

# *The Class Actions Act*

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Chapter C-12.01 of the *Statutes of Saskatchewan, 2001*  
(effective January 1, 2002).

**NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER C-12.01

### An Act respecting Class Actions

#### PART I

#### Introductory Matters

##### Short title

1 This Act may be cited as *The Class Actions Act*.

##### Interpretation

2 In this Act:

“**action**” means an action as defined in *The Queen’s Bench Act, 1998*; («*action*»)

“**certification order**” means an order certifying an action as a class action; («*ordonnance de certification*»)

“**class**” means two or more persons with common issues respecting a cause of action or a potential cause of action; («*groupe*»)

“**class action**” means an action certified as a class action pursuant to Part II; («*recours collectif*»)

“**common issues**” means:

- (a) common but not necessarily identical issues of fact; or
- (b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts; («*questions communes*»)

“**court**” means the Court of Queen’s Bench; («*tribunal*»)

“**defendant**” includes a respondent. («*défendeur*»)

2001, c.C-12.01, s.2.

##### Application of Act

3 This Act does not apply to:

- (a) an action that may be brought in a representative capacity pursuant to another Act;
- (b) an action required by law to be brought in a representative capacity; and
- (c) a representative action commenced before this Act comes into force.

2001, c.C-12.01, s.3.

**PART II**  
**Certification**

**Plaintiff's class action**

- 4(1) One member of a class who resides in Saskatchewan may commence an action in the court on behalf of the members of that class.
- (2) The member who commences an action pursuant to subsection (1) shall:
- (a) apply to the chief justice of the court for the designation of a judge to consider an application mentioned in clause (b); and
  - (b) apply to the judge designated pursuant to clause (a) for an order:
    - (i) certifying the action as a class action; and
    - (ii) subject to subsection (4), appointing the member as the representative plaintiff for the class action.
- (3) An application pursuant to clause (2)(b) must be made:
- (a) within 90 days after the later of:
    - (i) the date on which the statement of defence was delivered; and
    - (ii) the date on which the time prescribed by *The Queen's Bench Rules* for delivery of the statement of defence expires without it being delivered; or
  - (b) with leave of the court at any other time.
- (4) Where it is necessary to do so in order to avoid a substantial injustice to the class, the court may appoint a person who is not a member of the class as the representative plaintiff for the class action.

2001, c.C-12.01, s.4.

**Defendant's class actions**

- 5 A defendant in two or more actions may, at any stage of one of the actions, apply to a judge of the court for an order:
- (a) certifying the actions as a class action; and
  - (b) appointing a representative plaintiff.

2001, c.C-12.01, s.5.

**Class certification**

- 6 The court shall certify an action as a class action on an application pursuant to section 4 or 5 if the court is satisfied that:
- (a) the pleadings disclose a cause of action;
  - (b) there is an identifiable class;
  - (c) the claims of the class members raise common issues, whether or not the common issues predominate over other issues affecting individual members;

- (d) a class action would be the preferable procedure for the resolution of the common issues; and
- (e) there is a person willing to be appointed as a representative plaintiff who:
  - (i) would fairly and adequately represent the interests of the class;
  - (ii) has produced a plan for the class action that sets out a workable method of advancing the action on behalf of the class and of notifying class members of the action; and
  - (iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.

2001, c.C-12.01, s.6.

#### **Certification application**

7(1) The court may adjourn the application for certification to permit the parties to amend their materials or pleadings or to permit further evidence to be introduced.

(2) An order certifying an action as a class action is not a determination of the merits of the action.

2001, c.C-12.01, s.7.

#### **Subclass certification**

8(1) Notwithstanding section 6, if a class includes a subclass whose members have claims that raise common issues not shared by all the class members and, in the opinion of the court, the protection of the interests of the subclass members requires that they be separately represented, the court may, in addition to the representative plaintiff for the class, appoint a representative plaintiff for each subclass who:

- (a) would fairly and adequately represent the interests of the subclass;
- (b) has produced a plan for the action that sets out a workable method of advancing the action on behalf of the subclass and of notifying subclass members of the action; and
- (c) does not have, on the common issues for the subclass, an interest that is in conflict with the interests of other subclass members.

