



BILL NO. 19

Government Bill

*1st Session, 60th General Assembly
Nova Scotia
56 Elizabeth II, 2007*

An Act Respecting Class Proceedings

CHAPTER 28
ACTS OF 2007

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 13, 2007**

The Honourable Cecil P. Clarke
Minister of Justice

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act Respecting Class Proceedings

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Class Proceedings Act*.

2 In this Act,

(a) “certification order” means an order certifying a proceeding as a class proceeding;

(b) “class or subclass” means two or more persons with common issues respecting a cause of action or potential cause of action;

(c) “class or subclass member” means a person who is or becomes a member of a class or subclass in accordance with a certification order, and who has not opted out of the class or subclass;

(d) “class proceeding” means a proceeding under this Act, even if an application for certification of the proceeding as a class proceeding has not yet been determined by the court;

(e) “common issues” means

(i) common but not necessarily identical issues of fact, or

(ii) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;

(f) “court” means the Supreme Court of Nova Scotia, and includes any judge of that court;

(g) “decertification order” means an order decertifying a proceeding as a class proceeding;

(h) “defendant” includes a respondent;

(i) “party” means a representative plaintiff, a plaintiff, a representative defendant, a defendant or a person that the court adds as a party, but does not include any other individual class or subclass members;

(j) “plaintiff” includes an applicant;

(k) “representative defendant” means a person who is appointed under this Act as the representative defendant for a class or subclass in respect of a class proceeding and, where the context requires, includes a person who is seeking to be appointed as a representative defendant;

(l) “representative party” means a representative plaintiff or representative defendant;

(m) “representative plaintiff” means a person who is appointed under this Act as the representative plaintiff for a class or subclass in respect of a class proceeding and, where the context requires, includes a person who is seeking to be appointed as a representative plaintiff;

(n) “settlement class” means those persons who constitute a settlement class under Section 6.

3 (1) Subject to the *Proceedings against the Crown Act*, this Act binds Her Majesty in right of the Province.

(2) For greater certainty,

(a) notice required to be given to the Crown under the *Proceedings against the Crown Act* must be given by the proposed representative plaintiff; and

(b) the notice referred to in clause (a) must clearly state that the action is a class proceeding and provide particulars regarding the intended class.

(3) Subject to subsection (4), this Act does not apply to

(a) a proceeding that may be brought in a representative capacity under another Act;

(b) a proceeding required by law to be brought by a plaintiff in a representative capacity; or

(c) a proceeding brought in a representative capacity that was commenced before the coming into force of this Section.

(4) Where a proceeding is commenced under Rule 5.09 of the *Civil Procedure Rules* before the coming into force of this Section, the court may, on the application of a party to the proceeding, order that the proceeding be continued under this Act, subject to the terms or conditions the court considers appropriate.

CERTIFICATION

4 (1) One member of a class of persons may commence a proceeding in the court on behalf of the members of that class.

(2) In a proceeding referred to in subsection (1), the originating process must indicate that the proceeding is brought under this Act.

(3) The person who commences a proceeding under subsection (1) shall make an application to the court for an order certifying the proceeding as a class proceeding and, subject to subsection (5), appointing the person as representative plaintiff for the class.

(4) An application under subsection (3) must be made

(a) within one hundred and twenty days of the date upon which the proceeding is commenced; or

(b) at any other time with leave of the court.

(5) The court may appoint a person who is not a member of the class as the representative plaintiff for the class only if, in the opinion of the court, it is necessary to do so in order to avoid a substantial injustice to the class.

(6) A defence to a class proceeding does not need to be filed until forty-five days after a certification order is issued in respect to the proceeding.

5 (1) A defendant in two or more proceedings may, at any stage of one of the proceedings, make an application to the court for an order certifying some or all of the proceedings as a class proceeding and appointing a representative plaintiff for the class that will be involved in the class proceeding.

(2) Any party to a proceeding against two or more defendants may, at any stage of the proceedings, make an application to the court for an order certifying the proceeding as a class proceeding and appointing a representative defendant.

