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Class actions within the Commonwealth.
Safety in numbers?



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COMMONWEALTH
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AN AUSTRALIAN PERSPECTIVE FOCUSING ON CLASS ACTIONS BROUGHT
BY FIRST NATIONS AUSTRALIANS

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CLASS ACTIONS WITHIN THE COMMONWEALTH - SAFETY IN NUMBERS? AN AUSTRALIAN PERSPECTIVE FOCUSING ON CLASS ACTIONS BROUGHT BY FIRST NATIONS AUSTRALIANS

1. Safety in numbers? Definitely - at least in Australia in the context being discussed.
2. Since 2016 there have been about a dozen class actions brought by First Nations peoples leading to settlements involving large numbers of Group Members and substantial settlement amounts.
3. These proceedings are all proceedings where but for the class action regimes available in Australia it is highly unlikely that any of the various Group Members would have received any compensation in respect of the claims brought.
4. The proceedings are essentially of two types:
 - a) Claims based upon the historical treatment of First Nations People¹;
 - b) Claims based upon human rights involving contraventions of the Racial Discrimination Act 1975 (Cth)(**"RDA"**) and other legislation.

1. These claims also involve claims under the RDA but only in respect of Reparations Schemes which the proceedings challenged.

The various First Nations class actions are summarised as follows:

1. *Wotton v State of Queensland [2016]* - settlement \$30M
2. *Pearson v State of Queensland [2016]* - known as the Queensland "Stolen Wages" class action - settlement \$190M
3. *Street v State of Western Australia [2020]* - the Western Australia "Stolen Wages" class action - settlement \$180.4M
4. *McDonald v Commonwealth of Australia* - the Northern Territory "Stolen Wages" class action - settlement \$202M
5. Stolen Generation Reparations and Class Actions - reparations and settlements totalling \$430M
6. *Banksia Hill Juvenile Detention and Unit 18 Class Actions* - Western Australia
- 7-9. Child Safety Class Actions
10. New South Wales Fisheries Class Action
11. Western Australian and Northern Territory Housing Class Actions



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CASE STUDY FROM THE CARIBBEAN COURT OF JUSTICE

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Questions posed by the conference organisers:

- Challenges of bringing class actions in unfamiliar jurisdictions
- How can procedural guidelines help

Questions posed by class actions generally:

- Funding & liability for adverse costs
- Establishing the class, proof of eligibility, etc
- Remedies, proving quantum, timely compensation

While managing large numbers efficiently and fairly

Ellis Richards v Trinidad and Tobago

- Claim brought in Caribbean Court of Justice in its original jurisdiction (i.e. in respect of Caricom Treaty)
- Brought by several hundred claimants who had all lost investments in a subsidiary of collapsed insurance giant CLICO
- Alleging discrimination by T&T government

CCJ (Original Jurisdiction) Rules:

- Very broad general case management powers (r 8.1)
- But no specific group action rules or procedures

Solutions existed in this case for typical issues:

- Establishing viable number of claimants
- Funding
- Liability for adverse costs

But one specific objective:

Implementing mechanisms for establishing

- Eligibility to claim
- Eligibility for remedy
- Quantum of compensation

Mechanisms, cont

Why? Fear of delay – delay in proof, delay in payout

Why important generally? Real access to justice, fair and timely remedy

Proposals

- eligibility and quantum determined by simplified and accelerated mechanism
- using register of claimants
- adapted from orders in English cases

Reasoning:

- Questions of eligibility were simple matters of documentation
- Great majority unlikely to be contentious
- Defendant was State with ready access to information
- Eligibility could be determined by accelerated procedure with no need for individual determinations by court

Result? Failure: defendant did not engage, court declined to implement proposals, test cases proceeded

One diagnosis in this case: lack of procedural framework,
signposts - encouraging focus on issues of class management

Not a question of prescribing specific directions - each case
different, court has broad case management powers

