

2010 Bill 20

Third Session, 27th Legislature, 59 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 20

CLASS PROCEEDINGS AMENDMENT ACT, 2010

MR. DRYSDALE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 20
Mr. Drysdale

BILL 20

2010

CLASS PROCEEDINGS AMENDMENT ACT, 2010

(Assented to , 2010)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends SA 2003 cC-16.5

1 The *Class Proceedings Act* is amended by this Act.

2 Section 1 is amended

(a) by adding the following after clause (b):

(b.1) “class” means 2 or more persons with common issues
related to a cause of action or a potential cause of action;

(b) by adding the following before clause (i):

(h.2) “multi-jurisdictional class proceeding” means, except
where the context requires otherwise, a proceeding
certified as a multi-jurisdictional class proceeding under
Part 1;

(c) by repealing clause (l) and substituting the following:

(l) “representative plaintiff” means

(i) a person who is appointed under this Act as the
representative plaintiff for a class or subclass in
respect of a class proceeding, or

Explanatory Notes

- 1** Amends chapter C-16.5 of the Statutes of Alberta, 2003.
- 2** Adds definitions.

- (ii) in respect of a multi-jurisdictional class proceeding or a proposed multi-jurisdictional class proceeding commenced in a jurisdiction other than Alberta, a person who is appointed under an Act of that jurisdiction as the representative plaintiff for a class or subclass in respect of that proceeding;

3 Section 2(2) is repealed and the following is substituted:

(2) A person who commences a proceeding under subsection (1) must

- (a) make an application to the Court for an order certifying the proceeding as a class proceeding and, subject to subsection (4), appointing that person, or another person who on certification will be a member of the class, as the representative plaintiff, and
- (b) give notice of the application for certification to
 - (i) the representative plaintiff in any multi-jurisdictional class proceeding, and
 - (ii) the representative plaintiff in any proposed multi-jurisdictional class proceeding

commenced elsewhere in Canada that involves the same or similar subject-matter.

4 The following is added after section 2:

Right to appear

2.1 A person who receives notice of an application for certification under section 2(2)(b) may make submissions at the application for certification.

5 Section 5 is amended by adding the following after subsection (5):

(6) If a multi-jurisdictional class proceeding or a proposed multi-jurisdictional class proceeding has been commenced elsewhere in Canada that involves subject-matter that is the

3 Section 2(2) presently reads:

(2) A person who commences a proceeding under subsection (1) must make an application to the Court for an order certifying the proceeding as a class proceeding and, subject to subsection (4), appointing that person, or another person who on certification will be a member of the class, as the representative plaintiff.

4 Right to appear.

5 Section 5 presently reads:

5(1) In order for a proceeding to be certified as a class proceeding on an application made under section 2 or 3, the Court must be satisfied as to each of the following:

same as or similar to that of a proceeding being considered for certification under this section, the Court must determine whether it would be preferable for some or all of the claims or common issues raised by the prospective class members to be resolved in the proceeding commenced elsewhere.

(7) When making a determination under subsection (6), the Court must be guided by the following objectives:

- (a) ensuring that the interests of all parties in each of the relevant jurisdictions are given due consideration;
- (b) ensuring that the ends of justice are served;
- (c) where possible, avoiding irreconcilable judgments;
- (d) promoting judicial economy.

(8) When making a determination under subsection (6), the Court may consider any matter that the Court considers relevant but must consider at least the following:

- (a) the alleged basis of liability, including the applicable laws;
- (b) the stage each of the proceedings has reached;
- (c) the plan for the proposed multi-jurisdictional class proceeding, including the viability of the plan and the capacity and resources for advancing the proceeding on behalf of the prospective class members;
- (d) the location of the class members and representative plaintiffs in the various proceedings, including the ability of the representative plaintiffs to participate in the proceedings and to represent the interests of the class members;
- (e) the location of evidence and witnesses;
- (f) the advantages and disadvantages of litigation being conducted in more than one jurisdiction.

- (a) *the pleadings disclose a cause of action;*
- (b) *there is an identifiable class of 2 or more persons;*
- (c) *the claims of the prospective class members raise a common issue, whether or not the common issue predominates over issues affecting only individual prospective class members;*
- (d) *a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;*
- (e) *there is a person eligible to be appointed as a representative plaintiff who, in the opinion of the Court,*
 - (i) *will fairly and adequately represent the interests of the class,*
 - (ii) *has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and*
 - (iii) *does not have, in respect of the common issues, an interest that is in conflict with the interests of other prospective class members.*

(2) In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues, the Court may consider any matter that the Court considers relevant to making that determination, but in making that determination the Court must consider at least the following:

- (a) *whether questions of fact or law common to the prospective class members predominate over any questions affecting only individual prospective class members;*
- (b) *whether a significant number of the prospective class members have a valid interest in individually controlling the prosecution of separate actions;*
- (c) *whether the class proceeding would involve claims that are or have been the subject of any other proceedings;*
- (d) *whether other means of resolving the claims are less practical or less efficient;*

6 Section 7(3) is repealed.

7 Section 9(1)(g) is repealed.

8 The following is added after section 9:

Orders in multi-jurisdictional certification

9.1(1) The Court may, on application, make an order certifying a proceeding as a multi-jurisdictional class proceeding if

- (a) the criteria set out in section 5(1) have been satisfied,
and

(e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

(3) Where the Court is satisfied as to each of the matters referred to in subsection (1)(a) to (e), the Court is to certify the proceeding as a class proceeding.

(4) The Court may not certify a proceeding as a class proceeding unless the Court is satisfied as to each of the matters referred to in subsection (1)(a) to (e).

(5) Notwithstanding subsection (3), where an application is made to certify a proceeding as a class proceeding for the purposes of binding members of a settlement class, the Court may not certify the proceeding unless the Court has approved the settlement.

6 Section 7(3) presently reads:

(3) If a class is made up of persons who are residents of Alberta and persons who are not residents of Alberta, that class is to be divided into resident and non-resident subclasses.

7 Section 9(1) presently reads in part:

9(1) Where the Court makes a certification order, the Court may include any provisions that it considers appropriate, but in its order the Court must at least

(g) state the manner in which, and the time within which, a person who is not a resident of Alberta may opt into the proceeding.

8 Orders in multi-jurisdictional certification.

(b) having regard to section 5(7) and (8), the Court determines under section 5(6) that Alberta is the appropriate venue for the determination of the proceeding.

(2) If the Court determines that the proceeding should proceed as a multi-jurisdictional class proceeding in another jurisdiction, the Court shall refuse to certify the proceeding as a multi-jurisdictional class proceeding.

(3) The Court may refuse to certify a portion of a proposed class if that portion contains members who may be included within a class proceeding, or a proceeding that is the subject of a certification application, in another jurisdiction.

9 Section 17 is repealed and the following is substituted:

Opting out

17(1) A person who meets the criteria to be a class member in respect of a class proceeding is a class member in the class proceeding unless the person opts out of the class proceeding.

(2) The Court may, in a certification order or at any time,

(a) specify the manner in which and the time within which the members of a class, or any individual member of a class, may opt out of the proceeding, and

(b) impose terms or conditions subject to which the class members or an individual member may opt out of the proceeding.

(3) A person who opts out of a class proceeding ceases, effective from the time the person opts out, to be a class member of the class proceeding.

(4) Notwithstanding anything in this section, where the Court certifies a proceeding pursuant to an application by a defendant, a class member is prohibited from opting out of the class proceeding other than with leave of the Court.

(5) If the Court grants leave under subsection (4) for a person to opt out of a class proceeding, that person has, as a matter of right, the right to apply to the Court to be added, on any terms

9 Section 17 presently reads:

17(1) For determining, with respect to a class proceeding, whether a person is a class member or remains a class member, the following applies:

- (a) a person who is a resident of Alberta and who meets the criteria to be a class member in respect of the class proceeding is a class member in the class proceeding unless that person, in the manner and within the time provided for in the certification order made in respect of the class proceeding, opts out of the class proceeding;*
- (b) subject to clause (d), a person who is not a resident of Alberta may, in the manner and within the time provided for in the certification order made in respect of the class proceeding, opt into the class proceeding if that person would have been included under clause (a) as a class member in the class proceeding had that person been a resident of Alberta;*
- (c) a person referred to in clause (b) who opts into a class proceeding is, effective from the time that the person opts in, a class member in the class proceeding for every purpose of this Act;*
- (d) a person who is a prospective subclass member may not opt into a class proceeding under clause (b) unless a representative plaintiff who satisfies the requirements of section 7 has been or will have been appointed for the*

or conditions that the Court considers appropriate, as a named plaintiff for the purposes of allowing that plaintiff to conduct the plaintiff's own case.

(6) Notwithstanding anything in this section, the Court may at any time determine whether or not a person is a class member and may impose any terms or conditions the Court considers appropriate on the person's membership in the class.

10 The following is added after section 17:

Transitional — opting in

17.1(1) In this section,

- (a) “former Act” means the *Class Proceedings Act* as it read before being amended by the *Class Proceedings Amendment Act, 2010*;

subclass in which the person is to become a subclass member at the time that the person becomes a class member;

(e) a person who is a class member may, if permitted to do so by this Act, the certification order or the Court, opt out of the class proceeding subject to any terms or conditions imposed under the certification order or by the Court;

(f) a person referred to in clause (e) who opts out of the class proceeding ceases, effective from the time the person opts out and subject to any terms or conditions referred to in clause (e), to be a class member in the class proceeding.