6 Where as a condition of settlement between a plaintiff and a defendant certification of a proceeding as a class proceeding is being sought in order that the settlement will bind the class members, the class members constitute a settlement class.

7 (1) The court shall certify a proceeding as a class proceeding on an application under Section 4, 5 or 6 if, in the opinion of the court,

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

(2) In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the dispute, the court shall consider

- (a) whether questions of fact or law common to the class members predominate over any questions affecting only individual members;
- (b) whether a significant number of the class members have a valid interest in individually controlling the prosecution of separate proceedings;
- (c) whether the class proceeding would involve claims or defences 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;

(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; and

(f) any other matter the court considers relevant.

(3) Notwithstanding subsection (1), where an application is made to certify a proceeding as a class proceeding in order that a settlement will bind the members of a settlement class, the court shall not certify the proceeding as a class proceeding unless the court approves the settlement.

8 (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 a proceeding as a class proceeding is not a determination of the merits of the proceeding.

9 Where a class includes a subclass whose members have claims or defences that raise common issues not shared by all the class members so that, in the opinion of the court, the protection of the interests of the subclass members requires that the subclass members be separately represented, the court may, in addition to appointing the representative party for the class, appoint for each subclass a representative party who, in the opinion of the court,

(a) would fairly and adequately represent the interests of the subclass;

(b) has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the subclass and of notifying subclass members of the class proceeding; and

(c) does not have, with respect to the common issues for the subclass, an interest that is in conflict with the interests of other subclass members.

10 The court shall not refuse to certify a proceeding as a class proceeding by reason only that

(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; or

(e) the class includes a subclass whose members have claims that raise common issues not shared by all class members.

11 (1) A certification order shall

- (a) describe the class in respect of which the order was made by setting out the class's identifying characteristics;
- (b) appoint the representative parties;
- (c) state the nature of the claims or defences asserted on behalf of the class;
- (d) state the relief sought 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 proceeding; and
- (g) include any other provisions the court considers appropriate.

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

(3) Where the certification order is made in respect of a settlement class, the court may, as the court considers appropriate, modify the contents of the order to reflect the existence of the settlement and its terms.

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

12 Where the court refuses to certify a proceeding as a class proceeding, the court may permit the proceeding to continue as one or more proceedings between different parties and, for that purpose, the court may

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

13 (1) Without limiting subsection 11(4), where at any time after a certification order is made under this Part it appears to the court that the conditions referred to in Section 7 or subsection 9(1) are not satisfied, the court may amend the certification order, decertify the proceeding as a class proceeding or make any other order it considers appropriate.

(2) Where the court makes a decertification order under subsection (1), the court may permit the proceeding to continue as one or more proceedings between different parties and may make any order referred to in Section 12 in relation to each of those proceedings.

CONDUCT OF CLASS PROCEEDINGS

- 14 (1)** Unless the court otherwise orders under Section 15, in a class proceeding,
- (a) common issues for a class shall be determined together;
 - (b) common issues for a subclass shall be determined together; and

(c) individual issues that require the participation of class members shall be determined in accordance with Sections 30 and 31.

(2) The court may give judgment in respect of the common issues and separate judgments in respect of any other issue.

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

16 The court may at any time stay or sever any proceeding related to the class proceeding on the terms or conditions the court considers appropriate.

17 (1) All applications, whether contested or not, in the class proceeding that are made before the trial of the common issues shall be heard by the same judge but, where that judge becomes unavailable for any reason to hear an application in the class proceeding, the Chief Justice of the court may assign another judge of the court to hear the application.

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

18 (1) In order to ensure the fair and adequate representation of the interests of the class or any subclass or for any other appropriate reason, the court may, at any time, in a class proceeding permit one or more class members to participate in the class proceeding.

(2) Participation under subsection (1) must be in the manner and on the terms or conditions, including terms or conditions as to costs, that the court considers appropriate.

19 (1) A person who is a member of a class involved in a class proceeding may opt out of the class proceeding

(a) in the manner and within the time specified in the certification order; or

(b) with leave of the court and on the terms or conditions the court considers appropriate.

