

CANADIAN CLASS ACTION JURISDICTIONAL ISSUES:

Opting IN Or Opting OUT?

**Prepared for: The Canadian Institute's Calgary Seminar
on Litigating Class Actions May 30 and 31, 2002**

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***This is an updated version of a paper originally presented at The Canadian
Institute's 2nd Annual National Forum**

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The national newspapers chronicle the latest mass tort claims: stock frauds, medical devices and products, pharmaceuticals, and real estate fraud. The negligent actions of a defendant are no longer, indeed if they ever were, limited to affecting individuals in a single jurisdiction. This paper outlines the existing Canadian legislative mechanisms in relation to mass tort actions¹ and some of the key jurisdictional issues involving these claims.

Due to the nature of commerce and trade in today's world, multiple plaintiffs in a tort action often reside in different jurisdictions. Different legislative mechanisms exist in relation to mass tort action in each Canadian jurisdiction. Lawyers today are therefore faced with two key questions in relation to mass tort claims:

1. **Jurisdiction:** In what jurisdiction should the action be commenced?
2. **Opting In /Opting Out:** Should a plaintiff resident in a province, which does not have class action legislation opt into or out of a class action in another province?

¹ For the purposes of this paper, a mass tort is defined as any tort action involving multiple plaintiffs

In order to answer the above questions the following issues are addressed:

- a. Today's economic and social realities v. traditional territorial limits of the law;
- b. The legislative mass tort tools available to Canadian lawyers;
- c. A brief outline of the benefits and limitations of the available mass tort tools.

A. The Law: “A Byproduct of Modern Civilization”

Multi-jurisdictional corporations and trade result in individuals in any number of jurisdictions suffering damages as a result of the negligence of a corporate defendant. In many ways today's economy is at odds with traditional territorial limits of the law. The Supreme Court of Canada in *Jensen v. Tofofon*² acknowledged the “structural problem”³ in applying “underlying postulate of public international law in which each state has jurisdiction to make and apply law within its territorial limit”⁴ to the legal issues raised by today's economic and social realities. The Honourable Mr. Justice La Forest stated the following in relation to the territorial limits of law:

“...to accommodate the movement of people, wealth and skills across state lines, a byproduct of modern civilization, they [a state] will in great measure recognize the determination of legal issues in other states. And to promote the same values, they will open their national forums for the resolution of specific legal disputes

² *Jensen v. Tofofon* [1994] 3 S.C.R. 1022

³ *Ibid.* para.38. (La Forest, J.)

⁴ *Ibid.*

arising in other jurisdictions consistent with the interests and internal values of the forum states”⁵.

The multi-jurisdictional nature of the Canadian economy therefore dictates Canadian mass tort legislation the Canadian judiciary and lawyers address not only the theoretical issue as the concern for an individual’s access to justice, but the practical, and constitutional issues involved in litigating class actions.

B. Mass Tort Tools

In Canada there are two main mass tort tools:

1. Representative Actions; and
2. Class Action Legislation.

1. Representative Actions

With the exception of the provinces of B.C., Ontario, and Quebec, the other Canadian provinces have adopted a variety of representative action legislation.⁶ Representative actions remain a relevant mass tort tool even in jurisdictions, which now have class action legislation. For example, both Saskatchewan and Newfoundland have enacted

⁵ Ibid. para..39. (La Forest, J.)

⁶ Federal Court Rule 114; Manitoba Rule 12, Queen’s Bench Rules; New Brunswick Rule 14.01, rules of Court of New Brunswick; Newfoundland Rule 7.11, Rules of the Supreme Court; Northwest Territories Rule 62; Nova Scotia Rule 5.09, Rules of Court of Nova Scotia; P.E.I Rule 12, Rules of Court; Saskatchewan Rule 70, Queen’s Bench Rules.

class action legislation. However, the class action legislation in both provinces provides that representative actions may still be commenced in the event it is required by law to be brought in a representative capacity or in instances when an action may be brought in a representative capacity under another act.⁷

The language used in each province's representative action legislation is significantly different and for the purposes of examining the key aspects of representative actions as a mass tort tool, this paper will only examine Rule 42 of the *Alberta Rules of Court*. Rule 42 of the *Alberta Rules of Court* states the following:

“Where numerous persons have a common interest in the subject of an intended action, one or more of those persons may sue or be sued or may be authorized by the Court to defend on behalf of or for the benefit of all”.