Generally important procedural elements: rules for class
management; costs



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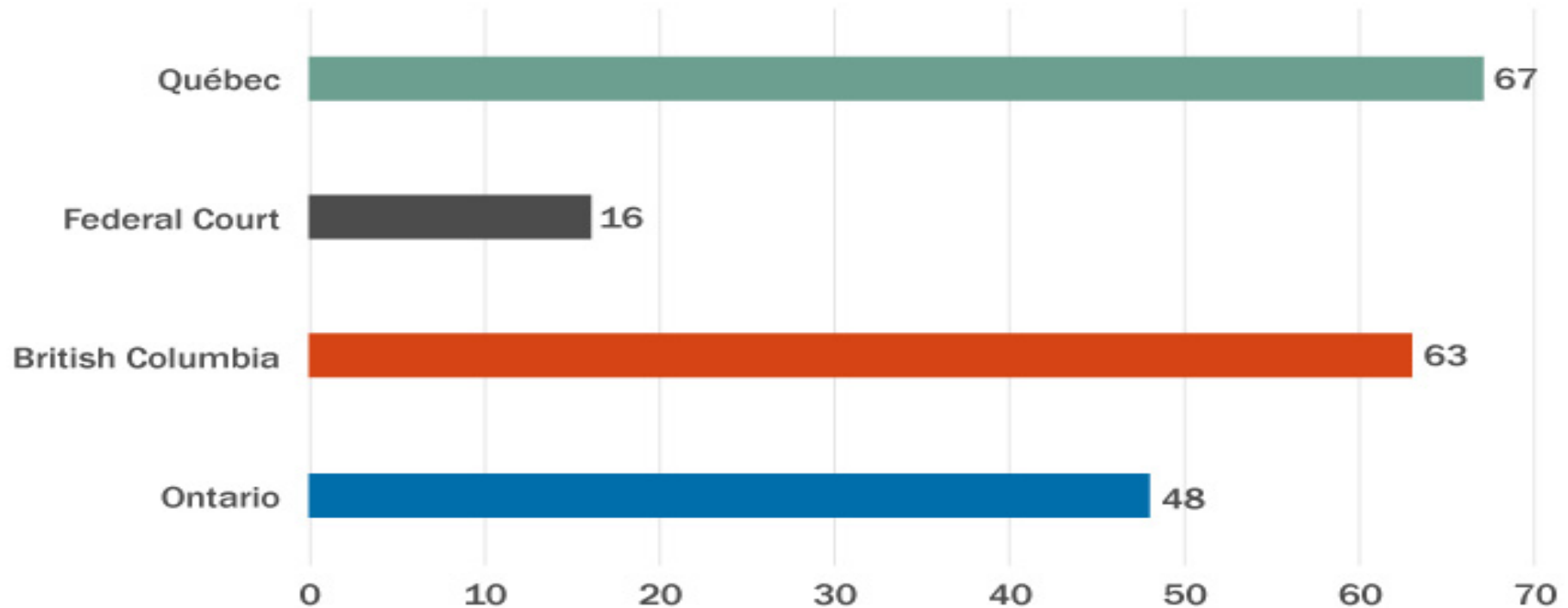
CLASS ACTIONS IN CANADA: 2024 IN REVIEW

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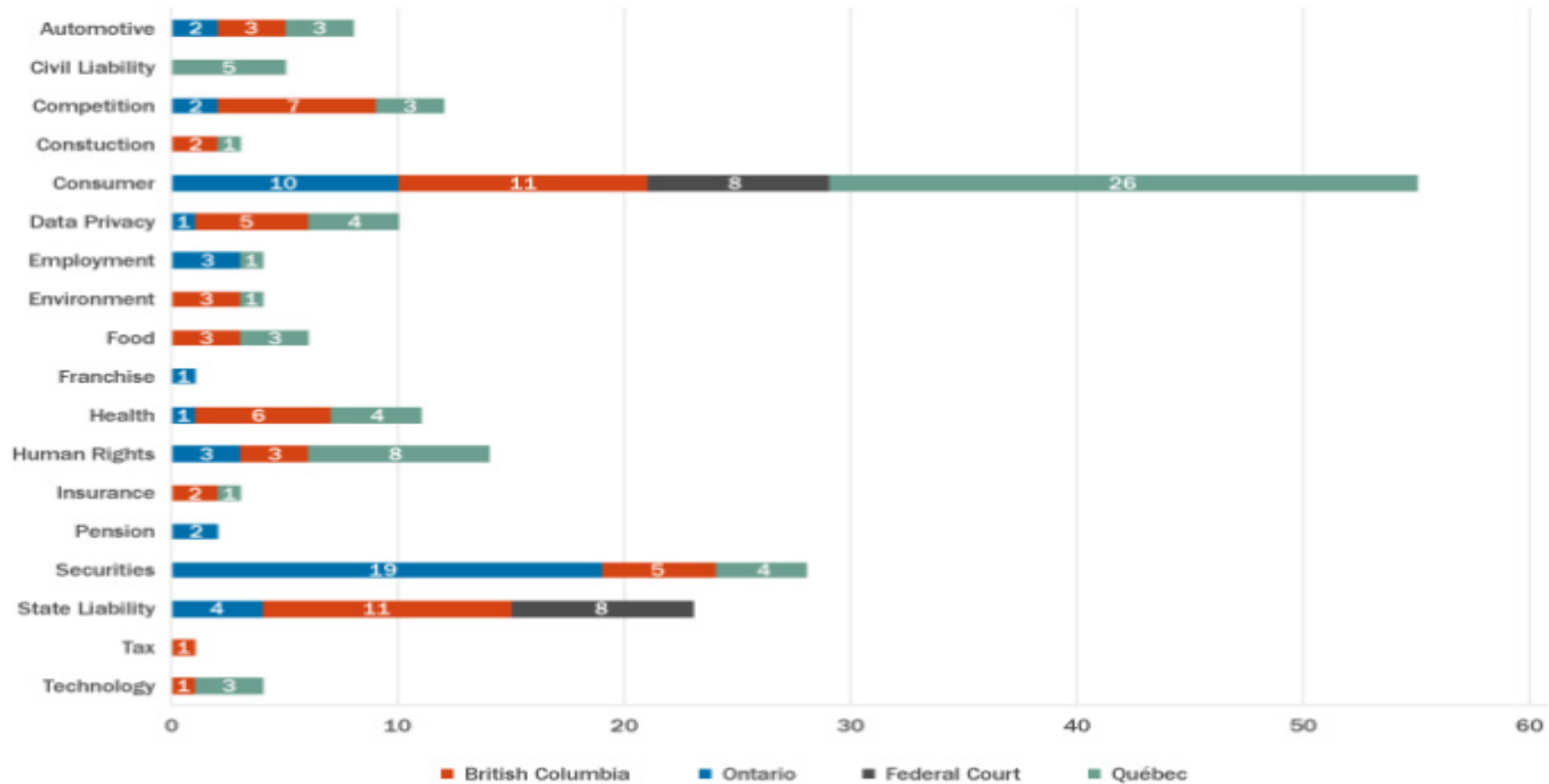
Class actions in Canada: 2024 in Review

