

Legal update

Proposed amendments to *Class Proceedings Act* in British Columbia

April 2018

Class actions

Proposed amendments to British Columbia's *Class Proceedings Act*, R.S.B.C. 1996, c.50 (the Act) will permit national opt-out class actions and require the court to consider proceedings in other jurisdictions before agreeing to certify the class action in British Columbia.

Multi-jurisdictional class proceedings

The proposed amendments received their first reading in the Legislative Assembly on April 23, 2018. If passed, the amendments would expand the Act's definition of "class proceeding" to include a "multi-jurisdictional class proceeding," which would be defined as "a proceeding that is brought on behalf of a class of persons that includes persons who do not reside in British Columbia."

As a result of this expanded definition, the Act would be amended to include new provisions that specifically set out the objectives and factors a court must take into consideration when faced with an application to certify a multi-jurisdictional class proceeding. The amended Act would also require that members commencing proceedings in British Columbia notify plaintiffs involved in multi-jurisdictional class proceedings commenced elsewhere in Canada involving the same or similar subject matters. The bill would also introduce provisions outlining the orders a court may make in a multi-jurisdictional certification.

BC may become an opt-out jurisdiction

Likely most important to corporations facing class actions in British Columbia, the proposed amendments would create a system whereby non-resident members of a British Columbian multi-jurisdictional class proceeding are automatically included in the proceeding unless they choose to opt out. This would be a significant departure from the existing regime under the Act, which requires non-residents of British Columbia to take certain steps to opt into a class proceeding they would otherwise be members of if they were residents of British Columbia. This amendment would bring BC legislation in line with the legislation in several other Canadian jurisdictions that permit national class actions on an opt-out basis.

Maintaining the “no-cost” regime

Notably, the Act will continue to prohibit a court from awarding costs against any party with respect to any stage of a class proceeding, subject to certain exceptions. The combination of this “no-cost” regime and the opt-out process for non-residents, might lead to an increase in class action litigation in British Columbia, as class counsel are able to expand the size of their class while at the same time avoid negative cost consequences.

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