Court approval of the representative action prior to the representative plaintiff's commencement of the action is not required. However, a four-fold test must be satisfied in order to proceed as a representative action. The case of *Korte v. Deloitte, Haskins & Sells*⁸ outlined four prerequisites in relation to a representative action namely:

1. The class must be clearly and definitely defined.

⁷ *The Class Actions Act S.S., 2001 c.C-12.01* Section 3 and *Class Actions Act*. SNL 2001 c. C-18.1 Section 41.

⁸ *Korte v. Deloitte, Haskins & Sells* (1993), A.R. 389 (Alta. C.A.)

2. The principal issues of fact and law must be the same.
3. Success for one of the Plaintiffs equals success for all.
4. Assessment of each individual Plaintiff's claim is not required.

*Holtslag v. Alberta*⁹ reaffirmed the fourfold prerequisite test outlined in *Korte v. Deloitte* and it also illustrated the significant limitation to using representative actions in the Province of Alberta, namely in the event all four prerequisites of the test are not met, the court will reject the representative proceeding.

Separate contracts involving different plaintiffs; different remedies sought by different plaintiffs; and plaintiffs whose claims' raise common issues which are not shared by all plaintiffs to a potential action, are examples of bars to commencing a representative action. Originally, the Supreme Court of Canada in *Naken. v. General Motors of Canada Ltd.*¹⁰ severely limited the number of instances in which representative actions apply. As a result, few actions proceed by way of a representative action. The representative actions commenced were often limited to a specific class of plaintiffs who due to the facts of each case were residents of a particular jurisdiction. The existing class action legislation increases the spectrum of potential plaintiffs in the action. As a result members of the class may reside in any number of jurisdictions each of which has its own rules and legislation regarding representative actions, class actions and limitation periods.

⁹ *Holtslag v. Alberta* (2000) ABQC 351.

In the case of *Western Canadian Shopping Centres Inc. v. Dutton et al* (July 13, 2001) SCC 46, the Supreme Court appears to have changed its approach in dealing with representative actions in jurisdictions without Class Action legislation.

The Court heard an appeal from an order that had denied the Defendant's application to strike the Rule 42 representative action being advanced by a group of investors who had invested in what they thought was commercial real estate and what turned out to be a gold play.

In dismissing the appeal the Court found that:

“33 Clearly, it would be advantageous if there existed a legislative framework addressing these issues. The absence of comprehensive legislation means that courts are forced to rely heavily on individual case management to structure class proceedings. This taxes judicial resources and denies the parties *ex ante* certainty as to their procedural rights. One of the main weaknesses of the current Alberta regime is the absence of a threshold “certification” provision. In British Columbia, Ontario, and Quebec, a class action may proceed only after the court certifies that the class and representative meet certain requirements. In Alberta, by contrast, courts effectively certify *ex post*, only after the opposing party files a motion to strike. It would be preferable if the appropriateness of the class action could be determined at the outset by certification.

34 Absent comprehensive legislation, the courts must fill the void under their inherent power to settle the rules of practice and procedure as to disputes brought before them: *Bell v. Wood* [1927] 1 W.W.R. 580 (B.C.S.C.), at pp. 581-

¹⁰ *Naken. v. General Motors of Canada Ltd.* (1983) 144 D.L.R. (3rd) 385.

82; *Langley v. North West Water Authority*, [1991] 3 All E.R. 610 (C.A.), leave denied [1991] 1 W.L.R. 711n (H.L.); *Newfoundland Association of Public Employees v. Newfoundland* (1995), 132 Nfld. & P.E.I.R. 205; W.A. Stevenson and J.E. Cote, *Civil Procedure Guide*, 1996, at p.4. However, desirable comprehensive legislation on class action practice may be, if such legislation has not been enacted, the courts must determine the availability of the class action and the mechanics of class action practice.”