(2) A person referred to in subsection (1) who opts out of the class proceeding ceases, from the time the person opts out and subject to any terms or conditions referred to in subsection (1), to be a member of the class involved in the class proceeding.

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

20 (1) Except as otherwise provided in this Act or the regulations, parties to a class proceeding are subject to discovery in the same manner as parties to any other proceeding, but only after the proceeding has been certified, unless leave of the court has been obtained.

(2) Except as otherwise provided in this Act or the regulations, parties may discover a class member only with leave of the court and after all representative parties have been discovered or their discoveries have been waived.

(3) In deciding whether to grant a party leave to conduct discovery under subsection (1) or (2), the court shall consider

- (a) the stage of the class proceeding and the issues to be determined at that stage;
- (b) the presence of subclasses;
- (c) whether the discovery is necessary in view of the claims or defences of the party seeking leave;
- (d) the approximate monetary value of individual claims, if any;
- (e) whether discovery would result in oppression or in undue annoyance, burden or expense for the class members sought to be discovered; and
- (f) any other matter the court considers relevant.

(4) A class member is subject to the same sanctions under the *Civil Procedure Rules* as a party for failure to submit to discovery and, for greater certainty, the court may dismiss the claims of or allow a claim against any individual class member who fails to submit to discovery.

21 (1) Before the certification hearing, parties to a class proceeding may examine any other party to the proceeding, or any deponent of an affidavit filed with respect to the certification application, or, with leave of the court, any other person, and such examination is limited to issues arising from the certification application.

(2) With respect to any other application, including an interlocutory application, a party shall not examine a person before the hearing of the application or interlocutory application, except with leave of the court.

(3) In deciding whether to grant a party leave to conduct an examination under subsection (1) or (2), the court shall consider the factors set out in subsection 20(3).

22 (1) Subject to subsection (2), notice that a proceeding has been certified as a class proceeding must be given by the representative party for the class 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) Subject to subsection (2), the court shall make an order setting out when and by what means notice is to be given under this Section and in doing so shall have regard to

- (a) the cost of giving notice;
- (b) the nature of the relief sought;
- (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 or publishing;
- (d) individually notifying a sample group within the class;
- (e) creating and maintaining an Internet site; or
- (f) 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.

(6) Unless the court orders otherwise, a notice under this Section must

- (a) describe the class proceeding, including the names and addresses of the representative parties and the relief sought;
- (b) state the manner in which and the time within which a class member may opt out of the class proceeding;
- (c) describe any counterclaim or third party claim being asserted in the class proceeding, including the relief sought;
- (d) summarize any agreements respecting fees and disbursements between the representative parties and their solicitors;
- (e) describe the possible financial consequences of the class proceeding to class and subclass members;
- (f) 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 class proceeding;
- (g) 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 class proceeding;
- (h) describe the rights, if any, of class members to participate in the class proceeding;
- (i) give an address to which class members may direct inquiries about the class proceeding; and
- (j) give any other information the court considers appropriate.

(7) Where the application to certify a proceeding as a class proceeding was made in respect of a settlement class, a notice under this Section must refer to the existence of the settlement and describe its terms, and must be modified otherwise as the court considers appropriate.

(8) With leave of the court, an application under this Section may include a solicitation of contributions from class members to assist in paying solicitors' fees and disbursements.

23 (1) Where the court determines common issues in favour of a class or subclass and considers that the participation of individual class or subclass members is required to determine individual issues, the representative party for that class or subclass shall give notice to those members in accordance with this Section.

(2) Subsections 22(3) to (5) apply with the necessary modifications to a notice given under this Section.

(3) A notice under this Section must

- (a) state that common issues have been determined;
- (b) identify the common issues that have been determined and explain the determinations made;
- (c) state that class or subclass members may be entitled to individual relief;
- (d) describe the steps that must be taken to establish an individual claim;
- (e) state that failure on the part of a class or subclass member to take those steps will result in the member not being entitled to assert an individual claim except with leave of the court;
- (f) give an address to which class or subclass members may direct inquiries about the class proceeding; and
- (g) give any other information the court considers appropriate.

24 (1) At any time in a class proceeding, the court may order any party to give any notice that the court considers necessary to protect the interests of any class member or party or to ensure the fair conduct of the class proceeding.

