



UNIFORM LAW CONFERENCE OF CANADA

CLASS ACTIONS SECOND POLICY REPORT

Presented by

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About the Institut québécois de réforme du droit et de la justice (IQRDJ)

Founded in 2018, the Quebec Law and Justice Reform Institute is an independent, public-oriented institution devoted to the reform of law and justice. Its work is aimed at the ongoing adjustment of legal normativity to the contemporary needs of society and the rule of law. It is based on legal and interdisciplinary research, as well as on the ongoing consultation and participation of members of civil society. For the purposes of its research activities, the Institute relies on the advice of a Scientific Committee made up of jurists and researchers from disciplines other than law, affiliated with different universities.

CLASS ACTIONS – SECOND POLICY REPORT

Table of Contents

Introduction.....	4
1. Executive summary of proposed directions for potential amendments	6
2. Certification of class actions	8
2.1. Context and public policy considerations	9
2.2. The preliminary certification stage must be maintained.....	11
2.2.1. The efficiency of certification: a matter of judicial practice?.....	11
2.2.2. Abolishing certification would not offer any clear benefits	14
2.3. Some certification criteria must be harmonized and adjusted	17
2.3.1. The cause of action criterion must remain unchanged.....	18
2.3.2. The commonality criterion must remain unchanged	21
2.3.3. The identifiable class criterion must remain unchanged.....	23
2.3.4. The preferability criterion must be simplified	25
2.3.5. The adequate representation criterion must be adjusted to incorporate the second part of the preferability analysis	34
2.4. Evidence at the certification stage must remain limited	36
2.4.1. Evidence from plaintiffs	37
2.4.2. Evidence from defendants.....	38
3. Multi-jurisdictional class actions	40
3.1. Context and public policy considerations	41
3.2. Managing overlaps in multi-jurisdictional actions	43
3.2.1. Starting point: the <i>Uniform Act of 2007</i>	43
3.2.2. The uneven adoption of the provisions of the <i>Uniform Act of 2007</i>	45
3.2.3. The <i>Uniform Act of 2007</i> remains appropriate	48
3.2.4. There is no need to set up a multi-jurisdictional panel	53
3.3. The multiplicity of laws applicable on the merits.....	54
3.3.1. The opt-in approach should be ruled out	56
3.3.2. The ‘wait and see’ approach is problematic	57
3.3.3. A third option: taking into account the applicable law at certification.....	60
4. Next steps and proposed resolution.....	62

APPENDIX I – Provisions on certification.....	64
APPENDIX II – Provisions on multi-jurisdictional actions	79

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Introduction

[1] At its 2022 meeting, the ULCC’s Civil Section approved the launch of this Class Actions Project. Overseen by the Institut québécois de réforme du droit et de la justice (“IQRDJ”), the project aims to prepare “a Uniform Act adapted to the current realities of class actions” in order to implement a solution that “promotes access to justice and provides a coherent judicial response”.¹

[2] In February 2024, at the invitation of the IQRDJ, the undersigned formed a working group to carry out this work. The group is made up of practitioners and academics from a variety of backgrounds who work in several provinces as well as within the federal justice system:

- Prof. Jérémy Boulanger-Bonnely, chair (McGill University – Québec)
- Mtre Andréane Joannette-Laflamme (Justice Canada – Federal)
- Mtre Clara Poissant-Lespérance (Trudel Johnston & Lespérance – Québec)
- Mtre Emmanuelle Rolland (Audren Rolland – Québec)
- Prof. Gerard Kennedy (University of Alberta)
- Prof. Guillaume Laganière (Université du Québec à Montréal – Québec)
- Prof. Hassan Ahmad (York University – Ontario)
- Mtres Opeyemi Bello and Mandy Kinzel, alternate (Government of Alberta)
- Mtre Rima Kayssi (Justice Québec)²

[3] As a reminder, in its 2024 report,³ the working group identified five contemporary issues in class actions that it felt deserved further study and could potentially lead to

¹ Uniform Law Conference of Canada, “Minutes of the Civil Section, 2022”, Edmonton, August 2022 at 24, online (pdf): <<https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2022/Civil-Section-Minutes-2022.pdf>>.

² The members of the working group participate in their personal capacity and nothing contained in this report should be attributed to their respective employers. In the context of its 2025-2026 work, the working group was supported by Mtre Christina Croteau of the ULCC, Mtre Alexandra Pasca of the IQRDJ, Mr. William Gogas-Lirette as a research assistant working with the IQRDJ, and Mr. Nathan Penman as a research assistant working at McGill University. We thank them warmly for their invaluable support.

³ Uniform Law Conference of Canada, *Class Actions Progress Report*, 2024, online (pdf): <<https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2024/Class-Actions-Progress-Report-2024.pdf>>.

amendments to the *Uniform Class Proceedings Act*.⁴ At its meeting in August 2024, the ULCC mandated the working group to identify the public policy considerations underlying these issues and to propose ideas for potential amendments.

[4] In 2025, the working group presented a first policy report on three of these issues, i.e. overlapping class actions within the same jurisdiction; class counsel fees; and the enforcement of final judgments and settlements.⁵ At its meeting in August 2025, the ULCC accepted that report and asked the working group to continue its activities on the two remaining issues.⁶

[5] This report thus discusses the issues arising from the certification process and from multi-jurisdictional actions. The working group adopted the following method to analyze these three issues and identify proposed directions for future amendments:

- With the help of research assistants, detailed research memoranda were prepared to identify the relevant legislation, case law and doctrine in each province and territory, as well as at the federal level.
- A consultation was already conducted in 2025 to gather the views of class action practitioners on the issues identified by the working group, and the analysis of the results continued this year. A total of 129 respondents across Canada completed all or part of the survey. This report contains a summary of the main results which are relevant to the issues it addresses.
- Based on these research memoranda and survey results, the undersigned prepared preliminary reports on which the working group provided comments both in writing and at several meetings. These documents were combined to form this report.

[6] The report is divided into four parts:

- The first part presents an executive summary of the directions for amendments proposed by the working group.
- The second part analyzes issues arising from the certification process.

⁴ Uniform Law Conference of Canada, *Uniform Class Proceedings Act*, 1996, online (pdf): <<https://www.ulcc-chlc.ca/ULCC/media/EN-Uniform-Acts/Uniform-Class-Proceedings-Act.pdf>> (hereinafter “*Uniform Act*”). The amendments would be drafted at a later stage.

⁵ Uniform Law Conference of Canada, *Class Actions First Policy Report*, 2025, online (pdf): <<https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2025/Class-Actions-Policy-Report-2025.pdf>>.

⁶ Uniform Law Conference of Canada, *Resolutions of the Civil Section*, 2025 at 6, online (pdf): <<https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2025/2025-Civil-Section-Resolutions.pdf>>.

- The third part deals with issues arising from multi-jurisdictional actions.
- Finally, the fourth part sets out the next steps that the working group proposes to take in 2026-2027 and contains a draft resolution for adoption by the ULCC.

1. Executive summary of proposed directions for potential amendments

[7] The first theme addressed in this report is the **procedure for certifying class actions**.⁷ Three questions were analyzed by the working group, who makes the following recommendations.

[8] First, should certification remain a *preliminary step*, or should it be abolished or integrated into the merits phase? On this point, the working group favours the status quo. While the Australian experience suggests that a procedure without certification might be viable, it is unclear that it would offer significant advantages. On the contrary, its implementation in the Canadian context would entail significant risks, particularly for absent members.

[9] Second, what *criteria* should govern certification? In our view, the cause of action, commonality, and identifiable class criteria should remain unchanged. However, the preferability criterion should be simplified and refocused on its core principle: whether another realistic procedure is more appropriate than a class action to achieve the objectives of that procedural vehicle. Moreover, the proposed representative should be required to establish a workable plan for advancing the proceeding. While this criterion already exists in common law jurisdictions, it should replace the part of the preferability analysis that seeks to confirm that the class action will be manageable. This step will encourage the plaintiff to plan the next stages of the class action and to demonstrate the seriousness of their approach, without, however, conflating this analysis with that of the existence of other realistic and more appropriate procedures.

[10] Third, what *evidence* should be required and permitted at the certification stage? In our view, plaintiffs should be required to establish “some evidence” for each criterion, except the causes of action, a minimal and flexible requirement that already exists *de facto* across Canada. However, it does not seem appropriate to extend to the whole of Canada the Quebec rule requiring defendants to obtain the court’s prior permission to submit evidence.

⁷ The term “authorization,” used in Quebec, will be preferred in the French version of the report. The term “certification” will be used in English, as it prevails in common law. These terms are interchangeable.

[11] The second theme discussed in this report focuses on **multi-jurisdictional class actions**,⁸ i.e., those involving a class that includes some members located outside the jurisdiction seized of the action. Such actions may be national if the class includes members from elsewhere in Canada, or even international or global if it includes foreign members. These actions, which are increasingly common,⁹ raise a number of issues which span various areas of law.¹⁰ The report focuses on two aspects pertaining to the *management* of these actions.

[12] The first of these aspects concerns the *management of overlaps* between two or more concurrent proceedings brought in different jurisdictions. Proceedings are considered concurrent when they have the same or a similar subject matter and cover the same members, in whole or in part.¹¹ The question is whether courts have the necessary tools to avoid the negative consequences of such overlaps. On this point, the working group is of the view that the provisions of the *Uniform Act* remain adequate and that the solution lies in their uniform adoption across Canada, as well as in active collaboration between the judges, lawyers and parties involved.

[13] The second issue concerns the *management of the multiplicity of applicable laws*. The claims of individual members in a multi-jurisdictional action may be subject to multiple domestic laws depending on their situation and the applicable conflict-of-laws rules. This creates some complexity for the parties and the court when settling the action or ruling on the merits, and may sometimes jeopardize the recognition and enforcement of the judgment or settlement in other jurisdictions. The working group is of the view that this difficulty, which arises *downstream*, must be managed more rigorously *upstream*, at the certification stage. In practical terms, when a claimant seeks to have a multi-jurisdictional action certified, they should be required to identify the applicable law(s) and demonstrate their similarity, based on the features of the class they put forward.

⁸ The words “multi-jurisdictional” and “multi-territorial” are both used. In the English version of this report, we use the term “multi-jurisdictional” which appears more frequently.

⁹ André Ryan & Shaun Finn, “Une proposition plus modeste : soumissions bilingues au ministre de la Justice du Québec dans le cadre de réformes possibles au régime d’action collective” (2022) 17:2 Can Class Action Rev 157.

¹⁰ Law Commission of Ontario, *Class Actions: Objectives, Experiences and Reforms – Final Report*, Juillet 2019 at 30, online (pdf): <<https://www.lco-cdo.org/wp-content/uploads/LCO-Class-Actions-Report-FINAL-July-17-2019.pdf>> [*LCO Report*].

¹¹ We therefore exclude from our analysis *parallel* but *non-concurrent* actions, i.e., those which have a similar subject matter but involve different parties. For example, actions against the same defendants and relating to similar or identical facts may be brought in several provinces, but with provincial groups; these actions do not raise the same issues.

2. Certification of class actions

[14] Required in all Canadian jurisdictions before the action may proceed on the merits, certification seeks to confirm that the action is suitable for a collective determination.¹² To that end, courts apply criteria that are broadly similar across the country: they must conclude that there is a cause of action, at least one common issue, an identifiable class, and an adequate representative.

