kirk Baert, Symposium on Class Actions (Toronto:Osgoode Hall Law School of York University, 2001).
 - "Emerging issues in medical malpractice class actions". by Kirk Baert, Symposium: The advanced program on medical malpractice : the latest legal developments and practical strategies for building and winning your case (Toronto, Ont. : Canadian Institute, 2001).
 - "Contingent fees awarded under Class Proceedings Act", by Kirk Baert, Symposium: An overview of class actions : biosketches & papers (Toronto, Ont. : Advocates' Society, 2000).

- "Funding from the class proceedings fund", by Kirk Baert, Symposium: An overview of class actions : biosketches & papers (Toronto, Ont. : Advocates' Society, 2000).
- "Conducting a civil action for toxic torts and mass wrongs", by Kirk Baert, Symposium: Litigating toxic torts and other mass wrongs : the latest legal developments and practical strategies for building/defending your case (Toronto, Ont. : Canadian Institute, 2000).
- "Class actions and government liability : a Y2K update", by Kirk Baert, Symposium: 6th annual provincial/municipal government liability (Toronto, Ont. : Canadian Institute, 2000).
- "Certification of class actions." by Kirk Baert, Symposium: Common and uncommon motions (Toronto, Ont. : Law Society of Upper Canada, Dept. of Continuing Legal Education, 1999).
- "Class actions : many small sufferings add up to a worthwhile action" by Kirk Baert and Michael McGowan, Symposium: Pursuing the public purse : new causes of action (Toronto, Ont. Canadian Bar Association - Ontario, 1999).