

# Class Actions

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A Summary of Class  
Action Decisions

## Parking the Uber Class Action

In *Heller v. Uber Technologies Inc.*, 2018 ONSC 718, Perell J. stayed a proposed class action on behalf of Uber drivers due to a clause in the parties' Service Agreement that mandated they resolve disputes by arbitration in The Netherlands. In upholding the arbitration clause, the Court followed the precedent set by the Supreme Court of Canada in *Seidel v. TELUS Communications Inc.*<sup>[1]</sup> that absent legislative language to the contrary, courts must enforce arbitration agreements.

In the action, the class members argued that they should be classified as Uber employees instead of independent contractors in order to be entitled to the benefits under Ontario's *Employment Standards Act, 2000*.<sup>[2]</sup>

After concluding that the *International Commercial Arbitration Act, 2017*<sup>[3]</sup> applied as a result of the dispute between the parties being commercial in nature, the Court upheld the competence-competence principle, which stands for the proposition that if there is a *prima facie* case that an arbitrator has jurisdiction, that arbitrator will have the power to rule over its own jurisdiction. The Court rejected the plaintiff's argument that since the proposed class action is about an alleged employment relationship it falls outside an arbitrator's jurisdiction. Rather, the Court held that it is left to an arbitrator in The Netherlands to decide whether it has jurisdiction over this matter. Moreover, there is nothing in the *Employment Standards Act, 2000* precluding resort to arbitration.

Finally, the Court held that resort to arbitration was not prohibited due to the Service Agreement being null and void or inoperative on the basis of unconscionability. While the Service Agreement is a contract of adhesion, there is no indication that Uber preyed or took advantage of Mr. Heller or the other Uber drivers or extracted an improvident agreement by inserting an arbitration provision mandating that a dispute be resolved in The Netherlands.

*Heller* continues a line of employment cases over the past several years that have upheld a contractual arbitration clause and expands the recognition of arbitration clauses to proposed class actions.

[1] 2011 SCC 15.

[2] S.O. 2000, c. 41.

[3] S.O. 2017, c. 2.

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