[15] However, some differences linger regarding a few key points. First and foremost, common law¹³ jurisdictions require that a class action be *preferable* to other available mechanisms, a criterion that Ontario has recently tightened, but which does not exist in Quebec. In addition, other seemingly similar criteria are worded differently across provinces, which sometimes alters their scope. The evidence required and permitted at the certification stage also varies between Quebec and the rest of Canada.

[16] These differences should be minimized as much as possible. Otherwise, actions that can legitimately be filed in several jurisdictions will likely be brought in the most plaintiff-friendly ones. This “forum shopping” phenomenon can place a heavy burden on certain parties and on the judicial systems of those provinces. This concern is not illusory: following the 2020 reform in Ontario, the number of new class actions filed in that province declined in favour of British Columbia.¹⁴

[17] More broadly, this harmonization exercise offers an opportunity to develop solutions to address the strong criticism that certification has attracted over the years. Despite its benefits for the protection of absent members and defendants, certification takes up considerable time and resources. It is sometimes criticized for its inefficiency and limited usefulness. A reform of the applicable legislative framework could address these issues, among others.

¹² See, e.g., *Doan v Clearview Inc.*, 2023 FC 1612 at para 31 (rev’d by 2025 FCA 133, but not on this point). Although it remains exceptional compared to the vast majority of civil actions, leave is also required in civil liability for false or inaccurate statements on the secondary securities market : *Securities Act*, CQLR, c V-1.1, s 225.4; *Securities Act*, RSO 1990, c S.5, s 138.8.

¹³ In this report, references to common law jurisdictions also refer to the federal courts, whose rules on the certification of class actions are more closely aligned with those of the common law provinces. The federal courts are not, however, purely common law courts, as they are sometimes required to apply Quebec civil law on the merits.

¹⁴ Data compiled by Aislyn Sax & Jasminka Kalajdzic, “Looking at the Numbers: Have Amendments to Ontario’s Certification Test Had a Chilling Effect?”, 8 May 2024, online: <<https://classactionclinic.com/looking-at-the-numbers-have-amendments-to-ontarios-certification-test-had-a-chilling-effect/>>. The trend appears to have continued in 2024, see “Class actions in Canada: a review of 2024”, *Torys LLP*, 20 March 2025, online: <<https://www.torys.com/our-latest-thinking/publications/2025/03/actions-collectives-au-canada>>.

[18] Admittedly, these issues of effectiveness, like the differences observed among the various Canadian jurisdictions, also depend on cultural and jurisprudential dynamics that legislative harmonization cannot entirely eliminate. Nevertheless, legislative criteria remain important in bridging these differences. With this in mind, the report examines three issues at the heart of the debate and proposes a few orientations that could inform amendments to the *Uniform Act*.

2.1. Context and public policy considerations

[19] Before addressing each of these issues, it is important to recall the public policy considerations underlying the certification procedure, as potential reforms may affect their balance. These considerations must be analyzed in light of the objectives of class actions, namely access to justice, judicial economy, and the modification of harmful behaviour.¹⁵ Ultimately, certification aims to protect three types of interests.

[20] First, certification protects **absent members**. In an opt-out regime such as ours, members are bound by the outcome of the action unless they opt out. In this context, refusing to certify a poorly drafted action prevents it from being rejected on its merits, thereby preserving the rights of members that may still be legitimate.¹⁶ Even when certification is granted, it protects members by setting the parameters of the action so that members may identify that they are part of the class and potentially opt out.¹⁷ In both cases, certification allows the judge to act as a guardian of the members' interests.

[21] On the other hand, certification may hinder access to justice for those same members if it becomes too burdensome. It may deter class counsel or those who finance them from bringing a meritorious action if the resources required are disproportionate to the amount at stake. Furthermore, the longer the certification process takes, the more difficult it may be to locate the members and pay them any compensation.¹⁸

[22] Second, certification also protects **defendants**. Class actions, due to their size and complexity, often require considerable resources to defend. In addition, they can have a reputational impact that may worsen over time. It is therefore preferable for defendants to have frivolous actions dismissed as soon as possible, or to limit the scope of meritorious ones when they appear too broad.¹⁹

¹⁵ See, e.g., *Desjardins Financial Services Firm Inc. v Asselin*, [2020 SCC 30](#) at para [201](#) (Côté J, dissenting in part but not on that point); *Western Canadian Shopping Centres Inc. v Dutton*, [2001 SCC 46](#) at paras [27-29](#).

¹⁶ Catherine Piché, *L'action collective : ses succès et ses défis*, Montréal, Thémis, 2019 at p 71 [Piché, *L'action collective*].

¹⁷ *Ibid.*

¹⁸ *Ibid* at pp 44-45.

¹⁹ *Ibid* at pp 71-72.

[23] On the other hand, an overly burdensome certification process may also harm defendants. The more the certification process becomes a “mini-trial,” the more resources defendants must spend on this stage, in addition to those invested in the merits of the case. Delays can also prolong the risk and uncertainty associated with the action longer than necessary, a burden that may weigh on the targeted company’s financial statements. That said, defendants with substantial resources may instead take advantage of a cumbersome certification process and the associated delays to wear down the plaintiffs. Each case is unique.

[24] Finally, certification has consequences for **judicial economy**. Certification is useful, on the one hand, to ensure that frivolous actions or those that are ill-suited to a collective form do not consume these precious resources longer than necessary. It is also helpful in defining the scope of certain actions and thus limiting the resources needed to conduct the debate on the merits.²⁰

[25] On the other hand, the certification stage itself requires considerable resources from both the parties involved and the justice system. Some of these resources would be invested in the merits in any event, but certification also requires resources for analyzing its specific criteria, which are more focused on form than substance. The more burdensome the certification process, the greater the risk of duplicating judicial resources that could be invested elsewhere.

[26] These considerations sometimes contradict each other. For example, from the perspective of the justice system, the more restrictive the process, the fewer class actions there will be and the fewer judicial resources they will require. On the other hand, such a process could exclude potentially meritorious claims or discourage their introduction, thereby undermining access to justice. Of course, individuals can always bring their own actions if they wish, but we know that this option is often illusory, particularly when the amounts at stake are small.

[27] Conversely, a permissive certification process may promote access to justice in some cases, but an overly permissive one will allow some poorly designed actions to proceed, and their rejection on the merits may harm members’ interests and divert resources away from other solutions to address the access to justice crisis.

[28] These tensions have sparked heated debate about the certification process. Each stakeholder favours some of these considerations over others. In this context, the great art

²⁰ Generally, see Catherine Piché, *Perspectives de réforme de l’action collective au Québec*, Université de Montréal, 2019 at pp 11-13 [*Piché Report*]; see also Veronica Aimar, “L’autorisation de l’action collective : raisons d’être, application et changements à venir” (2018) 13:1 *Can Class Actions Rev* 71 at pp 75-80.

that legislators and courts must master is striking the right balance that will protect members and defendants while remaining efficient and preserving judicial resources.

2.2. The preliminary certification stage must be maintained

[29] The first question that arises concerns the procedural sequence for certifying class actions: should certification remain a separate step prior to the hearing on the merits, or should it be integrated into the merits phase? In our opinion, the current model should be maintained.

2.2.1. The efficiency of certification: a matter of judicial practice?

[30] This question stems from concerns about resource duplication and the potential inefficiencies of the current two-step process. Let us first recall the main aspects of that process.

[31] In all Canadian jurisdictions, certification is a separate procedural step that must be decided before the action may proceed to the merits. This sequence reflects the provisions of the *Uniform Class Proceedings Act*, which provides as follows:

Plaintiff's class proceeding

2(1) A resident of [enacting jurisdiction] who is a member of a class of persons may commence a proceeding in the court on behalf of the members of that class.

(2) The member who commences a proceeding under subsection (1) must

(a) apply to the court for an order;

i. certifying the proceeding as a class proceeding, and

ii. subject to subsection (4), appointing the member as the representative plaintiff for the class proceeding;

[...]

Defendant's class proceeding

3 A defendant to two or more proceedings may, at any stage of one of the proceedings, make an application to a judge of the court for an order certifying the proceedings as a class proceeding and appointing a representative plaintiff.

[32] The common law provinces and the federal courts have adopted these provisions in substance.²¹ The action is first filed as an individual action, and the plaintiffs or

²¹ See the details of the provisions in the appendix to this report. *Federal Courts Rules*, SOR/98-106, ss 334.12-334.13 [**FC Rules**]; *Class Proceedings Act*, RSBC 1996, c 50, ss 2-3 [**BC Act**]; *Class Proceedings Act*, SA 2003, c 16.5, ss 2-3 [**AB Act**]; *The Class Actions Act*, SS 2001, c C-12.01, ss 4-5 [**SK Act**]; *The*

defendants may request certification so that it may proceed as a class action.²² In Quebec, the action may only be formally commenced after authorization,²³ but this conceptual difference does not affect the sequence: there, too, certification is a preliminary step.

[33] This two-step process has drawn sharp criticism. First and foremost, many have expressed concern that the resources and time invested in the certification process are often disproportionate to its actual usefulness.²⁴ Justice Bich of the Quebec Court of Appeal explained this concern as follows:

[TRANSLATION] [72] In practice, [...] the process of prior authorization of class actions, in its current form, consumes significant judicial resources, the scarcity of which is ill-suited to what appears to be a disproportionate effort in relation to the result achieved, which comes at the cost of an unbearable backlog. It is also a costly process for the parties, slow (sometimes even interminable), giving rise to debates which, in most cases, will in any event be taken up again on the merits if the action is authorized and will generate further interlocutory disputes. And that is not to mention the right of appeal that tops it all off, multiplying the opportunities to prolong the preliminary proceedings, a right of appeal that the legislature, for reasons that are difficult to grasp, has recently chosen to extend.

[73] Class actions are intended to facilitate access to justice, whereas, paradoxically, the prior authorization process in its current form too often hinders that access. And when it is not a hindrance, it is a formality whose exorbitant costs undermine its raison d'être, or a kind of procedural formality that does not allow for effective filtering. In any case, it generates widespread dissatisfaction, not to say—and I dare say it—frustration, which resonates throughout the judicial system. Some may be taking advantage of the situation (there have been countless denunciations of the class action “industry,” a new incarnation of “ambulance chasing”), but that cannot justify the status quo.²⁵

[34] However, these observations date back more than a decade and must be tempered. First, it is not certain that certification is truly just a “formality,” despite a persistent perception to that effect. Available data suggest that certification is denied in approximately 20 to 30 percent of cases, depending on the province.²⁶ These are all cases

Class Proceedings Act, CCSM, c C130, ss 2-3 [**MB Act**]; *Class Proceedings Act*, 1992, SO 1992, c 6, ss 2-3 [**ON Act**]; *Code of Civil Procedure*, CQLR, c C-25.01, art 574 [**CCP (QC)**]; *Class Proceedings Act*, RSNB 2011, c 125, ss 3-4 [**NB Act**]; *Class Proceedings Act*, SNS 2007, c 28, ss 4-5 [**NS Act**]; *Class Proceedings Act*, RSPEI 1988, c C-9.01, ss 3-4 [**PEI Act**]; *Class Actions Act*, SNL 2001, c C-18.1, ss 3-4 [**NL Act**]. Unlike other jurisdictions, Quebec does not allow defendants to apply for authorization, reserving this option for plaintiffs instead.

²² See, e.g., *ON Act*, ss 2(1)-2(2).

²³ *CCP (QC)*, arts 574, 583; see also *Haroch c Toronto-Dominion Bank*, [2023 QCCA 1282](#) at para 7.