(2) A class that comprises persons who reside in Saskatchewan and persons who do not reside in Saskatchewan must be divided into resident and non-resident subclasses.

2001, c.C-12.01, s.8.

#### **Certain matters not bar to certification**

9 The court shall not refuse to certify an action as a class action by reason only of one or more of the following:

- (a) the relief claimed includes a claim for damages that would require individual assessment after determination of the common issues;

- (b) the relief claimed relates to separate contracts involving different class members;
- (c) different remedies are sought for different class members;
- (d) the number of class members or the identity of each class member is not ascertained or may not be ascertainable;
- (e) the class includes a subclass whose members have claims that raise common issues not shared by all the class members.

2001, c.C-12.01, s.9.

**Contents of certification order**

**10(1)** A certification order must:

- (a) describe the class with respect to which the order was made by setting out the class's identifying characteristics;
- (b) appoint the representative plaintiff for the class;
- (c) state the nature of the claims asserted on behalf of the class;
- (d) state the relief claimed by the class;
- (e) set out the common issues for the class;
- (f) state the manner in which, and the time within which, a class member may opt out of the class action;
- (g) state the manner in which, and the time within which, a person who is not a resident of Saskatchewan may opt into the class action; and
- (h) include any other provisions the court considers appropriate.

(2) If a class includes a subclass whose members have claims that raise common issues not shared by all the class members and, in the opinion of the court, the protection of the interests of the subclass members requires that they be separately represented, the certification order must include the same information in relation to the subclass that, pursuant to subsection (1), is required in relation to the class.

(3) The court may, at any time, amend a certification order on the application of a party or class member or on its own motion.

2001, c.C-12.01, s.10.

**Refusal to certify**

**11** If the court refuses to certify an action as a class action, the court may permit the action to continue as one or more actions between different parties and, for that purpose, may:

- (a) order the addition, deletion or substitution of parties;
- (b) order the amendment of the pleadings; and
- (c) make any other order that it considers appropriate.

2001, c.C-12.01, s.11.

**If conditions for certification not satisfied**

**12(1)** Without limiting subsection 10(3), at any time after a certification order is made pursuant to this Part, the court may amend the certification order, decertify the action or make any other order it considers appropriate if it appears to the court that the conditions mentioned in section 6 or subsection 8(1) are not satisfied with respect to a class action.

(2) If the court makes a decertification order, the court may permit the action to continue as one or more actions between different parties and may make any order mentioned in section 11 in relation to each of those actions.

2001, c.C-12.01, s.12.

**PART III**  
**Conduct of Class Actions**

**Stages of class actions**

**13(1)** Unless the court orders otherwise pursuant to section 14, in a class action:

- (a) common issues for a class must be determined together;
- (b) common issues for a subclass must be determined together; and
- (c) individual issues that require the participation of individual class members must be determined individually in accordance with sections 29 and 30.

(2) The court may give a common judgment respecting the common issues and separate judgments respecting any other issue.

2001, c.C-12.01, s.13.

**Court may determine conduct of actions**

**14** The court may, at any time, make any order it considers appropriate respecting the conduct of a class action to ensure a fair and expeditious determination and, for that purpose, may impose on one or more of the parties any terms it considers appropriate.

2001, c.C-12.01, s.14.

**Court may stay any other action**

**15** The court may, at any time, stay or sever any action related to the class action on any terms the court considers appropriate.

2001, c.C-12.01, s.15.

**Applications**

**16(1)** The judge who makes a certification order shall hear all applications in the class action before the trial of the common issues.

(2) If a judge who made the certification order becomes unavailable for any reason to hear an application in the class action, the chief justice of the court may assign another judge of the court to hear the application.

(3) A judge who hears an application pursuant to subsection (1) or (2) may, but need not, preside at the trial of the common issues.

2001, c.C-12.01, s.16.

