

Changes to Ontario's Class Proceedings Act Proclaimed in Force

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Moments ago, Ontario Attorney General Doug Downey announced that the amendments to the *Class Proceedings Act, 1992*, in the recent Bill 161 (the *Smarter and Stronger Justice Act, 2020*) have been proclaimed in force effective **October 1, 2020**.

While the amendments are far-reaching, they are most notable for their changes to restrict the test for certification of a class proceeding. Those amendments stipulate that in order to be certified, a class action must propose common issues that predominate over individual ones, and the proposed action must also be superior to any other reasonably available means of resolving the claims of the plaintiff class or the conduct of the defendant.

The government has now clarified that the Bill 161 amendments will apply only to actions commenced on or after October 1, 2020. For further clarity, by Regulation 497/20, the government has also specified that class actions commenced under Section 138.8 of the *Securities Act* will be considered "commenced" upon the issuance of the originating process, regardless of when the motion for leave is made.

Other associated regulations to the new Act have been made under the *Law Society Act* concerning repayments to the Law Foundation of Ontario's Class Proceedings Fund in the event that a proposed class proceeding is dismissed for delay (O.Reg. 495/20); necessary technical amendments have been made to the *Rules of Civil Procedure* through O.Reg. 496/20; and ongoing confusion over the subrogated claims of provincial health insurers (or PHIs) in class actions have been addressed by a new regulation to the *Class Proceedings Act*: O.Reg. 498/20.

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