In its decision the Court prescribed four conditions for a “class action” in Alberta including:

1. The class must be capable of clear definition;
2. There must be issues of fact or law common to all class members;
3. With regard to common issues, success for one class member must mean success for all; and
4. The class representative must adequately represent the class.

These conditions vary somewhat from the conditions imposed by the Alberta Court of Appeal in the case of *Korte v. Deloitte, Haskins & Sells* (1993), 8 Alta. L.R. (3d) 337, as follows:

1. the class must be capable of clear and definite definition;
2. the principal issues of fact and law must be the same;
3. success for one of the plaintiffs must mean success for all; and
4. no individual assessment of the claims of individual plaintiffs need be made.

These conditions with the exception of the last condition are not appreciably different than the conditions typically required for the certification of class proceedings in those provinces that have class action legislation.

Absent class action legislation, the procedure in Alberta appears to be to file the representative action and assume that the action remains “certified” barring a successful application to strike the claim.

In the recent case of *Hobsbawn v. Enmax Corporation and The City of Calgary*, Action Number 9901-01671, Mr. Justice Lutz provided some direction for Alberta counsel in dealing with Rule 42 representative actions. A settlement associated with late payment penalties imposed by Enmax in relation to utility accounts was approved only after a Court hearing upon approved notice to class members. In providing this direction Mr. Justice Lutz followed certain guidelines established in the Alberta Law Reform Institute’s report on Class Actions.

2. Class Actions

Quebec¹¹, Ontario¹², B.C.¹³, Saskatchewan¹⁴ and Newfoundland¹⁵ are the only Canadian provinces to currently have class action legislation. However, other provinces are in the process of making legislative reforms in order to permit class actions in their respective

¹¹ Quebec Arts. 1050.1 CCP and Quebec Arts. 2897 and 2908 CCP

¹² *Class Proceedings Act*, 1992, S.O. 1992, c.6

¹³ *Class Proceedings Act*. R.S.C.B.C. 1996, c.50

¹⁴ *The Class Actions Act* SS, 2001 C-12.01 (effective January 1, 2002)

¹⁵ *Class Actions Act* SNL 2001 c-18.1 (assented to December 13, 2001)

provinces. The Alberta Law Reform Institute published its Final Report on Class Actions in December 2000. The charts attached to this article as Schedules “A” and “B” outline some of the key differences between the existing and draft class action legislation and the proposed Canadian class action legislation respectively. These charts are intended to facilitate discussion only and for further particulars regarding the legislation in each of these provinces please refer to the applicable statutes.

Arguably, all of the Canadian provinces and territories should implement class action legislation, as it is a practical and efficient means of resolution of plaintiffs’ claims in mass tort actions. Lawyers will therefore have to consider which of any number of jurisdictions is the appropriate jurisdiction for their client to commence his/her claim.

C. Existing Class Action Legislation

1. National Classes and Expanded Classes

Neither the Quebec¹⁶ nor Ontario¹⁷ class action legislation specifically addresses multi-jurisdictional issues. However, the Courts in both provinces have expanded the interpretation and application of their respective class action legislation in order to include a greater number of plaintiffs in various class actions. The Quebec Court of Appeal’s willingness to increase the ambit of class proceedings and arguably thereby reaffirm class proceedings as the preferred resolution procedure in relation to mass tort

¹⁶ Quebec Arts. 1050.1 CCP and Quebec Arts. 2897 and 2908 CCP

claims is evidenced by their approval of a national class in a number of cases including *Bourque v. Laboratories Abbott Ltee*¹⁸.