(2) Subsections 22(3) to (5) apply with the necessary modifications to a notice given under this Section.

25 A notice under Sections 22 to 24 must be approved by the court before it is given.

26 Where a party is required to give notice under this Act, the court may order another party to give the notice in addition to or instead of the party that was required to give the notice.

27 (1) The court may make any order it considers appropriate as to the costs of any notice under Sections 22 to 24, including an order apportioning costs among parties.

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

ORDERS, AWARDS AND RELATED PROCEDURES

- 28** An order made in respect of 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 or defences asserted on behalf of the class or subclass; and
 - (d) specify the relief granted.
- 29** (1) A judgment on common issues of a class or subclass binds every class or subclass member, as the case may be, who has not opted out of the class proceeding, 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 proceeding in any subsequent proceeding between the party and a person who opted out of the class proceeding.
- 30** (1) Where 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 under Section 35, that are applicable only to certain individual class or subclass members, 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, without limiting the generality of the foregoing, one or more independent experts, to conduct a reference into those individual issues under the *Civil Procedure 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 shall be followed in conducting hearings, references and determinations under subsection (1).
- (3) In giving directions under subsection (2), the court shall choose the least expensive and most expeditious method of determining the individual issues that, in the opinion of the court, is consistent with justice to the class or subclass members 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 class or subclass members may make claims under this Section in respect of the individual issues.

(5) A class or subclass member who fails to make a claim within the time set under subsection (4) shall not later make a claim under this Section in respect of the individual issues applicable to that member except with leave of the court.

(6) The court may grant leave under subsection (5) if, in the opinion of the court,

- (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 under clause (1)(c), a determination of issues made in accordance with that clause is deemed to be an order of the court.

31 Without limiting the generality of Section 30, where, after determining common issues in favour of a class or subclass, the court determines that a defendant's liability to individual class or subclass members cannot reasonably be determined without proof by those individual class or subclass members, Section 30 applies with the necessary modifications to the determination of the defendant's liability to those class or subclass members.

32 (1) Once a defendant has been found liable, the court may make an order for an aggregate monetary award in respect of all or any part of a defendant's liability to class or subclass members and may give judgment accordingly if

- (a) monetary relief is claimed on behalf of some or all class or subclass 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 or subclass members can, in the opinion of the court, reasonably be determined without proof by individual class or subclass members.

(2) Before making an order under subsection (1), the court shall provide the defendant with an opportunity to make submissions to the court in respect of any matter relating to the proposed order including, without limiting the generality of the foregoing,

- (a) submissions that contest the merits or amount of an award under that subsection; and
- (b) submissions that individual proof of monetary relief is required due to the individual nature of the relief.

(3) Before making an order under subsection (1), the court may permit the admission of additional evidence that, in the opinion of the court, is relevant in the circumstances.

33 (1) For the purpose of determining issues relating to the amount or distribution of an aggregate monetary award under 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 or published under the authority of an Act of the Parliament of Canada or of the legislature of any province or territory of Canada may be admitted as evidence without proof of its authenticity.

(3) Statistical information must not be admitted as evidence under this Section unless the party seeking to introduce the information

(a) has given to the party against whom the statistical evidence is to be used a copy of the information at least sixty days before that information is to be introduced as evidence;

(b) has complied with subsections (4) and (5); and

(c) introduces the evidence by an expert who is available for cross-examination on that evidence.

(4) A notice under 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 Act of the Parliament of Canada or of the legislature of any province or territory of Canada;

(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.

(5) Except with respect to information referred to in subsection (4), a notice under 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.

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

(7) Except with respect to information referred to in subsection (4), a party against whom statistical information is sought to be introduced under 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.

34 (1) Where the court makes an order under Section 32, the court may further 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, in the opinion of the court,

- (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) failure to make an order under this subsection would deny recovery to a substantial number of class or subclass members.

(2) Where an order is made under subsection (1), any class or subclass member in respect of whom the order was made may, within the time specified in the order, make an application 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 amount that the person would receive on an average or proportional basis;
- (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 referred to 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 proves the person's claim on an individual basis must be deducted from the amount to be distributed on an average or proportional basis before the distribution.