**Participation of class members**

**17** In order to ensure the fair and adequate representation of the interests of the class or any subclass or for any other reason, the court may, at any time in a class action, permit one or more class members to participate in the class action in any manner and on any terms, including terms as to costs, that the court considers appropriate.

2001, c.C-12.01, s.17.

**Opting out and opting in**

**18(1)** A class member involved in a class action may opt out of the action in the manner and within the time stated in the certification order.

(2) A person who does not reside in Saskatchewan may opt into a class action, in the manner and within the time stated in the certification order, if the person would otherwise, but for non-resident status, be a member of the class involved in the class action.

(3) A person mentioned in subsection (2) who opts into a class action is from that time a member of the class involved in the class action for the purposes of this Act.

(4) A person may not opt into a class action pursuant to subsection (2) unless the subclass of which the person is to become a member has or will have, at the time the person becomes a member, a representative plaintiff who satisfies the requirements of clauses 8(1)(a), (b) and (c).

(5) If a subclass is created as a result of persons opting into a class action pursuant to subsection (2), the representative plaintiff for that subclass shall ensure that the certification order for the class action is amended, if necessary, to comply with subsection 10(2).

2001, c.C-12.01, s.18.

**Discovery**

**19(1)** Parties to a class action have the same rights of discovery as they would have in any other action.

(2) After the examination for discovery of the representative plaintiff or, in an action mentioned in section 8, one or more of the representative plaintiffs, a defendant may, with leave of the court, conduct an examination for discovery of other class members.

(3) In determining whether to grant a defendant leave to conduct an examination for discovery of other class members, the court shall consider:

- (a) the stage of the class action and the issues to be determined at that stage;
- (b) the presence of subclasses;
- (c) whether the examination for discovery is necessary in view of the defences of the party seeking leave;
- (d) the approximate monetary value of individual claims, if any;



- (e) whether an examination for discovery would result in oppression or in undue annoyance, burden or expense for the class members sought to be examined; and
- (f) any other matter the court considers appropriate.

2001, c.C-12.01, s.19.

**Sanctions for failure to submit to examination for discovery**

**20** A class member who fails to submit to an examination for discovery is subject to the sanctions set out in *The Queen's Bench Rules*.

2001, c.C-12.01, s.20.

**PART IV**  
**Notices**

**Notice of certification**

**21(1)** Notice that an action has been certified as a class action must be given by the representative plaintiff to the class members in accordance with this section.

(2) The court may dispense with notice if, having regard to the factors set out in subsection (3), the court considers it appropriate to do so.

(3) The court shall make an order setting out when and by what means notice is to be given pursuant to this section and in doing so shall consider:

- (a) the cost of giving notice;
- (b) the nature of the relief claimed;
- (c) the size of the individual claims of the class members;
- (d) the number of class members;
- (e) the presence of subclasses;
- (f) the places of residence of class members; and
- (g) any other matter the court considers relevant.

(4) The court may order that notice be given by:

- (a) personal delivery;
- (b) mail;
- (c) posting, advertising, publishing or leafleting;
- (d) individually notifying a sample group within the class; or
- (e) any other means or combination of means that the court considers appropriate.

(5) The court may order that notice be given to different class members by different means.

2001, c.C-12.01, s.21.

**Content of notice**

**22(1)** Unless the court orders otherwise, notice pursuant to this Part must:

- (a) describe the action, including the name and address of the representative plaintiff and the relief claimed;
  - (b) state the manner in which and the time within which a class member may opt out of the action;
  - (c) state the manner in which and the time within which a person who is not a resident of Saskatchewan may opt into the action;
  - (d) describe any counterclaim or third party claim being asserted in the action, including the relief sought;
  - (e) summarize any agreements respecting fees and disbursements:
    - (i) between the representative plaintiff and the representative plaintiff's lawyer; and
    - (ii) if the recipient of the notice is a member of a subclass, between the representative plaintiff for that subclass and that representative plaintiff's lawyer;
  - (f) describe the possible financial consequences of the action to class members and subclass members;
  - (g) state that the judgment on the common issues for the class, whether favourable or not, will bind all class members who do not opt out of the action;
  - (h) state that the judgment on the common issues for a subclass, whether favourable or not, will bind all subclass members who do not opt out of the action;
  - (i) describe the rights, if any, of class members to participate in the action;
  - (j) give an address to which class members may direct inquiries about the action; and
  - (k) give any other information the court considers appropriate.
- (2) With leave of the court, notice pursuant to this section may include a solicitation of contributions from class members to assist in paying lawyers' fees and disbursements.