²⁴ See, e.g., *Piché Report*, *supra* note 20 at pp 25-27; Aimar, *supra* note 20 at pp 92-99; Maxime Nasr et al, “La crise de la quarantaine de la procédure d’autorisation” (2020) 480 *Colloque national sur l’action collective : développements récents au Québec, au Canada et aux États-Unis* 153; Patrick Visintini, “If it Ain’t Broke, Don’t Fix it; if You’re Not Sure, Measure Again: Strengthening the Imperfect Mechanics of Class Authorization” (2020) 15:2 *Can Class Actions Rev* 115; see also Valérie Beaudin, “Quand on se compare, on se console : le Québec aurait-il trouvé le juste milieu ?” (2023) 544 *Colloque national sur l’action collective : développements récents au Québec, au Canada et aux États-Unis* 7 at p 71.

²⁵ *Charles c Boiron Canada inc.*, [2016 QCCA 1716](#) at paras 72-73; see also *Société québécoise de gestion collective des droits de reproduction (Copibec) c Université Laval*, [2017 QCCA 199](#) at para 136.

²⁶ Law Commission of Ontario, *Class Actions – Objectives Experiences and Reforms – Final Report*,

in which the procedure resulted in the dismissal of actions that would presumably not have been appropriate in a collective form. The benefit this represents for absent members, defendants, and the justice system should not be overlooked.²⁷

[35] Furthermore, even in the 70% to 80% of cases in which certification is granted, this preliminary step often helps refine the scope of the action by narrowing the class and the issues in dispute.²⁸ This is a benefit in terms of efficiency, but it is not reflected in the certification rate alone. Similarly, members of the working group noted that the certification stage sometimes encourages negotiations between the parties and facilitates the conclusion of settlements, which can also improve the efficiency of the proceedings, either by bringing them to a quicker resolution or by narrowing the scope of the issues.

[36] Certification is therefore useful to some extent, but does it require excessive efforts that unduly delay the action? It is true that a decade ago, it took an average of 2.5 years to obtain a certification decision in Quebec, a delay that reflected the resources mobilized at this stage.²⁹ The other provinces also experienced long delays.

[37] However, these efficiency issues can be partially resolved through changes to *judicial practice*, without reforming the certification sequence.³⁰ Quebec's example is instructive. Since 2018, applications for authorization filed in Montreal have been heard by a group of specialized judges who ensure rigorous case management. The limited data available, corroborated by certain stakeholders, suggest that this change in judicial practice has reduced delays.³¹ Judicial directives reflect this by stipulating that authorization must normally be decided within one year of the application being filed.³²

Toronto, 2019 at p 16, online (pdf): <<https://www.lco-cdo.org/wp-content/uploads/2019/07/LCO-Class-Actions-Report-FINAL-July-17-2019.pdf>> [**LCO Report**]; *Piché Report*, *supra* note 20 at pp 21-22; see also Aimar, *supra* note 20 at p 81, who reaches similar conclusions; see however Beaudin, *supra* note 24 at p 23 (suggesting that in Québec, in 2020 and 2021, the authorization rate was around 55%). These data are from a number of years ago, but more recent analyses suggest that the situation remains relatively stable, with certification rates hovering around 75% depending on the province: see “Class actions in Canada: a review of 2024”, *Torys LLP*, 20 March 2025, online: <<https://www.torys.com/our-latest-thinking/publications/2025/03/actions-collectives-au-canada>>.

²⁷ For a similar opinion, see *Cleaver v The Cadillac Fairview Corporation Limited*, 2025 BCSC 910 at para 102.

²⁸ *Piché Report*, *supra* note 20 at p 13.

²⁹ *Piché*, *L'action collective*, *supra* note 16 at p 46.

³⁰ The Law Commission of Ontario agreed with this position, see *LCO Report*, *supra* note 26 at p 37.

³¹ For some preliminary data, see *Piché Report*, *supra* note 20 at p 62; see also Barreau du Québec, *Mémoire – Consultation publique – Perspectives de réforme de l'action collective au Québec*, 28 September 2021 at pp 2-3, online (pdf): <<https://www.barreau.qc.ca/media/ckfndhag/memoire-perspectives-reforme-action-collective-quebec.pdf>>.

³² Cour supérieure du Québec, *Directives de la Cour supérieure Division de Montréal*, 1 January 2026, art 116, online (pdf): <https://coursuperieureduquebec.ca/fileadmin/cour-superieure/Districts_judiciaires/Division_Montreal/Directives_et_annexes_Division_de_Montreal/Directives_de_la_division_de_Montreal.pdf>.

Similarly, the members of the working group noted that a new practice of the Superior Court provides that defendants have 60 days to file their preliminary motions, which also improves the efficiency of the pre-authorization procedure. Several survey responses point in the same direction, suggesting that limits be imposed on the number of pages in certification submissions, or on the filing of multiple preliminary motions outside of the certification process.

2.2.2. Abolishing certification would not offer any clear benefits

[38] Nevertheless, authors and judges have proposed another, more radical option: abolishing the preliminary certification stage and integrating some of its components into the merits phase.³³ The certification criteria would remain the same, but they would not be analyzed through a separate, preliminary hearing.³⁴

[39] This model is applied in Australia. Class actions proceed without prior certification, and it is the defendants who may, if they wish, request the “decertification” of the action.³⁵ This may be done at any time and for various reasons, namely that the group consists of fewer than seven persons, that the cost of distribution would be excessive in relation to the amounts claimed, or that the interests of justice so require, in particular if the costs are disproportionate or if other proceedings are deemed preferable.³⁶

[40] This model, proposed by the Australian Law Reform Commission in 1988, was a response to the American and Quebec experiences and aimed to promote access to justice and efficiency.³⁷ However, its success has been mixed. For several decades, it appears

³³ *Charles c Boiron Canada inc.*, [2016 QCCA 1716](#) at paras [71](#), [74](#) (Bich J, concurring); *Whirlpool Canada c Gaudette*, [2018 QCCA 1206](#) at para [29](#); see also, more recently, *Desjardins Financial Services Firm Inc. v Asselin*, [2020 SCC 30](#) at paras [207-209](#) (Côté J, dissenting). The Law Commission of Ontario rejected this option without even analyzing it: *LCO Report*, *supra* note 26 at p 38.

³⁴ *Piché Report*, *supra* note 20 at pp 25-27; Aïmar, *supra* note 20 at pp 92-99; Nasr et al, *supra* note 24; Visintini, *supra* note 24; see also Beaudin, *supra* note 24 at p 71. It should be noted, however, that Professor Piché, in her monograph on the subject, argued instead for maintaining authorization: Piché, *L'action collective*, *supra* note 16 at p 110.

³⁵ *Federal Court of Australia Act 1976*, s [33C](#). State laws that provide for class actions generally follow the same model : Law Reform Commission of Western Australia, *Representative Proceedings – Project 103 – Final Report*, June 2015 at p 56, online (pdf): <https://www.wa.gov.au/system/files/2021-02/LRC-Project-103-Final-Report.pdf>. Sweden also adopts a model without prior authorization, but with an “opt-in” format, which limits the relevance of comparisons.

³⁶ *Federal Court of Australia Act 1976*, ss [33L](#), [33M](#), [33N](#).

³⁷ Australian Law Reform Commission, *Grouped Proceedings in the Federal Court*, [\[1988\] ALRC 46](#).

that the model led to a “proliferation of interlocutory motions”³⁸ which shifted the problem to a later stage in the action without solving it.

[41] The most recent data paint a more optimistic picture. They suggest that interlocutory motions have become less frequent as judges and parties have become accustomed to the new system.³⁹ Decertification requests were filed in only 28.4% of cases overall and were successful in only 19.1% of those cases, and even less so in recent years.⁴⁰ In short, the certification of class actions seems to generate less debate in Australia than in Canada.

[42] However, caution should be exercised before concluding that this relative effectiveness stems from the absence of a distinct certification stage. Other variables may influence a defendant’s decision to challenge certification, as well as the challenge’s success or failure, including the applicable criteria and their interpretation by the courts. It is therefore difficult to conclude that abolishing the preliminary certification stage in Canada would produce results similar to those achieved in Australia.

[43] With regard to delays, Morabito and Caruana conclude that decertification motions took an average of 195 days to be decided from the date the motion was filed (rather than from the date the action was filed).⁴¹ While this may seem faster than most certification applications in Canada, it should be noted that it is no longer uncommon for actions to be certified within one year of their filing (rather than from the filing of a subsequent motion for decertification). The difference is therefore a few months at most.

[44] Besides shorter delays, Australian commentators attribute two main advantages to the decertification model compared to the North American model.⁴² However, a more in-depth analysis reveals that these advantages may not be as tangible as they seem and that decertification also carries certain risks.

- First, decertification is presented as advantageous because it is invoked only when the defendant raises a challenge, thereby eliminating the need to debate every certification criterion in each case. However, this is also substantially the case in

³⁸ US Chamber Institute for Legal Reform, *Ripe for Reform: Improving the Australian Class Action Regime*, March 2014 at p 6, online (pdf): <https://instituteforlegalreform.com/wp-content/uploads/media/RipeForReformUS_web1.pdf>; see also Rachael Mulheron, “Justice Enhanced: Framing an Opt-Out Class Action for England” (2007) 70 *Modern L Rev* 550 at p 568; *P Dawson Nominees Pty Ltd v Multiplex Ltd*, [2007] FCA 1061 at para 18.

³⁹ Michael Lee, “Certification of Class Actions: A ‘Solution’ in Search of a Problem?”, 20 October 2017, online: <<https://www.fedcourt.gov.au/digital-law-library/judges-speeches/justice-lee/lee-j-20171020>>.

⁴⁰ Vince Morabito & Jane Caruana, “Can Class Action Regimes Operate Satisfactorily without a Certification Device? Empirical Insights from the Federal Court of Australia” (2013) 61 *Am J Comp L* 579 at pp 594-598.

⁴¹ *Ibid* at p 610.

⁴² Lee, *supra* note 39.

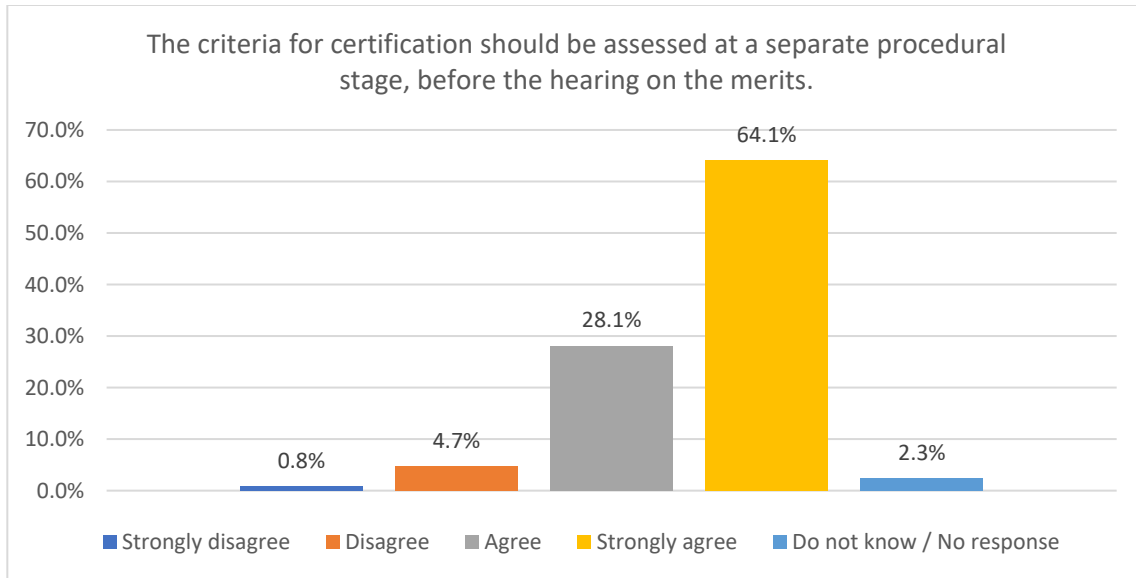
Canada, where defendants often concede that one or more of the certification criteria are met, limiting the debate in a similar way.