The Ontario courts have also increasingly expanded the application and interpretation of the Ontario class action legislation. The statutory requirements for certification of a class are outlined in Section 5 of the *Class Proceedings Act*, S.O. 1992, c.6. O'Brien, J outlined the following objects of the Ontario class proceeding legislation in *Abdool v. Anaheim Management Ltd.*¹⁹:

“It seems clear the three main objects of the class proceeding legislation are:

1. **Judicial economy**, or the efficient handling of potentially complex cases of mass wrongs;
2. **Improved access to the courts** for those whose actions might not otherwise be asserted. This involves claims which might have merit but legal costs of proceedings were disproportionate to the amount of each claim and hence many plaintiffs would be unable to pursue their legal remedies;
3. **Modification of behavior** of actual or potential wrongdoers who might otherwise be tempted to ignore public obligations”.²⁰ [Emphasis added]

¹⁷ *Class Proceedings Act*, 1992, S.O. 1992, c.6

¹⁸ *Bourque v. Laboratories Abbott Ltee* (unreported, April 9, 1998, Montreal 500-06-000023-988, Que.S.C.) For further examples of Quebec case law on point please see chapter eleven of Class Actions in Canada. by Ward Branch. (Aurora, Ontario: Canada Law Book Inc. 2001) p.11-4

¹⁹ *Abdool v. Anaheim Management Ltd.* (1995), 21 O.R. (3rd) 453.

²⁰ *Abdool v. Anaheim Management Ltd.* (1995), 21 O.R. (3rd) 453 at 461.

The Ontario courts certified a national class in *Nantais v. Telectronics Proprietary (Canada) Ltd.*²¹. In this case, the plaintiffs sought to certify a national class in relation to Canadian plaintiffs who received a specific brand of pacemaker. The defendants argued a national class should not be certified, as non-resident members of the class would be bound by the results of the case. However, on the facts of the case, the class members were easily identified and the Court found that notice provisions would be highly effective in alerting all possible claimants. It is submitted the certification of a national class in *Nantais v. Telectronics Proprietary (Canada) Ltd.*²² is fact specific, and it will be rare that an issue arises with such a readily identifiable group of claimants across Canada. In the majority of cases, the preferable approach is multiple certifications throughout Canada. An example of an issue certified in multiple Canadian jurisdictions is the Hepatitis C dispute.

*Carom v. Bre-X Minerals Ltd.*²³ is an example of an Ontario case in which the court's liberal interpretation of the Class Proceedings Act, 1992, S.P. 1992,c.6 resulted in a greater number of individuals obtaining access to justice. In *Carom v. Bre-X Minerals Ltd.*²⁴ the Ontario court certified the class proceedings to include fifteen common issues; which included using the action as the procedure for resolving the negligent misrepresentation claim advanced by the Plaintiffs. The court's inclusion of the

²¹ *Nantais v. Telectronics Proprietary (Canada) Ltd.* (1995) 25 O.R. (3d) 331 (Gen. Div.) (leave to appeal dismissed) (1995), 25 O.R. (3d) 347 (Div Ct.)

²² *Ibid.*

negligent misrepresentation claims advanced by the Plaintiffs arguably increased the type of issues, which constitute a “common issue” within the parameters of the Ontario legislation. An application for leave to appeal to the Supreme Court of Canada regarding whether the Court of Appeal erred in finding a class proceeding the preferable procedure for the resolution of the negligent misrepresentation claim was submitted on January 29, 2001 and as of the date of this paper the matter is currently before the Court.

The Canadian judiciary’s current trend of prioritizing “access to justice” issues when considering the certification of class actions is further evidenced in the case of *Harrington v. Dow Corning*²⁵. In *Harrington v. Dow Corning*²⁶ the B.C. courts certified a class proceeding despite the many unresolved, difficult, individual issues associated with establishing claims, arising out of the allegedly defective breast implants. MacKenzie, J. stated the following regarding the object of the *Class Proceedings Act*, R.S.B.C. 1996, c.50. in *Harrington v. Dow Corning*²⁷:

“...*The object of the act is not to provide perfect justice, but to provide a “fair and efficient resolution” of common issues. It is a remedial, procedural statute and should be interpreted liberally to give effect to its purpose. It sets out very*