2001, c.C-12.01, s.22.

**Notice of determination of common issues**

**23(1)** Where the court determines common issues in favour of a class and considers that the participation of individual class members is required to determine individual issues, the court, respecting notice:

- (a) shall make an order pursuant to subsection 21(3); and
  - (b) may make an order pursuant to subsection 21(4) or (5).
- (2) The representative plaintiff shall give notice to the individual class members in accordance with the court order.

2001, c.C-12.01, s.23.

**Notice to protect interests of affected persons**

**24(1)** At any time in a class action, the court may order any party to give notice to the persons mentioned in the order to protect the interests of any class member or party or to ensure the fair conduct of the action.

(2) Where the court makes an order respecting notice, subsections 21(3) to (5) apply.

2001, c.C-12.01, s.24.

**Approval of notice by the court**

**25(1)** A notice pursuant to this Part must be approved by the court before it is given.

(2) The court may order a party to give the notice required to be given by another party pursuant to this Act.

2001, c.C-12.01, s.25.

**Costs of notice**

**26(1)** The court may make any order it considers appropriate respecting the costs of any notice pursuant to this Part, including an order apportioning costs among parties.

(2) In making an order pursuant to subsection (1), the court may consider the different interests of a subclass.

2001, c.C-12.01, s.26.

## PART V Orders, Awards and Related Procedures

**Contents of order on common issues**

**27** An order made respecting a judgment on common issues of a class or subclass must:

- (a) set out the common issues;
- (b) name or describe the class or subclass members to the extent possible;
- (c) state the nature of the claims asserted on behalf of the class or subclass;  
and
- (d) specify the relief granted.

2001, c.C-12.01, s.27.

**Judgment on common issues is binding**

**28(1)** A judgment on common issues of a class or subclass binds every member of the class or subclass, as the case may be, who has not opted out of the class action, but only to the extent that the judgment determines common issues that:

- (a) are set out in the certification order;
- (b) relate to claims described in the certification order; and
- (c) relate to relief sought by the class or subclass as stated in the certification order.

(2) A judgment on common issues of a class or subclass does not bind a party to the class action in any subsequent action between the party and a person who opted out of the class action.

2001, c.C-12.01, s.28.

**Determination of individual issues**

**29(1)** If the court determines common issues in favour of a class or subclass and determines that there are issues, other than those that may be determined pursuant to section 35, that are applicable only to certain individual members of the class or subclass, the court may:

- (a) determine those individual issues in further hearings presided over by the judge who determined the common issues or by another judge of the court;
  - (b) appoint one or more persons, including one or more independent experts, to conduct an inquiry into those individual issues pursuant to *The Queen's Bench Rules* and report back to the court; or
  - (c) with the consent of the parties, direct that those individual issues be determined in any other manner.
- (2) The court may give any necessary directions relating to the procedures that must be followed in conducting hearings, inquiries and determinations pursuant to subsection (1).
- (3) In giving directions pursuant to subsection (2), the court shall choose the least expensive and most expeditious method of determining the individual issues that is consistent with justice to members of the class or subclass and the parties and, in doing so, the court may:
- (a) dispense with any procedural step that it considers unnecessary; and
  - (b) authorize any special procedural steps, including steps relating to discovery, and any special rules, including rules relating to admission of evidence and means of proof, that it considers appropriate.
- (4) The court shall set a reasonable time within which individual members of the class or subclass may make claims pursuant to this section respecting the individual issues.
- (5) A member of the class or subclass who fails to make a claim within the time set pursuant to subsection (4) may not make a claim pursuant to this section respecting the issues applicable only to that member except with leave of the court.
- (6) The court may grant leave pursuant to subsection (5) if it is satisfied that:
- (a) there are apparent grounds for relief;
  - (b) the delay was not caused by any fault of the person seeking the relief; and
  - (c) the defendant would not suffer substantial prejudice if leave were granted.
- (7) Unless otherwise ordered by the court making a direction pursuant to clause (1)(c), a determination of issues made in accordance with clause (1)(c) is deemed to be an order of the court.

