

LITIGATION - CANADA

CLASS ACTION LAW IN ONTARIO CANADA – SUPREME COURT OF CANADA UPHOLDS RESTRICTIVE INTERPRETATION OF LIMITATION PERIOD FOR SECONDARY MARKET MISREPRESENTATION CLAIMS

by Thomas Arndt
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On August 2, 2012, the Supreme Court of Canada, denied leave to appeal the Court of Appeal decision in *Sharma v. Timminco*. In so doing, the Supreme Court upheld the appeal court's restrictive interpretation of the three year limitation period set out in section 138.14 of the *Ontario Securities Act* for a claimant to seek leave to proceed with a section 138.3 claim (misrepresentation in the secondary market). Failure to seek leave to proceed within the three year limitation period for section 138.3 claims will render even a meritorious claim statute barred.

Indeed in *Green v. CIBC* 2012 ONSC 3637 (released shortly after and applying the Court of Appeal decision in *Sharma v. Timminco*) Justice Strathy explained that he would have granted leave to proceed with the section 138.3 claim and certified the action as a class proceeding but for the statutory limitation period.

These developments are sure to bring comfort to directors and officers of issuers and serve to caution investors to seek leave to proceed with dispatch. The class action playbook continues to be written.

For a discussion on how *Pennyfeather v. Timminco* 2011 ONSC 4257 S.C.J. and *Sharma v. Timminco* 2012 ONCA 107 have revised the class action playbook in Ontario see [Class Action Law In Ontario Canada – A New Playbook 20 Years In The Making](#).

FOR MORE INFORMATION, PLEASE CONTACT:



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