

Martindale-Hubbell posed the following question to provide a variety of views on this important topic:

Companies from Wal-Mart Stores, Inc. to Crayola crayon makers Binney & Smith, Inc. have faced class action suits. How does a company avoid this surprise?

Worries about the unknown keep corporate counsel up at night, with class actions frequently topping the list. Although litigation by groups dates to the 12th century, the plaintiffs' bar has recently turned this tool into an art form. No one appears to be immune.



David W. Kent

*Partner, Litigation Chair,
Class Action Group*

McMillan Binch LLP
david.kent@mcmillanbinch.com

Corporate counsel are less likely to face class action in Canada by taking three steps:

1. Consider arbitration clauses in customer contracts to keep disputes out of court.
2. Use a "choice of forum" clause requiring people to sue either in a jurisdiction that does not recognize class actions or that has a reasonable class action process. (For instance, avoid Québec.)
3. Resist certification, especially in "shakedown" cases. If you push back, you will become known at the class action bar as a company that doesn't roll over and settle.