2001, c.C-12.01, s.29.

**Individual assessment of liability**

**30** If, after determining common issues in favour of a class or subclass, the court determines that the defendant's liability to individual class members cannot reasonably be determined without proof by those individual class members, section 29 applies to the determination of the defendant's liability to those class members.

2001, c.C-12.01, s.30.

**Aggregate awards of monetary relief**

**31(1)** The court may make an order for an aggregate monetary award respecting all or any part of a defendant's liability to class members and may give judgment accordingly if:

- (a) monetary relief is claimed on behalf of some or all class members;
  - (b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and
  - (c) the aggregate or a part of the defendant's liability to some or all class members can reasonably be determined without proof by individual class members.
- (2) Before making an order pursuant to subsection (1), the court shall provide the defendant with an opportunity to make submissions to the court respecting any matter touching on the proposed order, including submissions that:
- (a) contest the merits or amount of an award pursuant to subsection (1); and
  - (b) state that individual proof of monetary relief is required due to the individual nature of the relief.

2001, c.C-12.01, s.31.

**Statistical evidence may be used**

**32(1)** For the purposes of determining issues relating to the amount or distribution of an aggregate monetary award pursuant to this Act, the court may admit as evidence statistical information that would not otherwise be admissible as evidence, including information derived from sampling, if the information was compiled in accordance with principles that are generally accepted by experts in the field of statistics.

(2) A record of statistical information purporting to be prepared by or published under the authority of an enactment of the Parliament of Canada or the legislature of any province or territory may be admitted as evidence without proof of its authenticity.

(3) Unless this section provides otherwise, the law and practice with respect to evidence tendered by an expert in an action applies to a class action.

(4) Except with respect to information mentioned in subsection 33(2), a party against whom statistical information is sought to be introduced pursuant to this section may require the party seeking to introduce it to produce for inspection any document that was prepared or used in the course of preparing the information, unless the document discloses the identity of persons responding to a survey who have not consented in writing to the disclosure.

2001, c.C-12.01, s.32.

**Notice requirement**

**33(1)** Statistical information must not be admitted as evidence pursuant to section 32 unless the party seeking to introduce the information:

- (a) has given to the party against whom the statistical evidence is to be introduced a copy of the information at least 60 days before that information is to be introduced as evidence;
  - (b) has complied with subsections (2) and (3); and
  - (c) introduces the evidence by an expert who is available for cross-examination on that evidence.
- (2) Notice pursuant to this section must specify the source of any statistical information sought to be introduced that:
- (a) was prepared or published under the authority of an enactment of the Parliament of Canada or the legislature of any province or territory;
  - (b) was derived from market quotations, tabulations, lists, directories or other compilations generally used and relied on by members of the public; or
  - (c) was derived from reference material generally used and relied on by members of an occupational group.
- (3) Except with respect to information mentioned in subsection (2), notice pursuant to this section must:
- (a) specify the name and qualifications of each person who supervised the preparation of the statistical information sought to be introduced; and
  - (b) describe any documents prepared or used in the course of preparing the statistical information sought to be introduced.

2001, c.C-12.01, s.33.

