

Class Actions

A Summary of Class
Action Decisions

Court certifies class action and awards summary judgment at same time

In *Levac v. James*, [2016 ONSC 7727](#) the Ontario Superior Court both certified the class action, and awarded summary judgment to the plaintiffs, a procedural rarity in Ontario class action jurisprudence.

Levac v. James involved an infectious outbreak among patients who received epidural injections from the defendant doctor. Toronto Public Health investigators found that the defendant doctor's hand hygiene was not consistently or properly performed, and did not follow proper procedures for sterilization.

The defendant did not oppose certification of the action as a class proceeding, but did object to the formulation of the common issues. Justice Perell certified the class and the following common issues: (a) whether the Defendants owed a duty of care to the Class Members to maintain infection control practices; (b) did any Defendant breach his, her, or its duty of care with respect to the design and or performance of the Defendants' invariable IPAC Practice?; and (c) whether the Defendants' conduct was sufficient to attract punitive damages.

Justice Perell found that the duty of care issue was suitable for summary judgment, as "little would be gained" by sending the issue to a regular trial.

In determining whether the defendant doctor breached the standard of care owed to his patients, Justice Perell inferred from the circumstantial evidence presented by the plaintiff that the doctor was negligent, and shifted the burden to the defendant to negate the inference of negligence. As the defendant was unable to offer an alternate explanation of the harm to the class members, Justice Perell found in favour of the plaintiff.

Justice Perell held that general causation was proven for all class members. For those patients whose infections could be connected to the colony of *staphylococcus aureus* found on the defendant doctor, specific causation had been proven. Patients infected by other strains of the bacteria will have to prove specific

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JUSTICE MATTERS

causation and quantification at individual issues trials.

**This post was authored by members of Koskie Minsky's Class Actions Department.*

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This edition of Class Action News was produced and edited by the Class Action Department at [Koskie Minsky LLP](#)

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