Furthermore, the certification process allows the judge to protect absent members by raising, if necessary, questions on points conceded by the defendants (although this rarely happens). In a decertification model, the judge still remains responsible, at every stage of the proceedings, for safeguarding the interests of absent members. However, unless the judge summons the parties on his or her own motion – which rarely happens – the judge will have the opportunity to intervene only if the defendants raise an objection relating to one or more of the certification criteria, or much later in the process. This entails a certain risk, unlike the certification model, which provides the judge with a proactive opportunity to intervene earlier if necessary.

- Second, decertification is presented as advantageous because it may be raised at any step of the proceedings, even after trial, and thus respond to issues that sometimes arise after the preliminary stage. However, this possibility of subsequent intervention also exists in Canada. All jurisdictions provide that the judge may, at any time, decertify an action if the certification criteria are no longer met.⁴³

[45] Finally, although not decisive, respondents to the survey conducted as part of this project—mainly class actions practitioners—are almost unanimous (92.2%) in their opinion that the certification criteria should continue to be assessed at a separate preliminary stage, whether they are acting for plaintiffs or defendants. This suggests that adopting a radically different model would represent a significant cultural shift:

⁴³ *CF Rules*, s 334.19; *BC Act*, s 10; *AB Act*, s 11; *SK Act*, s 12; *MB Act*, s 10; *ON Act*, s 10; *CCP (QC)*, art 588; *NB Act*, s 12; *NS Act*, s 13; *PEI Act*, s 13; *NL Act*, s 11. See, e.g., *Navartnarajah v FSB Group Ltd.*, [2023 ONSC 2574](#).



[46] All things considered, **we believe it is appropriate to maintain certification as a separate procedural step, prior to the merits debate.** A decertification model might yield some efficiency gains, although it is difficult to determine whether these gains result from the decertification mechanism itself or from other variables specific to the Australian context, such as the different certification criteria. That said, in the absence of a clear advantage, it is uncertain that a major reform that would limit the role of judges as guardians of the interests of members would be worthwhile.

2.3. Some certification criteria must be harmonized and adjusted

[47] The second question that arises concerns the criteria that should govern certification. The *Uniform Act* provides for the following criteria:

Class certification

4(1) Subject to subsections (2) and (3), the court must certify a proceeding as a class proceeding on an application under section 2 or 3 if

- (a) the pleadings disclose a cause of action,
- (b) there is an identifiable class of 2 or more persons,
- (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 resolution of the common issues, and
- (e) there is a representative plaintiff who
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.

[48] Two major issues arise. On the one hand, despite a certain convergence in case law,⁴⁴ the wording of these criteria is not uniform across Canada, which poses a harmonization problem. The most significant differences concern the preferability criterion (section 4(1)(d)), but nuances also affect the scope of other criteria, such as that relating to adequate representation.

[49] On the other hand, the scope of the criteria affects the balance among the protection of members, defendants, and judicial resources. More stringent criteria will reduce the number of actions, and therefore the resources invested in class actions overall, but could, at the same time, hinder access to justice and the modification of harmful behaviour. Conversely, overly lenient criteria may lead to the certification of meritless actions that may waste judicial resources and harm defendants and, possibly, absent members.

[50] The certification criteria play an important role to filter unmeritorious claims, even if it is generally accepted that the burden must be relatively low so that the analysis remains focused on the *form* of the action rather than its *merit*.⁴⁵

[51] The following sections therefore examine each criterion by comparing its wording and interpretation across jurisdictions, and then assessing whether any amendments to the *Uniform Act* would be appropriate.

2.3.1. The cause of action criterion must remain unchanged

[52] The first criterion of the *Uniform Act* requires that “the pleadings disclose a cause of action.” This criterion is adopted in substance in all common law provinces.⁴⁶ The federal courts’ rules require that “the pleadings disclose a reasonable cause of action,”⁴⁷ whereas in Quebec, “the facts alleged [must] appear to justify the conclusions sought”.⁴⁸

[53] Despite these differences in wording, courts have applied this criterion relatively consistently across Canada.

⁴⁴ See, e.g., *Doan v Clearview Inc.*, [2023 FC 1612](#) at para 28 (rev’d by [2025 FCA 133](#), but not on that point; see, e.g., para 19).

⁴⁵ *Doan v Clearview Inc.*, [2023 FC 1612](#) at para 31 (rev’d by [2025 FCA 133](#), but not on that point). Members of the working group rightly point out that certification is not the only mechanism for preventing frivolous claims: regulating the fees of class counsel can also achieve this objective, insofar as if judges limit the fees that can be claimed following a claim that achieves little or none of the objectives of class actions, the market could eventually regulate itself and reduce the frequency of such claims.

⁴⁶ *BC Act*, s 4(1)(a); *AB Act*, s 5(1)(a); *SK Act*, s 6(1)(a); *MB Act*, s 4(a); *ON Act*, s 5(1)(a); *NB Act*, s 6(1)(a); *NS Act*, s 7(1)(a); *PEI Act*, s 6(1)(a); *NL Act*, s 5(1)(a).

⁴⁷ *FC Rules*, s 334.16(1)(a) (emphasis added).

⁴⁸ *CCP (QC)*, art 575(2).

[54] In common law jurisdictions, they have concluded that the test “is the same as it would be in any motion to strike: the pleadings must disclose a reasonable cause of action, assuming that the facts as pled are true”.⁴⁹ In other words, the court must ask itself “whether it is “plain and obvious” that the claim must fail”⁵⁰ or “whether the claim as pleaded has no reasonable prospect of success”.⁵¹ This also means that the court must not assess the merits of the action.⁵²

[55] In Quebec, the criterion is formulated differently, but the approach is similar. The courts must exercise a “screening” role,⁵³ taking the facts as proven.⁵⁴ The judge must “screen out *only* those applications which are “frivolous”, “clearly unfounded” or “untenable” ... [or] have no prospect of success”.⁵⁵ The plaintiff, therefore, does not have to prove that their claim is based on a sufficient factual basis.⁵⁶

[56] It should be noted that these statements of principle are largely similar, if not identical, in both legal traditions. **No harmonization issue, therefore, seems to justify amendments to the *Uniform Act* in relation to this criterion.**

[57] Nevertheless, perhaps because this criterion most frequently leads to the rejection of applications for authorization in Quebec,⁵⁷ its interpretation has been the subject of much debate. As Finn explains in detail, its shifting application has revealed that it is subjective and discretionary, regardless of the exact terms used to set the threshold.⁵⁸

[58] In addition, some stakeholders—especially on the defence side—believe that this threshold is too low to effectively filter out frivolous or meritless actions. This phenomenon is reflected in the survey we conducted: while 63.5% of respondents believe that the criterion should remain unchanged, 29.4% believe that it should be tightened or

⁴⁹ *Salna v Voltage Pictures, LLC*, [2021 FCA 176](#) at para 72; see also *Welshman v Central Regional Health Authority*, [2024 NLSC 35](#) at para 10 (leave to appeal granted [2025 NLCA 31](#)).

⁵⁰ *Pioneer Corp. v Godfrey*, [2019 SCC 42](#) at para 27; *Cleaver v The Cadillac Fairview Corporation Limited*, [2025 BCSC 910](#) at para 97.

⁵¹ *Ibid*; see also *Medellin v Lucion*, [2025 BCSC 180](#) at para 22 for a more detailed list of applicable principles (essentially, one must argue based on facts and not speculation, but solid proof is not necessary).

⁵² *Hollick v Toronto (City)*, [2001 SCC 68](#) at para 16.

⁵³ *L’Oratoire Saint-Joseph du Mont-Royal v J.J.*, [2019 SCC 35](#) at paras 7, 56; *Infineon Technologies AG v Option consommateurs*, [2013 SCC 59](#) at paras 59-65; *Vivendi Canada Inc. v Dell’Aniello*, [2014 SCC 1](#) at para 37; *Desjardins Financial Services Firm Inc. v Asselin*, [2020 SCC 30](#) at paras 27, 55.

⁵⁴ *L’Oratoire Saint-Joseph du Mont-Royal v J.J.*, [2019 SCC 35](#) at paras 22, 24.

⁵⁵ *Ibid* at para 56.

⁵⁶ *Infineon Technologies AG v Option consommateurs*, [2013 SCC 59](#) at para 128; *L’Oratoire Saint-Joseph du Mont-Royal v J.J.*, [2019 SCC 35](#) at para 58; *Desjardins Financial Services Firm Inc. v Asselin*, [2020 SCC 30](#) at para 81; *Haroch c Toronto-Dominion Bank*, [2023 QCCA 1282](#) at para 8.

⁵⁷ *Piché Report*, *supra* note 20 at pp 15, 23.

⁵⁸ Shaun E Finn, “Chronique sur le paragraphe 575(2) C.p.c. – L’historique trouble et le futur incertain du critère de la « cause défendable »” (2022) *Repères*, EYB2022REP3502, online (pdf): <<https://www.datocms-assets.com/161919/1757077418-eyb2022rep3502.pdf>>.

strongly tightened. The latter group represents defendants exclusively or, to a lesser extent, both defendants and plaintiffs.

[59] These stakeholders propose tightening the cause of action criterion by drawing on securities law. In this area, secondary market actions must similarly be granted leave before proceeding, but the applicable criterion requires demonstrating “that the action is in good faith and there is a reasonable possibility that it will be resolved in favour of the plaintiff”.⁵⁹ This burden is heavier and requires more robust evidence than the current standard for class actions.

[60] Before considering such a reform, it must first be established that the current criterion is problematic, i.e., that too many frivolous or meritless class actions are getting past the screening stage. This has yet to be proven. While it is obviously possible that some unmeritorious actions will slip through the cracks, Professor Piché (as she then was) concluded that there is no evidence of an increase in the number of frivolous cases or cases involving *de minimis* claims despite the low bar.⁶⁰ In short, it is not certain that the current criterion is clogging up our courts with frivolous or doomed cases.

[61] Conversely, raising the threshold would pose significant risks to access to justice and to judicial resources.⁶¹ As the Law Commission of Ontario noted when it recently rejected this proposal, a higher threshold would predictably lead to the filing of more voluminous evidence, as plaintiffs would want to meet the higher burden imposed on them, and defendants would want to respond to that evidence.⁶² This risk becomes even more real when considering the scale of certain recent class-action certification proceedings in securities cases conducted under the more stringent criterion.⁶³

[62] Such a reform would therefore risk, once again, turning the certification process into a “mini-trial,” with all the costs and delays that this entails. We do not believe that this is appropriate.

⁵⁹ *Securities Act*, CQLR, c V-1.1, s [225.4](#); *Securities Act*, RSO 1990, c S.5, s [138.8](#).

⁶⁰ *Piché Report*, *supra* note 20 at p 14. This conclusion is based on data specific to Quebec, but Prof. Piché notes in passing that the fact that the cause of action criterion is used more frequently in Quebec than in Ontario to dismiss claims at the certification stage may suggest that there are fewer frivolous cases in the latter province. It is difficult, however, to find data that would allow one to draw a definitive conclusion on this point.