**Average and proportional share of aggregate awards**

**34(1)** Where the court makes an order pursuant to section 31, the court may order that all or a part of the aggregate monetary award be applied so that some or all individual class or subclass members share in the award on an average or proportional basis if:

- (a) it would be impractical or inefficient to:
    - (i) identify the class or subclass members entitled to share in the award; or
    - (ii) determine the exact shares that should be allocated to individual class or subclass members; and
  - (b) the failure to make an order pursuant to this subsection would deny recovery to a substantial number of class or subclass members.
- (2) Where an order is made pursuant to subsection (1), any member of the class or subclass with respect to which the order was made may, within the time specified in the order, apply to the court to be excluded from the proposed distribution and to be given the opportunity to prove that member's claim on an individual basis.

(3) In deciding whether to exclude a class or subclass member from an average or proportional distribution, the court shall consider:

- (a) the extent to which the class or subclass member's individual claim varies from the average or proportional claim for the class or subclass;
- (b) the number of class or subclass members seeking to be excluded from an average or proportional distribution; and
- (c) whether excluding the class or subclass members mentioned in clause (b) would unreasonably deplete the amount to be distributed on an average or proportional basis.

(4) An amount recovered by a class or subclass member who establishes his or her claim on an individual basis shall be deducted from the amount to be distributed on an average or proportional basis before the distribution.

2001, c.C-12.01, s.34.

**Individual share of aggregate award**

**35(1)** When the court orders that all or a part of an aggregate monetary award pursuant to subsection 31(1) is to be divided among individual class or subclass members on an individual basis, the court shall determine whether individual claims must be made to give effect to the order.

(2) If the court determines pursuant to subsection (1) that individual claims must be made, the court shall specify the procedures for determining the claims.

(3) In specifying those procedures, the court shall:

- (a) minimize the burden on class or subclass members by authorizing, if appropriate:
  - (i) the use of standard proof of claim forms;
  - (ii) the submission of affidavit or other documentary evidence; and
  - (iii) the auditing of claims on a sampling or other basis; and
- (b) set a reasonable time within which individual class or subclass members may make claims pursuant to this section.

(4) A class or subclass member who fails to make a claim within the time set pursuant to clause (3)(b) shall not later make a claim pursuant to this section except with leave of the court.

(5) Subsection 29(6) applies to a decision whether to grant leave pursuant to subsection (4).

(6) The court may amend a judgment given pursuant to subsection 31(1) to give effect to a claim made with leave pursuant to subsection (4) if the court considers it appropriate to do so.

2001, c.C-12.01, s.35.

**Distribution**

**36(1)** The court may direct any means of distribution of amounts awarded pursuant to this Part that it considers appropriate.

- (2) The court may, when giving directions pursuant to subsection (1), order that:
  - (a) the defendant distribute directly to the class or subclass members the amount of monetary relief to which each class or subclass member is entitled by any means authorized by the court, including abatement and credit;
  - (b) the defendant pay into court or some other appropriate depository the total amount of the defendant's liability to the class or subclass members until further order of the court; or
  - (c) any person other than the defendant distribute directly to each of the class or subclass members, by any means authorized by the court, the amount of monetary relief to which that class or subclass member is entitled.
- (3) The court, when determining whether to make an order pursuant to clause (2)(a):
  - (a) shall consider whether distribution by the defendant is the most practical way of distributing the award; and
  - (b) may take into account whether the amount of monetary relief to which each class or subclass member is entitled can be determined from the records of the defendant.
- (4) The court shall supervise the execution of judgments and the distribution of awards pursuant to this Part and may stay the whole or any part of an execution or distribution for a reasonable period on the terms it considers appropriate.
- (5) The court may order that an award made pursuant to this Part be paid:
  - (a) in a lump sum, promptly or within a time set by the court; or
  - (b) in instalments, on any terms the court considers appropriate.
- (6) The court may:
  - (a) order that the costs of distributing an award pursuant to this Part, including the costs of any notice associated with the distribution and the fees payable to a person administering the distribution, be paid out of the proceeds of the judgment; and
  - (b) make any further or other order the court considers appropriate.

2001, c.C-12.01, s.36.

