

HEAD OF THE CLASS: CHANGES TO BC'S CLASS PROCEEDINGS ACT

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Introduction:

British Columbia's *Class Proceeding Act* is changing effective October 1, 2018. These amendments to the Act are expected to have major impacts on class proceedings in BC.

Major Changes:

1. Moving from an opt-in to an opt-out scheme

The change from an opt-in to an opt-out scheme allows BC to mirror Ontario, Saskatchewan, and Alberta, each which operate on opt-out regimes. Currently, class actions are limited to BC residents and non-residents must make an election to opt in to the class action if they wish to join a BC proceeding. An opt-out regime means that both resident and non-resident class members will automatically be part of the class and must opt out of the action if they do not wish to be bound by the proceedings. Thus, opt-out regimes often involve larger classes and are generally considered to be more plaintiff-friendly than opt-in regimes.

2. Providing for multi-jurisdictional proceedings

Another major change is that multi-jurisdictional class proceedings will be allowed in BC. This means that going forward, proceedings in BC may be brought on behalf of a class that includes non-resident members.

3. Consideration of a more appropriate forum

Once these changes come into force, courts will be required to consider whether it would be preferable for a proposed class proceeding in BC to be resolved in a different jurisdiction. This consideration will arise when the claims in a BC proceeding are similar to, or the same as, claims in an existing or proposed class proceeding in another province.

4. Notification and non-resident submission rules

The amendments further require that representative plaintiffs in BC give extra-provincial plaintiffs notice of a

certification application if the two actions involve similar claims. Upon receiving this notice, non-resident plaintiffs will be entitled to make submissions at the certification hearing in BC.

5. Orders in multi-jurisdictional certification

After October 1, 2018, courts will be at liberty to certify multi-jurisdictional class proceedings if it is determined that BC is the appropriate venue for the action. Conversely, certification may be refused if the proceedings would be more appropriately decided in a different jurisdiction. Certification of a portion of a class may be refused if that portion contains members that could be included in a class proceeding elsewhere in Canada. Ultimately, these amendments aim to ensure that class proceedings are heard in the jurisdiction that is the most appropriate, taking into consideration the location of class members, evidence, and witnesses and the interests of all the parties.

6. Transitional provisions

The original Act will continue to apply to proceedings that are certified prior to the amendments coming into force. However, class members will be entitled to apply to amend existing certification orders to include non-resident members of the class once the amendments are in force. Non-residents will automatically be included as class members in proceedings certified after October 1, 2018.

Conclusion: How these Amendments Will Impact the National Class Action Landscape

- As BC remains a no costs regime, these amendments make BC a more attractive location for national class actions, especially riskier ones, as there is no costs downside for the plaintiff.
- The traditional alliances between eastern and western plaintiffs' firms will likely falter now as BC firms will seek to compete for national class actions.
- Lastly, current proceedings will likely be impacted, as parties will be able to apply to include non-residents of BC in existing certification orders and expand the class beyond BC's border.

Ultimately, these changes are likely to both increase and expand the scope and significance of class proceedings in BC. Expect to see continued increases in the number of class actions being filed in BC as we head into 2019 and beyond.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained. © McMillan LLP 2018

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