⁶¹ See, e.g., *ibid* at p 27; *LCO Report*, *supra* note 26 at p 45.

⁶² *LCO Report*, *supra* note 26 at p 36.

⁶³ See *LCO Report*, *supra* note 26 at p 43.

2.3.2. The commonality criterion must remain unchanged

[63] The *Uniform Act* also requires that “the claims of the class members raise a common issue, whether or not the common issue predominates over issues affecting only individual members”. Subject to a few drafting nuances, this criterion has been adopted in all common law jurisdictions:

- It has been adopted almost without change by British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, and Newfoundland and Labrador.⁶⁴
- The Federal Courts Rules adopt slightly different wording but to the same effect, requiring that “the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members”.⁶⁵
- Finally, Ontario and Prince Edward Island simply require that “the claims or defences of the class members raise common issues,”⁶⁶ without mentioning predominance. This last aspect is governed by the preferability criterion, which we will turn to later.

[64] Despite these differences, common law courts agree that the criterion is intended to ensure that the class action “will avoid duplication of fact-finding or legal analysis”. A common issue must therefore be sufficiently precise and “necessary to the resolution of each class member’s claim”. However, it is not essential that all members be in the same situation or receive the same answer to a common issue, as long as the success of one leads to the success of the others.⁶⁷

[65] Quebec, for its part, requires that “the claims of the members of the class raise identical, similar or related issues of law or fact”.⁶⁸ This difference in wording does not appear to alter the analysis in substance. As in other provinces, this criterion only requires

⁶⁴ *BC Act*, s 4(1)(c); *AB Act*, s 5(1)(c); *SK Act*, s 6(1)(c); *MB Act*, s 4(c); *NB Act*, s 6(1)(c); *NS Act*, s 7(1)(c); *NL Act*, s 5(1)(c).

⁶⁵ *FC Rules*, s 334.16(1)(c).

⁶⁶ *ON Act*, s 5(1)(c); *PEI Act*, s 6(1)(c).

⁶⁷ *Western Canadian Shopping Centres Inc. v Dutton*, [2001 SCC 46](#) at paras 39-40; *Brake v Canada (Attorney General)*, [2019 FCA 274](#) at paras 76-77; *Cleaver v The Cadillac Fairview Corporation Limited*, [2025 BCSC 910](#) at para 191, citing *Finkel v Coast Capital Savings Credit Union*, [2017 BCCA 361](#) at para 22; *Trotman v WestJet Airlines Ltd.*, [2022 BCCA 22](#) at para 59; *Evans v General Motors of Canada Company*, [2019 SKQB 98](#) at para 55 (rev’d by [2024 SKCA 87](#), but not on that point); *Welshman v Central Regional Health Authority*, [2024 NLSC 35](#) at paras 68-69 (leave to appeal granted [2025 NLCA 31](#)).

⁶⁸ *CCP (QC)*, art 575(1).

identifying one issue common to the members of the class,⁶⁹ without requiring that this issue be sufficient to resolve the dispute completely.⁷⁰ The issue must simply “advance the resolution of the litigation with respect to all the members of the group” and “not play an insignificant role in the outcome of the case”.⁷¹

[66] That said, the application of this criterion is more flexible in Quebec.⁷² A “related” or “similar” issue will satisfy the Quebec criterion without necessarily satisfying the common law criterion of a “common issue.”⁷³ In some cases, this may open the door to more heterogeneous classes and actions with a more limited common foundation. Despite this difference in degree, the Quebec criterion still requires that [TRANSLATION] “it be demonstrated that one aspect of the dispute lends itself to a collective decision and that, once that aspect has been decided, the parties will have settled a significant part of the dispute”.⁷⁴ Once again, this is similar to the common law criterion, so the actual difference does not seem fundamental.

[67] How, then, can we explain that this criterion is one of the most frequently invoked grounds for refusing to certify class actions in Ontario, but not in Quebec?⁷⁵ This appears to be a question of evidence rather than a difference in the criterion itself. Indeed, as some authors note, courts in certain provinces, including Ontario, sometimes require plaintiffs to prove not only the commonality of an issue, but also the very existence of that issue on the facts.⁷⁶

[68] We will return to this evidentiary issue, but this requirement largely explains why the common issues criterion more often leads to the denial of class action certification in Ontario. However, we believe it is flawed because it leads the court to examine the merits of the causes of action, which are closely linked to the common issues.⁷⁷ This approach risks turning certification into a “mini-trial” and hindering access to justice.

⁶⁹ *Sibiga c Fido Solutions inc.*, [2016 QCCA 1299](#) at para [122](#) (« les demandes des membres soulèvent des questions de droit ou de fait identiques, similaires ou connexes »).

⁷⁰ *L’Oratoire Saint-Joseph du Mont-Royal v J.J.*, [2019 SCC 35](#) at para [15](#).

⁷¹ *Ibid* at para [18](#), citing *Vivendi Canada Inc. v Dell’Aniello*, [2014 SCC 1](#) at para [60](#).

⁷² *Vivendi Canada Inc. v Dell’Aniello*, [2014 SCC 1](#) at para [54](#); *L’Oratoire Saint-Joseph du Mont-Royal v J.J.*, [2019 SCC 35](#) at para [44](#). The members of the working group also confirm this impression.

⁷³ *Vivendi Canada Inc. v Dell’Aniello*, [2014 SCC 1](#) at para [53](#).

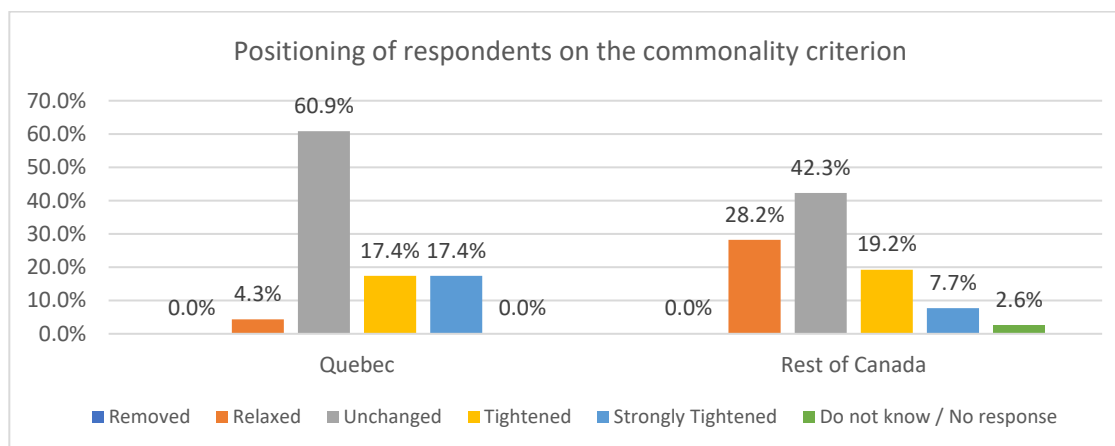
⁷⁴ *Charles c Boiron Canada inc.*, [2016 QCCA 1716](#) at para [74](#) (« démontrer qu’un aspect du litige se prête à une décision collective et qu’une fois cet aspect décidé, les parties auront réglé une part non négligeable du litige »); *Société québécoise de gestion collective des droits de reproduction (Copibec) c Université Laval*, [2017 QCCA 199](#) at para [136](#); *Whirlpool Canada c Gaudette*, [2018 QCCA 1206](#) at para [29](#).

⁷⁵ *Piché Report*, *supra* note 20 at p 23.

⁷⁶ Mohsen Seddigh, “The Commonality Test in Class Action Certification : The Battleground of Screening Merits and Fair Process” (2023) 19:1 Can Class Action Rev 39; Jacob Medvedev, Randy C Sutton & Linda Fuerst, “Two Steps Forward, One Step Back: ‘Some Basis in Fact’ and the Certification of Common Issues” (2022) 17:2 Can Class Actions Rev 33.

⁷⁷ *Ibid*.

[69] To a certain extent, the survey results reveal a similar sentiment. While respondents in Quebec overwhelmingly believe the criterion should remain unchanged (60.9%), this proportion drops to 42.3% in the rest of Canada, where 28.2% believe it should be relaxed. While these figures are not conclusive, they may reflect some dissatisfaction with the stricter approach taken by some common law courts.



[70] **Ultimately, we do not believe it is appropriate to change this criterion**, given its largely uniform application across the country, subject to the recommendations we will make later regarding the applicable standard of proof.

2.3.3. The identifiable class criterion must remain unchanged

[71] The *Uniform Act* further requires that “there is an identifiable class of 2 or more persons.” With a few minor variations, this criterion has been adopted by the federal courts and by all common law provinces except Saskatchewan.⁷⁸ That province simply requires that “there is an identifiable class,” without specifying its size; however, it is in the nature of a “class” that it be composed of at least two members.⁷⁹

[72] For common law courts, this criterion is used primarily to identify the persons who will be bound by the action and must be notified of its existence.⁸⁰ Consequently, it is primarily used to define the class’s scope and to ensure that individuals can determine whether they belong to it.⁸¹ To do this, the class must be defined objectively, without reference to the merits of the action, and there must be a rational link between the

⁷⁸ *FC Rules*, s 334.16(1)(b); *BC Act*, s 4(1)(b); *AB Act*, s 5(1)(b); *MB Act*, s 4(b); *ON Act*, s 5(1)(b); *NB Act*, s 6(1)(b); *NS Act*, s 7(1)(b); *PEI Act*, s 6(1)(b); *NL Act*, s 5(1)(b).

⁷⁹ *SK Act*, s 6(1)(b).

⁸⁰ *Doan v Clearview Inc.*, [2025 FCA 133](#) at para 13, citing *Western Canadian Shopping Centres Inc. v Dutton*, [2001 SCC 46](#) at para 38.

⁸¹ *Doan v Clearview Inc.*, [2025 FCA 133](#) at para 14, citing *Sanis Health Inc. v British Columbia*, [2024 SCC 40](#) at para 68.

common issues and the proposed definition of the class.⁸² However, it is not necessary to determine precisely the number and identity of the members of the class.⁸³

[73] In Quebec, there is no criterion that requires an identifiable class to exist,⁸⁴ although article 576 of the *Code of Civil Procedure* provides that the authorization judgment must describe that class. On this basis, courts have concluded that, even before analyzing the criteria in article 575 *CCP*, an identifiable class must be established using the same factors as in common law:

[TRANSLATION] 1. The definition of the class must be based on objective criteria; 2. The criteria must have a rational connection with the claims common to all members of the class; 3. The definition of the class must not be circular or vague; 4. The definition of the class must not be based on one or more criteria that depend on the outcome of the class action on the merits.⁸⁵

[74] In both legal traditions, therefore, unless the proposed definition does not allow members to be identified with sufficient certainty, this criterion will generally be satisfied and will play only a minimal—if any—role in the certification analysis. For Piché, in fact, this criterion “can hardly justify the rejection of an application for authorization in its current interpretation”.⁸⁶ Nevertheless, it plays a useful role in circumscribing the action when necessary.