**Undistributed award**

- 37(1)** The court may order that all or any part of an award pursuant to this Part that has not been distributed within the time set by the court be applied in any manner that may reasonably be expected to benefit class or subclass members, even though the order does not provide for monetary relief to individual class or subclass members.
- (2) The court shall consider, when determining whether to make an order pursuant to subsection (1):
    - (a) whether the distribution would result in unreasonable benefits to persons who are not class or subclass members; and
    - (b) any other matter the court considers relevant.



- (3) The court may make an order pursuant to subsection (1) whether or not all the class or subclass members can be identified or all their shares can be exactly determined.
- (4) The court may make an order pursuant to subsection (1) even if the order would benefit:
- (a) persons who are not class or subclass members; or
  - (b) persons who might otherwise receive monetary relief as a result of the class action.
- (5) If any part of an award that, pursuant to subsection 35(1), is to be divided among individual class or subclass members remains unclaimed or otherwise undistributed after a time set by the court, the court may order that part of the award to be:
- (a) applied against the cost of the class action;
  - (b) paid to the Crown in right of Saskatchewan; or
  - (c) returned to the party against whom the award was made.

2001, c.C-12.01, s.37.

## PART VI

### Termination of Class Actions and Appeals

#### Settlement, discontinuance, abandonment and dismissal

**38(1)** A class action may be settled, discontinued or abandoned only:

- (a) with the approval of the court; and
  - (b) on the terms the court considers appropriate.
- (2) A settlement may be concluded in relation to the common issues affecting a subclass only:
- (a) with the approval of the court; and
  - (b) on the terms the court considers appropriate.
- (3) A settlement pursuant to this section is not binding unless approved by the court.
- (4) A settlement of a class action or of common issues affecting a subclass that is approved by the court binds every member of the class or subclass who has not opted out of the class action, but only to the extent provided by the court.
- (5) In dismissing a class action or in approving a settlement, discontinuance or abandonment, the court shall consider whether notice should be given pursuant to section 22 and whether the notice should include:
- (a) an account of the conduct of the action;
  - (b) a statement of the result of the action; and
  - (c) a description of any plan for distributing any settlement funds.

2001, c.C-12.01, s.38.

**Appeals**

- 39(1)** Any party may, without leave, appeal to the Court of Appeal from:
- (a) a judgment on common issues; or
  - (b) an order pursuant to sections 31 to 37, other than an order that determines individual claims made by class or subclass members.
- (2) With leave of a justice of the Court of Appeal, a class or subclass member, a representative plaintiff or a defendant may appeal to that court any order:
- (a) determining an individual claim made by a class or subclass member; or
  - (b) dismissing an individual claim for monetary relief made by a class or subclass member.
- (3) With leave of a justice of the Court of Appeal, any party may appeal to the Court of Appeal from:
- (a) an order certifying or refusing to certify an action as a class action; or
  - (b) an order decertifying an action.
- (4) If a representative plaintiff does not appeal or seek leave to appeal pursuant to subsection (1) or (3) within the time limit for bringing an appeal set pursuant to section 9 of *The Court of Appeal Act, 2000* or if a representative plaintiff abandons an appeal pursuant to subsection (1) or (3), any member of the class or subclass for which the representative plaintiff had been appointed may apply to a justice of the Court of Appeal for leave to act as the representative plaintiff for the purposes of subsection (1) or (3).
- (5) An application by a class or subclass member for leave to act as the representative plaintiff pursuant to subsection (4) must be made within 30 days after the expiry of the appeal period available to the representative plaintiff or by any other date the justice may order.

2001, c.C-12.01, s.39.