²³ *Carom v. Bre-X Minerals Ltd.* [2000] S.C.C.A. No. 660

²⁴ *Ibid.*

²⁵ *Harrington v. Dow Corning.* (1996), 22 B.C.L.R. (3d) 97 (S.C.) (certification decision), *affd.* 193 D.L.R. (4th) 67, [2000] 11 W.W.R. 201 (C.A.); (1998), 55 B.C.L.R. (3d) 316 (B.C.S.C.) (extra-provincial class); (1999), 64 B.C.L.R. (3d) 332(B.C.S.C.) (striking claim against Dow Chemical Co.); (1999), 29 C.P.C. (4th) 14 (B.C.S.C.) (approval of Dow Settlement); (unreported: November 8, 2000) (appeal of order certifying the action)

²⁶ *Ibid.*

²⁷ *Ibid.*

flexible procedures and clothes the Court with broad discretion to ensure that justice is done to all parties”²⁸.

The case law therefore indicates the predominance of individual issues is not in itself fatal to an application for certification of a class. The courts in the three Canadian provinces which, have class action legislation, have not followed the American class action jurisprudence. Rule 23 of the U.S. Federal Rules of Civil Procedure requires common issues predominate over individual issues. The key question in Canadian class action certification applications is whether at least one common issue exists which should be dealt with by way of class proceedings. A class proceeding is the appropriate forum for a common issue if its resolution in favour of the proposed class advances the interest of the class. The existence of individual issues is therefore not, in and of itself, fatal to certification of the class. The Canadian courts’ approach to date focuses on the three main objects of the class proceeding legislation more particularly described above as:

- a. judicial economy;
- b. access to justice; and
- c. modification of behavior.

2. Opting In or Opting Out?

a. Ontario and Quebec: “Opting Out”

²⁸ Ibid. p. 113.

The legislation in the provinces of both Quebec and Ontario contain “opt out” plans in relation to non-resident class members. In the event a national class is certified in these provinces, it is the responsibility of the individual non-resident plaintiffs to “opt out” of the plan and in the event they fail to do so, they will be bound by the Ontario court’s decisions in relation to the action. A key constitutional question is whether an individual plaintiff resident in another Canadian Province or Territory, who does not receive notice of an Ontario or Quebec proceedings (the “National Class Action”), is bound by the decisions of the court in relation to the National Class Action? Arguably, an individual plaintiff non-resident in the province of origin of the National Class Action could commence their own individual suit in their province or territory of residence (the “Second Action”). The defendants in the National Class Action might then plead *res judicata* in relation to the Second Action as arguably, the non-resident plaintiff failed to opt out of the National Class Action.

b. British Columbia/Saskatchewan/Newfoundland: Non-Residents “Opting In”

The B.C., Saskatchewan and Newfoundland class action legislation permits non-residents to “opt in” to class action proceedings, commenced in the province. The legislative requirement that non-residents “opt into” their class proceedings eliminates the notification issues raised in relation to the certification of national classes under the provisions of the Ontario or Quebec legislation. The class action legislation does not require non-residents to “opt out” of the proceedings. However, the legislation is limited

in its application as all potential plaintiffs may not be included in the class and this results in the matter being re-litigated in another jurisdiction. The re-litigation of the matter is not necessarily beneficial to the plaintiff and the defendants in the action are inevitably adverse to re-litigating the issue in another province or territory. The case of *Campbell v. Flexwatt*²⁹ illustrates the limited application of the B.C. class action legislation.

In *Campbell v. Flexwatt*³⁰ the class included only British Columbia residents who owned radiant ceiling heating panels. However, the allegedly defective radiant heating panels were sold in provinces other than B.C. As a result, individual claimants resident in other provinces or territories which have the defective radiant heating panels installed in their homes must pursue their own independent action against the manufacturers and distributors of the product in the jurisdiction in which they reside. The re-litigation of the matter in a subsequent jurisdiction is not cost effective for the plaintiffs, defendants, nor the Courts.