(2) If a subclass is created as a result of persons opting into a class proceeding under subsection (1)(b), the representative plaintiff for that subclass must ensure that the certification order for the class proceeding is amended, if necessary, to comply with section 9(2).

(3) Notwithstanding anything in this section, where the Court certifies a proceeding pursuant to an application by a defendant, a class member is prohibited from opting out of the class proceeding other than with leave of the Court.

(4) If the Court grants leave under subsection (3) for a person to opt out of a class proceeding, that person has, as a matter of right, the right to apply to the Court to be added, on any terms or conditions that the Court considers appropriate, as a named plaintiff for the purposes of allowing that plaintiff to conduct the plaintiff's own case.

(5) Notwithstanding anything in this section, the Court may at any time determine whether or not a person is a class member or subclass member subject to any terms or conditions the Court considers appropriate.

10 Transitional — opting in.

(b) “non-resident” means a person who does not reside in Alberta.

(2) Section 17(1) of the former Act continues to apply to non-residents in respect of every proceeding that is certified as a class proceeding before the coming into force of section 9 of the *Class Proceedings Amendment Act, 2010*.

(3) Where a proceeding is the subject of an application for certification on the coming into force of section 9 of the *Class Proceedings Amendment Act, 2010*, and is later certified, section 17 of this Act applies to any non-residents in respect of the proceeding.

(4) Where a proceeding was certified under the former Act or where, under section 20 of that Act, any notices were given in compliance with section 20(6)(c) of that Act to persons who were non-residents at the time of receiving the notice, any party to the proceeding may apply to the Court for an order

- (a) amending the certification order to comply with sections 17 and 20 of this Act, and
- (b) directing that a notice under section 20 of this Act be given to the non-residents,

and the Court may make the order if it considers it equitable to do so.

11 Section 20(6)(c) is repealed.

12 Section 35 is repealed and the following is substituted:

Settlement, discontinuance, abandonment and dismissal

35(1) In this section, “proceeding” means a class proceeding or a proceeding that is the subject of an application for certification.

11 Section 20(6) presently reads in part:

(6) Unless the Court orders otherwise, notice given under this section must

(c) state the manner in which and the time within which a person who is not a resident of Alberta may opt into the proceeding,

12 Section 35 presently reads:

35(1) A class proceeding may be settled, discontinued or abandoned, but only with the approval of the Court and subject to any terms or conditions that the Court considers appropriate.

(2) A proceeding may be settled, discontinued or abandoned only with the approval of the Court and subject to any terms or conditions that the Court considers appropriate.

(3) A settlement may be concluded in relation to the common issues affecting a subclass or a prospective subclass, but only with the approval of the Court and subject to any terms or conditions that the Court considers appropriate.

(4) A settlement to which this section applies is not binding unless approved by the Court.

(5) A settlement of a proceeding that is approved by the Court binds every class member who has not opted out of the proceeding and every prospective class member, but only to the extent provided by the Court.

(6) A settlement in relation to the common issues affecting a subclass or a prospective subclass that is approved by the Court binds every subclass member who has not opted out of the proceeding and every prospective subclass member, but only to the extent provided by the Court.

(7) In dismissing a proceeding or in approving the settlement, discontinuance or abandonment of a proceeding, the Court must consider whether notice should be given under section 21 and, if so, whether the notice should include any one or more of the following:

- (a) an account of the conduct of the proceeding;
- (b) a statement of the results of the proceeding;
- (c) a description of any plan for distributing any settlement funds.

(8) This section applies to a proceeding regardless of whether the proceeding is commenced before or after the coming into force of the *Class Proceedings Amendment Act, 2010*.

13 This Act comes into force on Proclamation.

(2) A settlement may be concluded in relation to the common issues affecting a subclass but only with the approval of the Court and subject to any terms or conditions that the Court considers appropriate.

(3) A settlement to which this section applies is not binding unless approved by the Court.

(4) A settlement of a class proceeding that is approved by the Court binds every class member who has not opted out of the class proceeding, but only to the extent provided by the Court.

(5) A settlement in relation to the common issues affecting a subclass that is approved by the Court binds every subclass member who has not opted out of the class proceeding, but only to the extent provided by the Court.

(6) In dismissing a class proceeding or in approving a settlement, discontinuance or abandonment of a class proceeding, the Court must consider whether notice should be given under section 21 and whether the notice should include any one or more of the following:

- (a) an account of the conduct of the proceeding;*
- (b) a statement of the results of the proceeding;*
- (c) a description of any plan for distributing any settlement funds.*

13 Coming into force.

