Changes to Ontario's Class Proceedings Act passed into law

July 14, 2020

On July 7, 2020, Ontario's Legislative Assembly passed Bill 161, the *Smarter and Stronger Justice Act, 2020*. The Act, which gained Royal Assent the next day, amends a number of statutes, including the *Class Proceedings Act, 1992* (CPA). These changes to the CPA are now law, and will officially come into force on a proclamation date to be fixed in the future.

BLG has previously written about the proposed changes to the CPA. Most of these changes have now been formally enacted into law. Among the most noteworthy changes to the CPA are changes to the certification test, changes that address the proliferation of competing multi-jurisdictional class proceedings, changes to the relative availability of pre-certification motions and changes to appeal routes.

Certification

The CPA's certification-related amendments add new gloss on the long-standing certification requirement in section 5(1)(d) of the CPA that a class action must be "the preferable procedure for the resolution of the common issues." The amendments provide that, in order for a class action to be the preferable procedure, it must "at a minimum" be "superior to all reasonably available means" of addressing class members' claims, and the proposed common issues to be addressed by the class action must "predominate over any questions affecting only individual class members." These new predominance and superiority requirements will reduce the number of proposed class actions that satisfy the "preferable procedure" criterion for certification in Ontario.

Multi-jurisdictional class actions

The multi-jurisdictional amendments to the CPA explicitly call on the Ontario court to have regard to competing class actions in other Canadian jurisdictions involving the same or similar subject matter. When a motion for certification is brought in Ontario in a multi-jurisdictional class proceeding, the representative plaintiff is now required to give notice of the motion to a proposed representative plaintiff in a competing multi-jurisdictional proceeding, who will be entitled to make submissions at certification. In determining whether the class action is the "preferable procedure," amendments to the

CPA now mandate a determination by the Ontario court as to “whether it would be preferable for some or all of the claims of some or all of the class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced in the other jurisdiction instead of in the proceeding under [the CPA].”

Pre-certification motions

The amended CPA will introduce a new section 4.1, which appears designed to facilitate a greater number of pre-certification motions. Plaintiffs in proposed class proceedings, who generally want the certification motion to be the first order of business, tend to resist such motions. While class proceedings judges already have the discretion to permit pre-certification motions in limited circumstances, section 4.1 expressly requires that a pre-certification motion that “may dispose of the proceeding in whole or in part, or narrow the issues to be determined or the evidence to be adduced” be heard before certification, subject to the discretion of the class proceedings judge to order that the proposed motion be heard at the same time as the certification motion. It is very likely that section 4.1 will embolden defendants in proposed class proceedings to bring a greater number of pre-certification motions, attempting to narrow the scope of proposed class proceedings pending against them.

Appeal routes

The amendments to the CPA eliminate appeals of certification decisions to the Divisional Court, and introduce a reciprocal right of appeal by either a proposed representative plaintiff or a defendant directly to the Court of Appeal for Ontario. This change to the CPA received broad support, as it truncates the appeal routes for certification and will lead to timely final determinations regarding whether a proposed class action passes the certification hurdle.

The sweeping changes to modern class actions brought about by the amendments to the CPA will have a significant effect on class actions in Ontario in the years ahead. Once the proclamation date is finalized for these amendments, BLG will release a more detailed analysis of the amended CPA and its expected implications.

By

Ian C. Matthews, Glenn Zakaib, David Elman

Expertise

Disputes, Class Action Defence

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.