3. Benefits of the Multi-Jurisdictional Approach to Class Actions

An example of the benefits of a multi-jurisdictional approach to class action litigation is evidenced by the B.C. class action regarding the medical device known as the Vitek

²⁹ *Campbell v. Flexwatt* (1997), 44 B.C.L.R. (3d) 343 (C.A.) (appeal of certification); (unreported, June 14, 1996)(certification); (unreported, September 20, 1996) (clarifying aspects of certification decision); (unreported, 1998 06 23) (registration of class members); (unreported, Feb. 25 1998) (costs); (unreported, November 11, 1997) (dismissing appeals to the Court of Appeal).

³⁰ *Ibid.*

Temporomandibular Joint Implant (“TMJ Implant”). The judgment of Mr. J. Brenner of the B.C. Supreme Court in relation to the TMJ Implants is outlined in

*Sawatzky v. Societe Chirurgicale Instrumentarium Inc.*³¹ The TMJ Implants were sold through out Canada. However, the B.C. action included a non-resident sub-class and as a result pursuant to the terms of the settlement proposal, non-resident class members received compensation for their injuries.

Conclusion

The negligent actions of a defendant often do not affect individuals in a single jurisdiction. Representative actions are an effective legal tool in litigating some mass tort actions. However, they are often limited to a specific class of plaintiffs who due to the facts of each case are residents of a particular jurisdiction. The existing class action legislation increases the spectrum of potential plaintiffs in a class action and potential plaintiffs may therefore reside in any number of jurisdictions each of which has their own rules and legislation regarding representative actions, class actions and limitation periods. Both the “opt out” provisions of the Quebec and Ontario legislation and the “opt in” provisions of the B.C., Saskatchewan and Newfoundland legislation present both legal and practical problems. However, a multi-jurisdictional approach to class action litigation can be an effective means of litigating mass tort actions and this is evidenced by

³¹ (unreported [1999] B.C.J. No.1814 Vancouver Reg. No. C954740 (B.C. S.C.)) (settlement approval).

*Sawatzky v. Societe Chirurgicale Instrumentarium Inc.*³² Experienced, co-operative counsel are a key aspect to the effective multi-jurisdictional litigation of mass tort actions. The Canadian judiciary's current trend of prioritizing "access to justice" issues when considering the certification of class actions evidences that class actions are the preferred legal tool for litigating mass tort claims.

³² (unreported [1999] B.C.J. No.1814 Vancouver Reg. No. C954740 (B.C. S.C.)) (settlement approval).

Jurisdiction	Class Definition	Opt In/ Opt Out Provisions	Non Residents	Suspension of Limitation Periods	Exposure to Costs
Quebec	Natural persons only Not open to Corporations	Opt Out	No statutory reference to non-residents	Filing of a motion for certification stops the limitation clock Limitation Clock restarts if the application for certification is dismissed ³³	Costs may be awarded. The normal tariff is changed to decrease the effect on representatives of an adverse costs award. ³⁴
Ontario	Class = An identifiable class of two or more persons. Corporations are not restricted from inclusion in the class ³⁵	Opt Out only ³⁶	No statutory reference to non-residents	Limitation period is suspended from the time of the filing ³⁷ and resumes running against the class member when: a. The member opts out; b. Certification order is amended to exclude the member from the class; c. de-certification order; d. Class proceeding is dismissed; e. Class Proceeding is abandoned or discontinued; f. Class proceeding is settled	The representative plaintiff is responsible for any adverse cost awards. Absent class members will not be responsible for costs regarding the trial of common issues. ³⁸ Class members are responsible for costs in relation to their own individual claims. ³⁹

³³ Quebec Arts. 2897 and 2908 CCP

³⁴ Quebec Arts. 1050.1 CCP

³⁵ *Class Proceedings Act*, 1992, S.O. 1992, c.6. s.5(1)(b), (the “Ontario Act”)

³⁶ Ontario Act, s.9.