35 (1) Where the court orders that all or a part of an aggregate monetary award under subsection 32(1) be divided among individual class or subclass members on an individual basis, the court shall also determine whether individual claims need to be made to give effect to the order.

(2) Where the court determines under subsection (1) that individual claims need to be made, the court shall specify the procedures for determining the claims.

(3) In specifying the procedures under subsection (2), the court shall minimize the burden on class or subclass members and, for that purpose, the court may authorize

- (a) the use of standard proof of claim forms;
- (b) the submission of affidavit or other documentary evidence;
- (c) the auditing of claims on a sampling or other basis; and
- (d) any other procedure the court considers appropriate.

(4) When specifying the procedures under subsection (2), the court shall set a reasonable time within which individual class or subclass members may make claims under this Section.

(5) A class or subclass member who fails to make a claim within the time set under subsection (4) may not later make a claim under this Section except with leave of the court.

(6) Subsection 30(6) applies with the necessary modifications to a decision whether to grant leave under subsection (5).

(7) The court may amend a judgment given under subsection 32(1) to give effect to a claim made with leave under subsection (5) if the court considers it appropriate to do so.

36 (1) The court may direct any means of distribution of amounts awarded under Sections 32 to 35 that it considers appropriate.

(2) In giving directions under subsection (1), the court may 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 or credit;

(b) the defendant pay into court or some other appropriate depository the total amount of the monetary relief to which all of the class or subclass members are entitled 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) In deciding whether to make an order under clause (2)(a), the court

(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 under Sections 32 to 35 and may stay the whole or any part of an execution or distribution for a reasonable period on the terms or conditions it considers appropriate.

(5) The court may order that an award made under Sections 32 to 35 be paid

(a) in a lump sum, promptly or within a time set by the court; or

(b) in instalments, on the terms or conditions the court considers appropriate.

(6) The court may

(a) order that the costs of distributing an award under Sections 32 to 35, 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 other order it considers appropriate.

37 (1) The court may order that all or any part of an award under Sections 32 to 35 that has not been distributed within a time set by the court

(a) be applied in any manner that, in the opinion of the court, may reasonably be expected to benefit class or subclass members;

(b) be applied against the cost of the class proceeding;

(c) be forfeited to Her Majesty in right of the Province; or

(d) be returned to the party against whom the award was made.

(2) In deciding whether to make an order under clause (1)(a), the court shall consider

(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 under clause (1)(a) 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 under clause (1)(a) even if the order would benefit

(a) persons who are not class or subclass members; or

(b) persons who may otherwise receive monetary relief as a result of the class proceeding.

38 (1) A class proceeding may be settled or discontinued only

(a) with the approval of the court; and

(b) on the terms or conditions the court considers appropriate.

(2) A settlement in relation to the common issues affecting a subclass may be concluded only

(a) with the approval of the court; and

(b) on the terms or conditions the court considers appropriate.

(3) A settlement under this Section is not binding unless approved by the court.

(4) Where a proceeding has been certified as a class proceeding, a settlement of the class proceeding or of common issues affecting a subclass that is approved by the court binds every class or subclass member who has not opted out of the class proceeding, but only to the extent provided by the court.

(5) In dismissing a class proceeding or in approving a settlement or discontinuance, the court shall consider whether notice should be given and whether the notice should include any of the following:

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

(6) Subsections 22(3) to (5) apply with the necessary modifications to a notice referred to in subsection (5).

39 (1) Any party may appeal, without leave, to the Nova Scotia Court of Appeal from

- (a) a judgment on common issues; or
- (b) an order under Sections 32 to 37, other than an order that determines individual claims made by class or subclass members.

(2) With leave of a judge of the Nova Scotia Court of Appeal, a class or subclass member or any party 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 judge of the Nova Scotia Court of Appeal, any party may appeal to that court from

- (a) a certification order or an order refusing to certify a proceeding as a class proceeding; or
- (b) a decertification order.