[75] **Therefore, we do not believe it is necessary to propose amendments to the *Uniform Act* regarding the identifiable class criterion,** given the high level of uniformity already achieved across the country and the usefulness of this criterion in identifying the class. In fact, 67.5% of survey respondents believe that this criterion should remain unchanged, although here too there is some polarization between those representing plaintiffs (14.9% in favour of removing or relaxing the criterion and 83.6%

⁸² *Hollick v Toronto (City)*, [2001 SCC 68](#) at para [17](#); *Western Canadian Shopping Centres Inc. v Dutton*, [2001 SCC 46](#) at para [38](#); see *Doan v Clearview Inc.*, [2025 FCA 133](#) at para [16](#); *Brake v Canada (Attorney General)*, [2019 FCA 274](#) at para [71](#); *Cleaver v The Cadillac Fairview Corporation Limited*, [2025 BCSC 910](#) at para [177](#); *Evans v General Motors of Canada Company*, [2024 SKCA 87](#) at para [95](#); *Welshman v Central Regional Health Authority*, [2024 NLSC 35](#) at para [61](#) (leave to appeal granted [2025 NLCA 31](#)).

⁸³ *Doan v Clearview Inc.*, [2023 FC 1612](#) at para [53](#) (rev'd by [2025 FCA 133](#), but not on that point).

⁸⁴ The criterion set out in paragraph 575(3) of the *Code of Civil Procedure*, sometimes referred to as the ‘numerosity criterion’, nevertheless serves a similar purpose, albeit using different wording. By requiring that it be shown that “the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings”, this paragraph necessarily requires that there be a group comprising at least a few people.

⁸⁵ *Rozon c Les Courageuses*, [2020 QCCA 5](#) at para [55](#), citing *George c Québec (Procureur général)*, [2006 QCCA 1204](#) at para [40](#) (« 1. La définition du groupe doit être fondée sur des critères objectifs; 2. Les critères doivent avoir un rapport rationnel avec les revendications communes à tous les membres du groupe; 3. La définition du groupe ne doit être ni circulaire ni imprécise; 4. La définition du groupe ne doit pas s'appuyer sur un ou des critères qui dépendent de l'issue du recours collectif au fond »).

⁸⁶ *Piché Report*, *supra* note 20 at p 19.

in favour of leaving it unchanged) and defendants (42.9% in favour of leaving it unchanged and 57.14% in favour of tightening or strongly tightening it).

2.3.4. The preferability criterion must be simplified

[76] The *Uniform Act* requires that “a class proceeding would be the preferable procedure for the resolution of the common issues” but does not specify the factors to be considered in this analysis. As explained below, this criterion is the least harmonized across the country (2.3.4.1). Over time, it has taken on a scope and complexity that are ill-suited to the screening role of certification, especially since an analysis of nearly 200 certification decisions suggests that it is decisive in only a few cases (2.3.4.2). We recommend amending the *Uniform Act* to simplify this criterion by reducing it to its simplest form (2.3.4.3). This harmonized criterion would be particularly helpful in common law jurisdictions, since the particularities of the Quebec regime may make its adoption in that province more complex, although that would ultimately depend on a public policy decision (2.3.4.4).

2.3.4.1. The criterion is one of the least harmonized

[77] All common law jurisdictions have adopted the preferability criterion, but some of them have modified it. Three approaches coexist.

[78] The first approach is modelled on the *Uniform Act*. Saskatchewan has adopted the criterion without substantial change,⁸⁷ and Manitoba has adopted a slightly different version that requires a class action to “be the preferable procedure for the fair and efficient resolution of the common issues”.⁸⁸ In both jurisdictions, there are no provisions specifying the factors to be considered.

[79] The second approach adopts a similar criterion while adding a non-exhaustive list of factors to consider. Thus, the federal courts and courts in British Columbia, Alberta, New Brunswick, and Newfoundland and Labrador are required to consider at least the following five factors:

(2) All relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether

a) the questions of law or fact common to the class members predominate over any questions affecting only individual members;

b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings;

⁸⁷ *SK Act*, s 6(1)(d).

⁸⁸ *MB Act*, s 4(d) (emphasis added).

- c) the class proceeding would involve claims that are or have been the subject of any other proceeding;
- d) other means of resolving the claims are less practical or less efficient; and
- e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.⁸⁹

[80] Despite their differences, these first two approaches converge in the case law. Whether under the more detailed version or the more summary criterion of the *Uniform Act*, courts conduct their analysis through the lens of the objectives of class actions and by applying the following principles:

- (a) the preferability requirement has two concepts at its core:
 - (i) first, whether the class proceeding would be a fair, efficient and manageable method of advancing the claim; and
 - (ii) second, whether the class proceeding would be preferable to other reasonably available means of resolving the claims of class members;
- (b) this determination requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole; and
- (c) the preferability requirement can be met even where there are substantial individual issues; the common issues need not predominate over individual issues.⁹⁰

[81] Two jurisdictions add to these principles an analysis of proportionality. In Alberta, the courts consider this as an additional factor,⁹¹ whereas in British Columbia, they use it as a lens through which they analyze the legislative factors.⁹²

[82] The third approach is that of Ontario. In 2020, the province decided to raise the bar for the preferability criterion by stipulating that

- a class proceeding is the preferable procedure for the resolution of common issues under clause (1)
- (d) only if, at a minimum,

⁸⁹ *FC Rules*, s 334.16(2); *BC Act*, s 4(2); *AB Act*, s 5(2); *NB Act*, s 6(2); *NS Act*, s 7(2); *NL Act*, s 5(2). The New Brunswick and Nova Scotia acts add to these criteria “any other matter the court considers relevant,” which essentially has the same effect as the introductory note in the other provinces, namely that the list is not exhaustive.

⁹⁰ *Brake v Canada (Attorney General)*, [2019 FCA 274](#) at para 85, citing *Wenham v Canada (Attorney General)*, [2018 FCA 199](#) at para 77; *Setoguchi v Uber BV*, [2023 ABCA 45](#) at paras 63-64; *Evans v General Motors of Canada Company*, [2024 SKCA 87](#) at para 69; *Boucher et al. v The Government of Manitoba et al.*, [2023 MBKB 182](#) at para 103; see also *Hollick v Toronto (City)*, [2001 SCC 68](#) at paras 27-31. On that last point, see also *Tidd v New Brunswick*, [2021 NBQB 208](#) at para 109. On the point that predominance is not determinative, see also *Singh v Glaxosmithkline*, [2022 ABKB 762](#) at para 47.

⁹¹ *Setoguchi v Uber B.V.*, [2021 ABQB 18](#) at para 119 (conf’d [2023 ABCA 45](#)), citing *Berg v Canadian Hockey League*, [2017 ONSC 2608](#) at paras 187-188 (conf’d in part [2019 ONSC 2106](#)); see also *Flesch v Apache Corporation*, [2021 ABQB 491](#) at paras 118-121 (noting however that proportionality must be used with great caution; conf’d on this point [2022 ABCA 374](#)).

⁹² *Cleaver v The Cadillac Fairview Corporation Limited*, [2025 BCSC 910](#) at paras 213-214.

- a) it is superior to all reasonably available means of determining the entitlement of the class members to relief or addressing the impugned conduct of the defendant, including, as applicable, a quasi-judicial or administrative proceeding, the case management of individual claims in a civil proceeding, or any remedial scheme or program outside of a proceeding; and
- b) the questions of fact or law common to the class members predominate over any questions affecting only individual class members.⁹³

[83] These same criteria of *superiority* and *predominance* were adopted by Prince Edward Island.⁹⁴

[84] Although the courts have had few opportunities to apply this renewed criterion so far,⁹⁵ the case law continues to cite the principles applicable in other provinces,⁹⁶ but it raises the bar⁹⁷ by examining “(a) whether the design of the class action is manageable as a class action; (b) whether there are reasonable alternatives; (c) whether the common issues predominate over the individual issues; and (d) whether the proposed class action is superior (better) to the alternatives”.⁹⁸ Among other things, this means that a “class action will not be preferable if, at the end of the day, claimants remain faced with the same economic and practical hurdles that they faced at the outset of the proposed class action”.⁹⁹

[85] It must be concluded from this overview that the preferability criterion, although well established in all common law jurisdictions, takes many forms and deserves to be harmonized. But then, which version should be adopted?

2.3.4.2. The criterion is both complex and of limited use

[86] A review of the case law reveals that the current criterion, which was intended to be simple when the *Uniform Act* was adopted, has taken on a scope and complexity that are inconsistent with the screening role of certification. In fact, courts often analyze each factor in painstaking detail, even when the certification fails on other grounds.

[87] More specifically, whether or not a list of factors is found in the applicable legislation, courts generally consider

⁹³ *ON Act*, s 5(1.1) (emphasis added).

⁹⁴ *PEI Act*, s 6(2).

⁹⁵ Any action brought *before* the adoption of this reform proceeds under the old rules, meaning that several judgments issued since 2020 do not apply the new preferability criterion: see *ON Act*, s 39(1).

⁹⁶ *Banman v Ontario*, [2023 ONSC 6187](#) at paras [313-315](#).

⁹⁷ *Ibid* at paras [317-318](#).

⁹⁸ *Ibid* at para [320](#).

⁹⁹ *Ibid* at para [321](#).

[TRANSLATION] (a) the nature of the proposed common issues and their significance in relation to the claim as a whole; (b) the individual issues that remain after the common issues have been determined; (c) the factors listed in the statute; (d) the complexity and manageability of the proposed action as a whole; (e) alternative procedures for addressing the members' claims; (f) the likelihood that certification will achieve the underlying objectives of the Act; and (g) the rights of the plaintiff(s) and defendant(s).¹⁰⁰

[88] The parties must therefore prepare arguments and adduce some evidence on each of these points, which considerably slows down the certification process. This burden is made even more complex by the fact that, unlike the other certification criteria, preferability is expressly discretionary and largely subjective.¹⁰¹

[89] One might think that this complexity is a necessary evil. Given that preferability is one of the criteria most often cited for refusing to certify class actions in Ontario,¹⁰² one might assume that without such a robust criterion, actions that do not lend themselves to a collective form would be permitted to go ahead.

[90] A review of a sample composed of the 200 most recent decisions relating to certification and citing preferability suggests the opposite.¹⁰³ In the vast majority of cases in which certification was dismissed on the basis of preferability, this conclusion was superfluous, since at least one other criterion was not met.

[91] In the few cases where preferability was decisive, it had a much more limited use. It is useful to examine these cases one by one:

- In *Reichert v Canada (Attorney General)*, [2026 BCCA 9](#), RCMP members complained about the disclosure of notes taken during consultations with their psychologist. Although the Court doubted the viability of the claims due to Crown immunity and the statute of limitations, it did not rule on these issues. Instead, it concluded that it would be preferable for the members to lodge a claim with their

¹⁰⁰ *Piché report*, *supra* note 20 at pp 35-36, referring to *Cloud v Canada (Attorney General)* (2004), [73 OR \(3d\) 401](#) at para [52](#) (« (a) la nature des questions communes proposées et leur importance en relation avec la réclamation dans l'ensemble; (b) les questions individuelles qui restent après la détermination des questions communes; (c) les facteurs énumérés à la Loi; (d) la complexité et le caractère gérable de l'action proposée dans l'ensemble; (e) les procédures alternatives pour adresser les réclamations des membres; (f) les chances que la certification puisse permettre de remplir les objectifs sous-jacents à la Loi; et (g) les droits du(des) demandeur(s) et du(des) défendeur(s) »).

¹⁰¹ See, e.g., *Setoguchi v Uber BV*, [2023 ABCA 45](#) at para [69](#).

¹⁰² *LCO Report*, *supra* note 26 at p 17.