³⁷ Ontario Act, s.28

³⁸ Ontario Act, s.3(2)

³⁹ Ontario Act, s.31(2)

Jurisdiction	Class Definition	Opt In/Opt Out Provisions	Non Residents	Suspension of Limitation Periods	Exposure to Costs
British Columbia	<p>Class = Identifiable class of two or more persons.</p> <p>No restrictions against corporations being included in the class. Some of the members of the class must be residents of the Province of British Columbia.⁴⁰</p>	<p>B.C. residents may elect to opt out of the class action.</p> <p>If the class action has a non-resident sub-class; non-residents of the province must opt into the action.⁴¹</p>	<p>If the class is defined to include persons outside the province.</p> <p>This sub-class must have its own representative .</p>	<p>The clock continues to run on the limitation period unless certification is granted. Certification will stop the clock as of the date the action is commenced.</p>	<p>Barring any special order of the court no costs will be awarded to either party at the common issue stage of the proceedings.</p> <p>If the action is dismissed prior to the certification hearing the normal rules regarding costs apply.</p>

⁴⁰ *Class Proceedings Act*. R.S.C.B.C. 1996, c.50. (the "B.C. Act") s. 16(1)

⁴¹ B.C. Act s. 37

Jurisdiction	Class Definition	Opt In / Opt Out Provisions	Non Residents	Suspension of Limitation Periods	Exposure to Costs
Saskatchewan	<p>Class = two or more persons with common issues respecting a cause of action or potential cause of action⁴²</p> <p>Sask. Residency - One member of a class must reside in Saskatchewan⁴³</p>	If the class action has a non-resident sub-class; non-residents of the province must opt into the action.	If the class is defined to include persons outside the province; this sub class must have its own representative. ⁴⁴	<p>Limitation period applicable to a cause of action asserted in an action is suspended in from the time of the commencement of the class action and resumes running in one more of the following instances:</p> <ul style="list-style-type: none"> • Member opts out • A ruling of the court excludes the individual as a class member • Amendment if made to the certification order effectively excluding the member from the class action • Decertification order • Class action is discontinued without adjudication on the merits • Class action is discontinued or abandoned with approval of the court • Action is settled <p>The Court may, at any time, stay or sever any action related to the class action on any terms the court considers appropriate.⁴⁵</p>	<p>The Court may award costs to a party in relation to an application for certification or all or any part of the class action or appeal if the Court considers the action to have been vexatious, frivolous or abusive conduct on the part of any party.⁴⁶</p> <p>Class members, other than the representative plaintiff, are not liable for costs except with respect to the determination of their own individual claims.⁴⁷</p>

⁴² *The Class Actions Act* R.S.S., 2001 C-12.01 (the “*Saskatchewan Act*”) s. 2

⁴³ *Saskatchewan Act* s. 4(1)

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, s.15

⁴⁶ *Saskatchewan Act*, s.40(2)

⁴⁷ *Ibid.* S.40(4)

Jurisdiction	Class Definition	Opt In/ Opt Out Provisions	Non Residents	Suspension of Limitation Periods	Exposure to Costs
Newfoundland	Class = One member of a class of persons must reside in the province. ⁴⁸	<u>A member of a class may opt out</u> of the action in the manner and within the time limits specified in the certification order ⁴⁹ Non-residents may opt in ⁵⁰	Non-Resident Sub Class A class that is made up of persons resident in the province and persons not resident in the province shall be divided into resident and non-resident subclasses. ⁵¹	Limitation period is suspended from the time the class action is commenced and resumes running against the class member when: <ul style="list-style-type: none"> the member opts out of the class action; an amendment is made to the certification order that excludes the members from the class action desertification order class action is dismissed without an adjudication on the merits the class action is discontinued or abandoned with the approval of the court class action is settled with court approval⁵² 	Class members, other than the representative plaintiff are <u>not liable for costs</u> except with respect to the determination of their own individual claims. ⁵³ The Court may award costs to a party if it considers the action is vexatious, frivolous or abuse conduct by a party or an improper or unnecessary application; or there are exceptional circumstances. ⁵⁴

⁴⁸ *Class Actions Act*, SNL 2001 C.C-18.1 s..3(1)

⁴⁹ *Ibid.* s. 17(1)

⁵⁰ *Ibid.* s.17(2)

⁵¹ *Ibid.* s. 7(2)

⁵² *Ibid.* s.39

⁵³ *Ibid.* s.37(4)

⁵⁴ *Ibid.* s.37