(4) Where a representative party for a class or subclass does not appeal or seek leave to appeal as permitted by subsection (1) or (3) within the time limit for bringing an appeal set under the *Civil Procedure Rules* or where a representative party abandons an appeal under subsection (1) or (3), any member of the class or subclass may make an application to a judge of the Nova Scotia Court of Appeal for leave to act as the representative party for the purposes of subsection (1) or (3).

(5) Where a representative party intends to abandon an appeal under subsection (1) or (3), the representative party shall apply to a judge of the Nova Scotia Court of Appeal for approval to abandon the appeal and, where approval is granted, the judge of the Nova Scotia Court of Appeal shall consider whether the appellant should be ordered to provide notice to class or subclass members that the appeal has been abandoned.

(6) An application by a class or subclass member for leave to act as the representative party under subsection (4) must be made within thirty days after the expiry of the appeal period available to the representative party or by such other date as the judge of the Nova Scotia Court of Appeal may order.

(7) For greater certainty, an application for leave to appeal pursuant to this Section must be made before a single judge of the Nova Scotia Court of Appeal.

COSTS, FEES AND DISBURSEMENTS

40 (1) With respect to any proceeding or other matter under this Act, costs may be awarded in accordance with the *Civil Procedure Rules*.

(2) When awarding costs pursuant to subsection (1), the court may consider whether

(a) the class proceeding was a test case, raised a novel point of law or involved a matter of public interest; and

(b) a cost award would further judicial economy, access to justice or behaviour modification.

(3) The court may apportion costs against various parties in accordance with the extent of the parties' liability.

(4) A class member, other than a representative party, is not liable for costs except with respect to the determination of the class member's own individual claims.

41 (1) An agreement respecting fees and disbursements between a solicitor and a representative party must be in writing and shall

(a) state the terms or conditions 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 proceeding;

(c) where interest is payable on fees or disbursements referred to in clause (a), state the manner in which the interest will be calculated; and

(d) 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 solicitor and a representative party is not enforceable unless approved by the court, on the application of the solicitor.

(3) An application under subsection (2) may

(a) unless the court otherwise orders, be made without notice to any other party; or

(b) where notice to any other party is required, be made on the terms or conditions that the court may order respecting disclosure of the whole or any part of the agreement respecting fees and disbursements.

(4) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

- (5) Where an agreement is not approved by the court, the court may
- (a) determine the amount owing to the solicitor in respect of fees and disbursements;
 - (b) direct that a taxation be conducted in accordance with the *Civil Procedure Rules*; or
 - (c) direct that the amount owing be determined in any other manner.

(6) Sections 65 to 70 of the *Legal Profession Act* do not apply in respect of an agreement referred to in this Section.

GENERAL

42 (1) Subject to subsection (2), any limitation period applicable to a cause of action asserted in a class proceeding is suspended in favour of a class member on the commencement of the proceeding and resumes running against the class member when

- (a) a ruling is made by the court refusing to certify the proceeding as a class proceeding;
- (b) the class member opts out of the class proceeding;
- (c) an amendment is made to the certification order that has the effect of excluding the class member from the class proceeding;
- (d) a decertification order is made under Section 13;
- (e) the class proceeding is dismissed without an adjudication on the merits;
- (f) the class proceeding is discontinued with the approval of the court; or
- (g) the class proceeding is settled with the approval of the court, unless the settlement provides otherwise.

(2) Where there is a right of appeal in respect of an event described in clauses (1)(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.

(3) Where the running of a limitation period is suspended under this Section and the period has less than six months to run when the suspension ends, the limitation period, notwithstanding anything contained in this Section, is extended to the day that is six months after the day on which the suspension ends.

43 The *Civil Procedure Rules* apply to class proceedings to the extent that those rules are not in conflict with this Act.

44 Any provision of this Act with respect to discovery, damages, expert evidence or any procedural or substantive matter relating to a class proceeding is subject to the regulations.

45 (1) The Governor in Council may make regulations

- (a) respecting discovery, damages, expert evidence or any procedural or substantive matter relating to a class proceeding;

- (b) defining any word or expression used but not defined in this Act;
- (c) the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

46 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