¹⁰³ The search path on CanLII combines the keywords “EXACT(preferable) OR EXACT(preferability)” and a reference to either of the articles relating to preference or certification in each common law province and before the federal courts or to the *Fischer* decision, in which the Supreme Court examined preferability in the most detail. A total of 504 decisions were identified through this search. The 200 most recent decisions were analyzed. When a decision was appealed, both the trial decision and the appellate ruling were analyzed to provide a more comprehensive sample of the reasoning associated with preferability.

pension plan for disability benefits, a procedure that was not affected either by Crown immunity or the statute of limitations.

- In *Carcillo v Ontario Major Junior Hockey League*, [2025 ONCA 652](#), the Court concluded that the action would be unmanageable due to its size and complexity, especially because the representative had failed to provide a workable plan for advancing the proceeding under the adequate representative criterion.
- In *Lac La Ronge Indian Band v Canada (Attorney General)*, [2025 SKKB 147](#), an Indigenous band wished to represent others in an action concerning the consequences of the opioid crisis. The Court concluded that a representative action was preferable in order to implement treaty rights in a manner that was consistent and respectful of Indigenous governance.
- In *Voltage Pictures, LLC v Salna*, [2025 FCA 131](#), a rare reverse class action against individuals alleged to have infringed the copyright of film producers, the Court raised doubts about the causes of action and common issues. It concluded that individual actions would be preferable, since the few common issues were minor or uncontested, and that, to establish each person's liability, it would be necessary to prove that they had actually downloaded the film in question.
- In *Canada v Stonechild*, [2025 FCA 105](#), a case concerning services provided to Indigenous children off reserve, the Court concluded by a majority that, given that these services were provided by the provinces, a class action before the federal courts would be unmanageable because provincial immunity would prevent the relevant documents from being compelled. Actions in each province were therefore preferable and had in fact been brought at the time of the hearing before the Federal Court of Appeal.
- *Medellin v Lucion*, [2025 BCSC 180](#), concerned a claim for fees paid for a fictitious work permit program. The Court concluded that the only common issue concerned the existence of a fiduciary duty, but that the breach of that duty was an individual issue, so that individual (and potentially consolidated) actions were preferable.
- *Berenguer v Sata Internacional - Azores Airlines, S.A.*, [2023 FCA 176](#), involved a claim regarding flight delays. In a short analysis, the Court concluded that the Canadian Transportation Agency's "informal facilitation process and formal adjudicative process" were preferable.
- In *Setoguchi v Uber BV*, [2023 ABCA 45](#), the action concerned the alleged theft of personal information from Uber and Uber's alleged failure to protect that

information. The only common issue was the potential breach of contract stemming from Uber's failure to notify the individuals concerned about the theft of their data, but the damages were only nominal and depended on each individual's situation. According to the Court, individual actions were preferable to a class action.

- In *Coles v FCA Canada Inc.*, [2022 ONSC 5575](#), the Court concluded that the recall of airbags by an automobile manufacturer, at no cost to the members concerned, was a preferable alternative to a class action.
- In *VLM v Dominey*, [2022 ABQB 299](#), the Court concluded that individual actions were preferable to a class action, since each individual had to prove that the defendant—a priest responsible for their care at the time—had sexually assaulted them and that Alberta and the synod were liable. Importantly, the class consisted of only ten to fifteen members. The Alberta Court of Appeal, however, overturned this decision, concluding instead that a class action was preferable ([2023 ABCA 261](#)).
- In *Fisher v Richardson GMP Limited*, [2022 ABCA 123](#), a case involving misconduct in portfolio management, the Court concluded that the only common issues were not in dispute, leaving only individual issues, and that individual actions were preferable.
- In *Dewey v Kruger Inc.*, [2021 NLSC 118](#), a nuisance case concerning flooding allegedly caused by the defendants, the Court concluded that the common issues were negligible and that individual actions were preferable, given the small size of the class (approximately twenty houses had been affected). However, this decision was overturned on appeal (*Dewey v Corner Brook Pulp and Paper Limited*, [2025 NLCA 8](#)).
- Lastly, in *Sharp v Royal Mutual Funds Inc.*, [2021 BCCA 307](#), a case involving the illegal sale of mutual funds, the Court concluded that the common issue of breach of contract was of minor importance and that individual actions were preferable for resolving the other issues.

[92] These cases suggest that the preferability criterion is decisive in two specific situations. First, in most of these cases, the court was of the view that another type of procedure was better suited to achieving the objectives of class actions, either:

- because only one common issue of negligible importance was at stake, so that individual actions – according to the judges concerned – offered the same access

to justice as a class action while requiring fewer judicial resources (*Salna; Medellin; Setoguchi; Fisher; Sharp*);

- because another procedure was not affected by the same obstacles as a class action, such as Crown immunity, a statute of limitations, or issues pertaining to Indigenous governance or collective rights (*Reichert; Lac La Ronge; Stonechild*); or
- because another procedure could fully satisfy the members, whether it be a product recall or an administrative remedy (*Berenguer; Coles*).

In all these cases, the determining factor, to put it simply, was not the preferability of a class action but rather the existence of another type of procedure that was more appropriate for achieving the same objectives.¹⁰⁴

[93] On the other hand, in one of the cases studied, a class action was not preferable because of its “unmanageable” nature, due to its complexity and scope (*Carcillo*). This became evident primarily from the litigation plan presented by the representative under the fifth certification criterion, so we will address this point in the context of that criterion.

2.3.4.3. The proposed orientations

[94] In light of these observations, three options are possible for reforming the preferability criterion set out in the *Uniform Act*.

[95] First, it does not seem appropriate to adopt the restrictive criterion implemented in Ontario and Prince Edward Island. Allowing class actions to proceed only if they are *superior* and if the common issues are *predominant* treats class actions as an exceptional procedure. This approach may promote judicial economy by limiting the number of class actions heard on the merits. However, this will necessarily come at the expense of access to justice for the individuals concerned.

[96] Indeed, the Ontario criterion focuses on the class action and does not require that another procedural vehicle be accessible to class members. Consequently, if a class action is not *superior* to other means, it will not be certified even if the other options—such as an individual action—are illusory.¹⁰⁵ In 2026, with class actions now well established in

¹⁰⁴ It should be noted, however, that the courts often assess the availability of these alternative recourses in the abstract, without necessarily considering their actual accessibility to the members concerned. This shortcoming in current case law is discussed below and leads us to propose that the realistic nature of the other recourse should be taken into account in the preferability analysis.

¹⁰⁵ *Piché Report*, *supra* note 20 at p 40.

the Canadian legal landscape, it seems anachronistic to treat them as an exceptional procedure.¹⁰⁶ It should also be noted that the Law Commission of Ontario rejected the idea of introducing this new preferability criterion into Ontario law, and that only two stakeholders recommended it during their consultation process.¹⁰⁷

[97] On the other hand, it does not seem appropriate to repeal the preferability criterion altogether. As the above analysis confirms, it remains useful in a minority of cases, at least in common law jurisdictions. (We will return to the case of Quebec.) Nevertheless, its analysis is complex, costly, and subjective, and is ultimately relevant only in relatively isolated cases.

[98] Consequently, **we suggest retaining the preferability criterion in the *Uniform Act*, but simplifying it to its core principle: a class action should be certified when it meets the other criteria unless another realistic procedure, judicial or otherwise, is more appropriate for achieving the objectives pursued by class actions.**

[99] This amendment would shift the focus of the analysis to what really matters. Instead of asking whether a class action offers advantages over other dispute resolution mechanisms,¹⁰⁸ it is more helpful to ask whether an *alternative* mechanism is more advantageous for access to justice, judicial economy, and the modification of harmful behaviour. This criterion would likely lead to the same result in the above-cited cases, but would greatly simplify the analysis in other cases.

[100] This amendment would also recognize that class actions are now an ordinary, rather than exceptional, procedural vehicle, and would place the burden on defendants to establish that another procedure would be more appropriate. Under the current test, defendants need only raise another possible option for the burden to shift to the plaintiffs to establish the preferability of a class action.¹⁰⁹

[101] The proposed criterion would also require the defendants to establish that the alternative procedure they consider more appropriate is realistic. This aspect of the criterion reflects the importance of access to justice in the analysis. Indeed, it is not enough to assert that, in the abstract, the members of the proposed class could bring an individual action. Class actions exist precisely because, in many cases, various obstacles make such a recourse illusory even though it is theoretically available. Thus, the new

¹⁰⁶ On this point, see *L'Oratoire Saint-Joseph du Mont-Royal v J.J.*, [2019 SCC 35](#) at para 8.

¹⁰⁷ See Jasminka Kalajdzic & Adam S Zimmerman, « Local Reform or Legal Transplant: Ontario's Amended Certification Test » (26 April 2024) at p 9, online: <<https://dx.doi.org/10.2139/ssrn.4808628>>.

¹⁰⁸ *Setoguchi v Uber BV*, [2023 ABCA 45](#) at para 70; *Dewey v Corner Brook Pulp and Paper Limited*, [2025 NLCA 8](#) at paras 129-130.

¹⁰⁹ *Berenguer v Sata Internacional - Azores Airlines, S.A.*, [2023 FCA 176](#) at para 88.

preferability criterion we propose will require particular attention to be paid to the actual prospect of the putative members having access to the alternative procedure presented as more appropriate, to ensure that the application of this criterion does not ultimately lead to a complete lack of recourse.¹¹⁰

[102] It must be acknowledged that this proposal will not satisfy all stakeholders, but it is unlikely that any proposal will. Indeed, the survey responses regarding preferability (outside Quebec) are strongly polarized depending on whether respondents are acting for defendants or plaintiffs, and effectively align with their clients' interests:

- In relation to the superiority of the class action, 61.5% of respondents on the defence side believe that the criterion should be tightened or strongly tightened, while 62.2% of respondents on the plaintiff side believe that it should be removed or relaxed.
- In relation to the predominance of common issues, 73.1% of respondents on the defence side believe that the criterion should be tightened or strongly tightened, while 73.3% of respondents on the plaintiff side believe that it should be removed or relaxed.

[103] In this context, a preferability criterion that consolidates existing case law while simplifying the analysis appears to be a viable compromise.

2.3.4.4. The case of Quebec

[104] What about Quebec, where the preferability criterion applied in common law jurisdictions does not exist? Its addition to the *Code of Civil Procedure* has been proposed by some observers,¹¹¹ but the proposal is polarizing: while those in defence generally favour it,¹¹² those on the plaintiff side oppose it.¹¹³ This same phenomenon is

¹¹⁰ See, e.g., *V.L.M. v Dominey Estate*, [2023 ABCA 261](#) at para 42, which carries out such an analysis.

¹¹¹ *Piché Report*, *supra* note 20 at pp 63-66 (or a similar proportionality criteria).

¹¹² See, e.g., Bureau d'assurance du Canada, *Mémoire sur la consultation publique – Perspectives de réforme de l'action collective au Québec*, September 2021 at p 5, online (pdf): https://bac-quebec.qc.ca/media/6003/20210929_memoire_consultation-perspectives-reforme-action-collective.pdf; Médicaments Novateurs Canada & Medtech Canada, *Mémoire dans le cadre de la consultation publique du ministère de la Justice du Québec « Perspectives de réforme de l'action collective au Québec »*, 30 September 2021 at pp 11, 16, online (pdf): <http://innovativemedicines.ca/wp-content/uploads/2021/10/Reforme-de-laction-collective-au-Quebec-Memoire-de-Medicaments-novateurs-Canada-et-MedTech-Canada.pdf>; Association internationale des avocats en défense, *Mémoire en réponse à la consultation publique portant sur les perspectives de réforme de l'action collective au Québec*, September 2021 at pp 31-32, online (pdf): https://www.iadclaw.org/assets/1/6/Class_Action_Reform_Submission_-_Quebec_2021_-_french.PDF.

