BC's Class Proceedings Act to get a facelift?

Class Action Alert

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The Government of British Columbia introduced Bill 21 containing its proposed amendments to the Class Proceedings Act, RSBC 1996, c. 50 (the “CPA”) on 23 April 2018.* If passed, these amendments will significantly change class proceedings in British Columbia by bringing them in line with the Uniform Law Conference of Canada’s Uniform Class Proceedings Act (Amendment) 2006 and with other provinces, such as Alberta and Saskatchewan, whose legislation already permits certification of multi-jurisdictional class actions.

The proposed amendments to the CPA would expand the definition of “class proceeding” to include multi-jurisdictional class proceedings, which are those “brought on behalf of a class of persons that includes persons who do not reside in British Columbia.” The proposed amendments also include a number of new procedural provisions to specifically address certification of multi-jurisdictional proceedings.

Certification of Multi-Jurisdictional Proceedings (National Class)

The certification of multi-jurisdictional proceedings can be expected to raise a number of distinct procedural issues, and the proposed amendments in Bill 21 include provisions intended to address these challenges. In particular, challenges will arise where there is an application to certify a class in British Columbia and an existing class proceeding or proposed class proceeding in another jurisdiction involving the same or similar subject matter. In such circumstances, the proposed amendments would require that notice of the application for certification be provided to the representative plaintiff of any other multi-jurisdictional class proceeding. Such notice would then entitle that...
representative plaintiff to make submissions at the certification hearing in British Columbia.

The proposed amendments also require that the British Columbia court hearing the certification application consider whether British Columbia is the preferable jurisdiction for the class proceeding. If the judge determines, with reference to the objectives and factors set out in the proposed amendments, that British Columbia is not the preferable jurisdiction, the judge may, among other things, refuse to certify a multi-jurisdictional class proceeding in favour of the class proceeding in another jurisdiction.

Opting Out by Non-Resident Class Members

Under the existing CPA, non-residents of British Columbia who would otherwise be members of the class must actively opt-in to class proceedings in British Columbia. The proposed amendments will transform class proceedings in British Columbia into an opt-out system in which non-residents are automatically included as members of the class without having to take express steps to join the proceedings. This change would parallel other jurisdictions, such as Ontario, where opt-out provisions have already been implemented.

Transition

If the proposed amendments to the CPA are passed, the existing rules with respect to class proceedings and the requirement for non-resident class members to opt-in will continue to apply to all class proceedings certified before the amendments come into force. However, the proposed amendments permit the court, upon application by a party to the class proceeding, to amend any existing certification order and convert it into a multi-jurisdictional proceeding. On the other hand, a class proceeding commenced before but certified after the amendments come into force would include non-resident members of the class as per the proposed amendments.

Conclusion

Overall, the proposed amendments contained in Bill 21 would bring significant change to the class proceedings regime in British Columbia. While these changes would have a number of effects, the most notable of these is that British Columbia would likely be viewed as a more attractive forum for multi-jurisdictional class proceedings especially in light of the fact that it remains to be a “no cost” regime. As a result, the number and size of class proceedings in British Columbia can be expected to increase.

*Update: The Class Proceedings Amendment Act, 2018 received Royal Assent May 17, 2018 and will come into force by regulation of the Lieutenant Governor in Council on October 1, 2018.

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