Figure 1: Applications for authorization or proposed class actions filed, broken down by jurisdiction



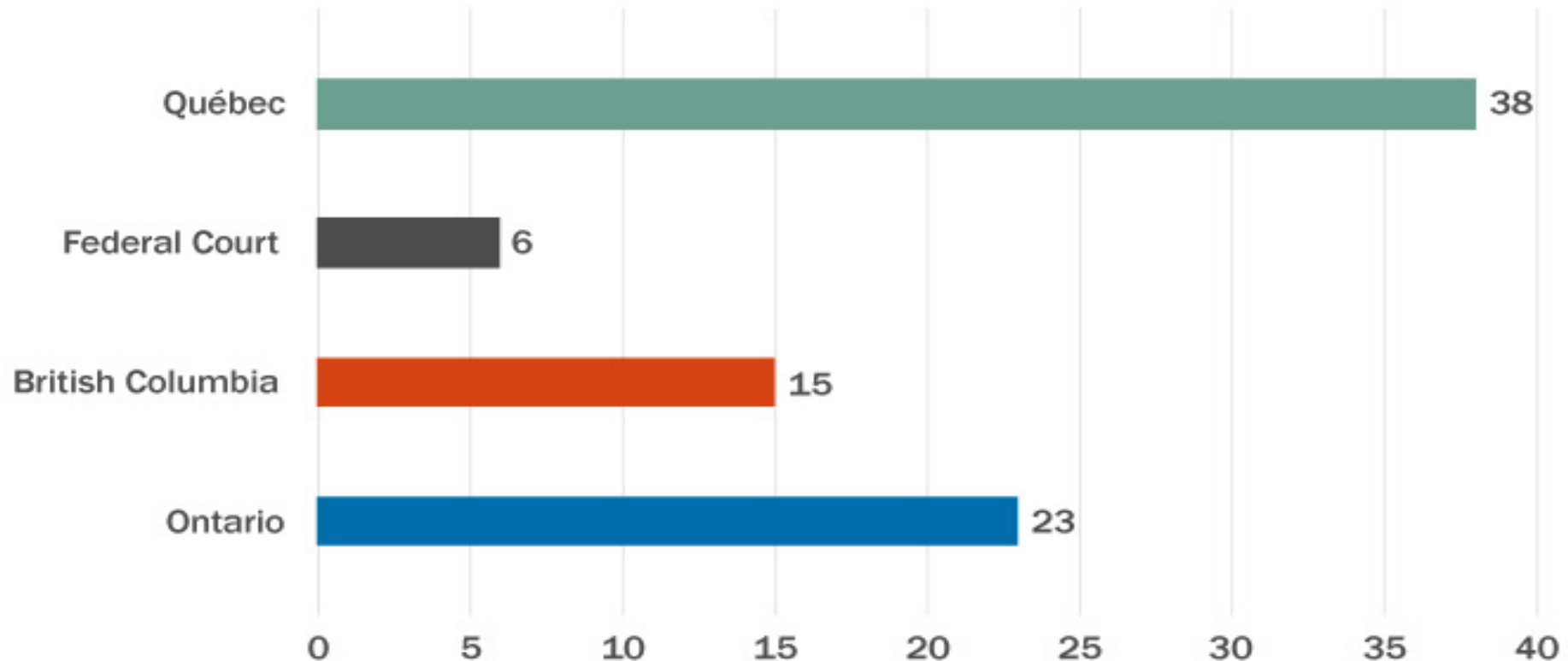
Class actions in Canada: 2024 in Review

Figure 2: Applications for authorization or proposed class actions filed, broken down by area and jurisdiction



Class actions in Canada: 2024 in Review

Figure 3: Class certification and authorization decisions, broken down by jurisdiction



Class actions in Canada: 2024 in Review

Figure 4: Total proposed class action filings, with certification/authorization granted vs. denied

