British Columbia Government Announces Proposed Changes to Class Proceeding Act

April 25, 2018

On April 23, 2018, the British Columbia government introduced Bill 21, proposing a variety of amendments to the *Class Proceeding Act*, British Columbia's class action legislation. The primary focus of the proposed amendments is to change how non-residents of British Columbia are included in B.C. class proceedings and to introduce rules for handling multi-jurisdictional proceedings. The government based many of the proposed changes on the Uniform Law Conference of Canada's model *Uniform Class Proceedings Act* amendments of 2006. British Columbia now joins Alberta and Saskatchewan in following this model legislation.

On April 26, 2018, the Bill passed third reading, without amendment. It will come into force on a date to be determined.

In its press release introducing the Bill, the government stated that these proposed changes will "clarify and improve the processes for class proceedings involving both residents and non-residents of British Columbia" and "increase access to justice and improve judicial efficiency by reducing the necessity for parallel proceedings to take place in other provinces or territories".

Proposed Amendments

Under the current law, residents outside of British Columbia must take active steps to participate in class proceedings ("opt in"). The most significant proposed change to the legislation will result in those persons being automatically considered to be part of a certified class action unless they "opt out". This change will make British Columbia's legislation similar in this regard to most Canadian jurisdictions, except for New Brunswick and Newfoundland and Labrador where non-residents must still "opt in".

The proposed amendments also add special definitions and provisions to deal with non-residents, including the introduction of the "multi-jurisdictional class proceeding", which is defined as a proceeding that is brought on behalf of a class of persons that includes persons who do not reside in British Columbia. Under these new rules, proposed representative plaintiffs in British Columbia must give notice of their proposed class action to other representative plaintiffs (or possible representative plaintiffs) in other class actions (or proposed class actions) involving the same or similar subject matter in

other jurisdictions. The proposed amendments provide that such individuals would have the opportunity to make submissions at the B.C. certification hearing and that the B.C. court would be required to consider whether it is preferable to resolve the claim (or any part of it) in another jurisdiction.

The proposed amendments also include other amendments to bring these changes into effect, including a transition section for cases that have been commenced but not yet certified. If a proceeding has already been certified, the proposed amendments allow parties to apply to amend the certification order to add non-residents to the class definition.

The proposed text of Bill 21 is available online.

Comment

These amendments are likely to increase class actions commenced in British Columbia as the legislation continues the "no-costs" regime for class actions. The introduction of provisions dealing with multi-jurisdiction proceedings will assist with efforts to rationalize litigation where proceedings have been brought in a number of provinces. It remains to be seen whether additional provinces will adopt similar provisions for multi-jurisdiction proceedings and, of course, the effectiveness of these provisions will depend on the approach taken to them by courts across the country. In this regard, it can be expected that Québec courts will continue to chart a separate course as both its substantive and procedural law relating to class actions is distinct.

Contact Us

For further information on this topic, or to provide comments or questions, please contact the authors.

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