**PART VII**  
**Costs, Fees and Disbursements**

**Costs**

- 40(1)** Subject to subsection (2), neither the Court of Queen's Bench nor the Court of Appeal may award costs to any party to an application for certification pursuant to subsection 4(2) or section 5, to any party to a class action or to any party to an appeal arising from a class action at any stage of the application, action or appeal.
- (2) A court mentioned in subsection (1) may award costs to a party respecting an application for certification or respecting all or any part of a class action or an appeal from a class action if the court considers that:
- (a) there has been vexatious, frivolous or abusive conduct on the part of any party;
  - (b) an improper or unnecessary application or other step has been made or taken for the purpose of delay or increasing costs or for any other improper purpose; or

- (c) there are exceptional circumstances that make it unjust to deprive the successful party of costs.
- (3) A court that orders costs may order that those costs be assessed in any manner that the court considers appropriate.
- (4) Class members, other than the person appointed as representative plaintiff for the class, are not liable for costs except with respect to the determination of their own individual claims.

2001, c.C-12.01, s.40.

**Agreements respecting fees and disbursements**

**41(1)** An agreement respecting fees and disbursements between a lawyer and a representative plaintiff must be in writing and must:

- (a) state the terms under which fees and disbursements are to be paid;
  - (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class action; and
  - (c) state the method by which payment is to be made, whether by lump sum or otherwise.
- (2) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff is not enforceable unless approved by the court, on the application of the lawyer.
- (3) An application pursuant to subsection (2) may:
- (a) unless the court orders otherwise, be brought without notice to the defendants; or
  - (b) if notice to the defendants is required, be brought on the terms respecting disclosure of the whole or any part of the agreement respecting fees and disbursements that the court may order.
- (4) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.
- (5) If an agreement is not approved by the court, the court may:
- (a) determine the amount owing to the lawyer respecting the fees and disbursements;
  - (b) direct an inquiry, assessment or accounting pursuant to *The Queen's Bench Rules* to determine the amount owing; or
  - (c) direct that the amount owing be determined in any other manner.

2001, c.C-12.01, s.41.

**Calculation of interest**

**42(1)** Interest payable on fees under an agreement approved pursuant to section 41 must be calculated in the manner set out in the agreement or, if not set out in the agreement:

- (a) at the interest rate, as that term is defined in *The Pre-judgment Interest Act*; or
- (b) at any other rate the court considers appropriate.

(2) Interest payable on disbursements under an agreement approved pursuant to section 41 must be calculated in the manner set out in the agreement or, if not set out in the agreement:

- (a) at the interest rate, as that term is defined in *The Pre-judgment Interest Act*; or
- (b) at any other rate the court considers appropriate, on the balance of disbursements incurred as totalled at the end of each six-month period following the date of the agreement.

2001, c.C-12.01, s.42.

## PART VIII

### General

#### Limitation periods

**43(1)** Any limitation period applicable to a cause of action asserted in an action:

- (a) is suspended in favour of a person if another action was commenced and it is reasonable for the person to assume that he or she was a class member for the purposes of that other action; and
- (b) resumes running against the person when one of clauses (2)(a) to (g) applies to the person as though he or she was the member mentioned in subsection (2).

(2) Any limitation period applicable to a cause of action asserted in an action that is certified as a class action is suspended in favour of a class member on the commencement of the action and resumes when:

- (a) the member opts out of the class action;
- (b) a ruling by the court has the effect of excluding the class member from the class action or from being considered to have ever been a class member;
- (c) an amendment is made to the certification order that has the effect of excluding the member from the class action;
- (d) a decertification order is made pursuant to section 12;
- (e) the class action is dismissed without an adjudication on the merits;
- (f) the class action is discontinued or abandoned with the approval of the court; or
- (g) the class action is settled with the approval of the court, unless the settlement provides otherwise.

(3) If there is a right of appeal respecting an event described in clauses (2)(a) to (g), the limitation period resumes running as soon as the time for appeal has expired without an appeal being commenced or as soon as any appeal has been finally disposed of.

2001, c.C-12.01, s.43.

**Rules of Court**

**44** *The Queen's Bench Rules* apply to class actions to the extent that those rules are not in conflict with this Act.

2001, c.C-12.01, s.44.

**Regulations**

**45** The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) respecting the use of statistical evidence to establish liability;
- (c) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (d) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2001, c.C-12.01, s.45.

**Coming into force**

**46** This Act comes into force on January 1, 2002.

2001, c.C-12.01, s.46.

