

## British Columbia Becomes More Plaintiff Friendly With Adoption of the *Class Proceedings Amendment Act*

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*The Government of British Columbia's amendments to the Class Proceedings Act (the Act) recently received Royal Assent and will come into force on October 1, 2018. The adoption of these proposed amendments will make British Columbia a friendlier jurisdiction for plaintiffs in class proceedings.*

### Key Takeaways

- **The amendments are modeled after provisions of the Uniform Law Conference of Canada's (the ULCC) *Uniform Class Proceedings Amending Act*.** Once the changes are adopted, British Columbia will be the third province in Canada to follow the ULCC's model, after Saskatchewan and Alberta.
- **British Columbia should see an increase in class action litigation.** By maintaining a no-cost regime and making it easier for non-residents to be included in class proceedings, the amendments will allow plaintiffs to increase the size of certified classes while avoiding potential negative cost consequences.

### Summary and Background

On April 23, 2018, the Government of British Columbia introduced Bill 21, which contained several proposed amendments to the Act. Bill 21 received Royal Assent on May 17, 2018 and will come into force on October 1, 2018. The amendments are largely based on the ULCC's *Uniform Class Proceedings Amending Act*, which has already been adopted by Saskatchewan and Alberta. Unlike the current law in British Columbia, the ULCC's model allows courts to certify multi-jurisdictional class proceedings on an opt-out basis.

As a result of these amendments, British Columbia will change from an "opt-in" jurisdiction to an "opt-out" jurisdiction for non-residents of the province. Additionally, the certification of multi-jurisdictional class proceedings will be permitted and addressed in the Act.

### The Amendments in Brief

Unlike most Canadian provinces, British Columbia is an opt-in jurisdiction for non-residents of the province, which requires non-residents to actively opt into class proceedings or else be excluded from the class. As of October 1, 2018, non-residents will automatically be considered part of a class proceeding unless they opt

out.

The amendments will also broaden the Act's reach, allowing it to capture multi-jurisdictional class proceedings, which are class proceedings that involve both residents and non-residents of British Columbia. Under the new law, the following considerations will need to be taken into account:

- First, where there is an existing or proposed multi-jurisdictional class proceeding elsewhere in Canada that involves the same or similar subject matter, the proposed representative plaintiff in British Columbia must give notice of the application for certification to the representative plaintiff of the other proceeding;
- Second, when dealing with an existing or proposed multi-jurisdictional class proceeding that has been commenced elsewhere in Canada and involves the same or similar subject matter, the court must consider whether British Columbia is indeed the preferable jurisdiction in which to resolve the claims or common issues at hand. In making this determination, the court must be guided by the objectives and factors laid out in the amending provisions of the Act; and
- Third, the amendments give courts the discretion to make any order they deem appropriate in certifying a multi-jurisdictional proceeding. A court could, therefore, refuse to certify a multi-jurisdictional class proceeding in British Columbia if it determines that the proceeding should instead advance in another jurisdiction.

Bill 21 also contains transitional provisions, which contemplate proceedings that span the period before and after the amendments come into force. All class proceedings certified before the amendments come into force will be subject to the previous provisions of the Act. However, upon application by a party to the proceeding, a court can amend any certification order to include non-residents as members of the class. All class proceedings certified after the amendments come into force, regardless of when they were commenced, will be subject to the amendment provisions.

## **The Upshot**

Despite these amendments, the Act will continue to prohibit courts from awarding costs against any party with respect to any stage of a class proceeding. British Columbia is among four Canadian provinces that employ this “no-costs” regime, where costs will only be awarded on dismissed certification motions in rare and exceptional circumstances. Maintaining the current “no-costs” regime while eliminating the numerous steps previously required for a non-resident to be considered part of a certified class has made British Columbia a friendlier jurisdiction to plaintiffs in class proceedings. As a result, the province should see an increase in class action litigation going forward.

The amendments will also provide courts in British Columbia with guidance when considering multi-jurisdictional certification applications. This guidance will help to ensure that class proceedings are being advanced in the most preferable and appropriate jurisdiction.

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For further information on class actions and class action litigation in Canada, please contact Timothy Pinos, Brigeeta Richdale, John M. Picone, Jessica Lewis or any other member of our Class Actions Group.

***The authors of this article gratefully acknowledge the contributions of summer student Grace Wu.***

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