¹¹³ See, e.g. Centre québécois du droit de l'environnement, *Consultation publique Perspectives de réforme de l'action collective au Québec – Mémoire*, September 2021 at p 4, online (pdf):

reflected in the results of our survey: 68.8% of respondents in defence agree or strongly agree that a preferability criterion should be added,¹¹⁴ while 90.9% of respondents on the plaintiff side oppose it or strongly oppose it.¹¹⁵

[105] In this context, the simplified preferability criterion we propose could be seen as a possible compromise. It would nevertheless represent a substantial change that must be considered carefully, as it interacts with other well-established aspects of the Quebec regime. For example, in 2002, the legislature sought to reduce the burden of proof at the authorization stage by removing the requirement for an affidavit on the part of the plaintiff and making the defence's evidence subject to prior permission by the court.¹¹⁶ However, the preferability criterion risks prompting the defence to adduce evidence seeking to establish that another procedure is more appropriate, which in turn risks leading the claimant to adduce evidence in response to those allegations. In short, introducing this criterion could call into question the nature of the Quebec authorization process, which is designed as a minimally onerous screening mechanism.

[106] Given these circumstances specific to Quebec, several members of the working group from the province have expressed doubts as to whether it is appropriate to introduce a preferability criterion there, even in a simplified form. Ultimately, this is a matter of legislative policy that should be resolved following wider discussions within the province.

[107] In any event, whether or not the proposed criterion is eventually adopted in Quebec, the proposed amendment to the *Uniform Act* remains, in our view, relevant if only because it offers a uniform solution for common law jurisdictions.

2.3.5. The adequate representation criterion must be adjusted to incorporate the second part of the preferability analysis

[108] Finally, the *Uniform Act* requires that “there is a representative plaintiff who (i) would fairly and adequately represent the interests of the class, (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and (iii) does not have, on

<https://www.bibliotheque.assnat.qc.ca/DepotNumerique_v2/AffichageFichier.aspx?id=270442>; Environnement Jeunesse, *L'action collective comme outil de justice sociale et environnementale*, 1 September 2021 at p 4, online (pdf): <https://enjeu.qc.ca/wp-content/uploads/2026/02/Memoire_ENJEU_MJQ.pdf>.

¹¹⁴ 25% are however uncertain.

¹¹⁵ However, it is important to note that the sample size for these segments is small (45 for Quebec, comprising 16 on the defence side, 22 on the plaintiff side, 3 on both, and 5 without association).

¹¹⁶ *An Act to reform the Code of Civil Procedure*, SQ 2002, c 7, s 150, amending the *Code of Civil Procedure*, CQLR, c C-25, art 1002 (repealed and replaced by art 574 *CCP (QC)*).

the common issues, an interest that is in conflict with the interests of other class members.”

[109] With a few minor differences, this criterion has been adopted in all common law provinces.¹¹⁷ Federal courts, for their part, add to the three factors listed in the *Uniform Act* that the representative plaintiff or applicant must “provide[] a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record”.¹¹⁸

[110] In general, common law courts interpret this criterion uniformly. They refuse to examine in detail the claimant’s skills and circumstances,¹¹⁹ but consider “the motivation of the representative, the competence of the representative’s counsel, and the capacity of the representative to bear any costs that may be incurred by the representative in particular (as opposed to by counsel or by the class members generally)”.¹²⁰ They also ensure that the representative and their lawyer put forward a workable plan to advance the proceeding.

[111] In Quebec, the criterion is much more flexible. It simply requires that “the class member appointed as representative plaintiff is in a position to properly represent the class members”.¹²¹ The courts apply this criterion liberally, examining three factors: “(a) an interest in the suit, (b) competence and (c) an absence of conflict with the class members”.¹²² Furthermore, the courts specify that “no proposed representative should be excluded unless his or her interest or competence is such that the case could not possibly proceed fairly”.¹²³

[112] As Bich-Carrière rightly points out, that interpretation results in the criterion now being of minimal use since the representative [TRANSLATION] “can be dismissed [...] does not call the shots, [...] can be replaced [and] is therefore of little significance”.¹²⁴

¹¹⁷ *BC Act*, s 4(1)(e); *AB Act*, s 5(1)(e); *SK Act*, s 6(1)(e); *MB Act*, s 4(e); *ON Act*, s 5(1)(e); *NB Act*, s 6(1)(e); *NS Act*, s 7(1)(e); *PEI Act*, s 6(1)(e); *NL Act*, s 5(1)(e).

¹¹⁸ *FC Rules*, s 334.16(1)(e).

¹¹⁹ *Cleaver v The Cadillac Fairview Corporation Limited*, [2025 BCSC 910](#) at para [223](#).

¹²⁰ *Western Canadian Shopping Centres Inc. v Dutton*, [2001 SCC 46](#) at para [41](#); see *Cleaver v The Cadillac Fairview Corporation Limited*, [2025 BCSC 910](#) at para [224](#); *Welshman v Central Regional Health Authority*, [2024 NLSC 35](#) at paras [90ff](#) (leave to appeal granted [2025 NLCA 31](#)).

¹²¹ *CCP (QC)*, art 575(4).

¹²² *L’Oratoire Saint-Joseph du Mont-Royal v J.J.*, [2019 SCC 35](#) at para [32](#).

¹²³ *Ibid*; see also *Infineon Technologies AG v Option consommateurs*, [2013 SCC 59](#) at para [149](#); *Sibiga c Fido Solutions inc.*, [2016 QCCA 1299](#) at paras [97-129](#).

¹²⁴ Laurence Bich-Carrière, “L’émancipation du représentant à l’action collective : anecdotes, mascottes et litotes” (2024) 58 RJTUM 3 at p 62 (« peut être écarté [...] ne mène pas le bal, [...] peut être remplacé [et] fait dès lors figure d’anecdote »). See also *Walter c Savonitto et Ass. inc.*, [2024 QCCA 1170](#), which highlights some of the difficulties that can arise when the criterion of adequate representation does not play the role it should (appeal heard by the Supreme Court of Canada, No. 41532).

Professor Piché (as she then was) shares this observation, which she deplors, and proposes strengthening this criterion, since [TRANSLATION] “adequate representation is at the heart of class actions or representative actions and serves to legitimize them”.¹²⁵

[113] Respondents to our survey, for their part, largely want the criterion to remain unchanged (65.2% in Quebec and 65.4% in the rest of Canada), although 30.4% of Quebec respondents want it to be tightened, compared to 12.8% in the rest of Canada. This difference partly reflects the rift between defence and demand, but it may also reflect the fact that the Quebec criterion is particularly lax.

[114] It seems to us that the core of this criterion, both in Quebec and in the rest of Canada, is to confirm that the representative—and, indirectly, their lawyers—will be able to conduct the action fairly and effectively and adequately represent the members. Of course, the representative’s case also provides the factual basis at the certification stage, and they must not have a conflict of interest with the other members of the class, but more than that, **they should be able to establish—with the help of their lawyers—that they have a workable plan to advance the proposed action.** This will lead the representative to consider carefully the next steps of their action, and to demonstrate the seriousness of their approach.

[115] However, in response to certain criticisms made in doctrine,¹²⁶ it should be clarified that the proposed plan should be examined flexibly, leaving room for plausible but as yet untested methods of establishing the elements of the cause of action, since this has appeared to pose a problem in some cases.

[116] As noted above, this criterion—which already exists in common law jurisdictions—is sometimes associated with the second part of the preferability analysis, which aims to determine whether the action will be manageable. Although courts have separated these two criteria conceptually,¹²⁷ it can helpfully replace this aspect of the preferability analysis, thereby simplifying the test as a whole.

2.4. Evidence at the certification stage must remain limited

[117] The final question concerns the evidence presented in connection with an application for certification. This issue is linked to the concern for efficiency mentioned in the introduction: the more voluminous the evidence, the more likely the certification is

¹²⁵ *Piché Report*, *supra* note 20 at p 20 (la « représentation adéquate est au cœur de l’action collective ou représentative, et sert à la légitimer »).

¹²⁶ *ON Act*, s 5(1)(e)(ii); see Kate Boyle & Nicholas Hooper, “The Unworkability of the Workable Methodology Standard” (2021) 16:2 Can Class Action Rev 93.

¹²⁷ *Brake v Canada (Attorney General)*, [2019 FCA 274](#) at paras [108-109](#).

to turn into a “mini-trial,” with the delays that this entails, whereas more limited evidence will generally tend to narrow the scope of the debate and the hearing on certification.

[118] A distinction must be made between evidence in support of the claim (2.4.1) and evidence adduced by the defendants (2.4.2).

2.4.1. Evidence from plaintiffs

[119] The *Uniform Act* contains no provisions governing evidence at the certification stage. The same is true for all Canadian provinces. However, the courts have filled this gap by developing their own standards of proof.

[120] Common law courts require that plaintiffs establish “some basis in fact”¹²⁸ for every certification criterion, except the cause of action. Indeed, requiring a factual basis for causes of action would amount to turning the certification into a “mini-trial,” which is viewed as undesirable.¹²⁹

[121] In Quebec, no evidence is technically required to establish the authorization criteria, which must be assessed on the assumption that the allegations are true. In this sense, the evidence required in Quebec is often considered less demanding than in the rest of Canada.¹³⁰ That said, even in Quebec, allegations that are “vague, general, or imprecise” must be supported by “some evidence” in order to be considered.¹³¹ *Infineon* even strongly suggests that “mere allegations” should also be supported by “some evidence”,¹³² even if recent case law reiterates that [TRANSLATION] “if the facts alleged are sufficiently clear, precise and specific, the claimant is not required to provide ‘some evidence’ in support of their allegations”.¹³³ Be that as it may, applications for authorization in Quebec are often supported by some evidence in practice, such as a contract between a consumer and a merchant, communications between them, reports from public authorities, etc.

[122] In light of these developments, **it would be appropriate to codify in the *Uniform Act* that the certification criteria, with the exception of the cause of action, must be supported by some evidence adduced by the plaintiff.** However, it should be

¹²⁸ *Pioneer Corp. v Godfrey*, [2019 SCC 42](#) at para 27; *Setoguchi v Uber BV*, [2023 ABCA 45](#) at para 19.

¹²⁹ *Hollick v Toronto (City)*, [2001 SCC 68](#) at para 25; *Fisher v Richardson GMP Limited*, [2022 ABCA 123](#) at paras 35-36.

¹³⁰ *LCO Report*, *supra* note 26 at pp 46-47; Mohsen Seddigh, “Class Action Certification: ‘Meaningful Screening Device’ and the ‘Compensable Loss’ Theory” (2021) 17:1 Can Class Action Rev 193.

¹³¹ *Infineon Technologies AG v Option consommateurs*, [2013 SCC 59](#) at paras 67, 134; *L’Oratoire Saint-Joseph du Mont-Royal v J.J.*, [2019 SCC 35](#) at para 59.

¹³² *Ibid*; see also *Nashen c Station Mont-Tremblant*, [2022 QCCA 415](#).

¹³³ See *Homsy v Google*, [2023 QCCA 1220](#) at para 24, citing *L’Oratoire Saint Joseph du Mont Royal v J.J.*, [2019 SCC 35](#) at para 59.

specified that this standard is significantly lower than the usual standard in civil matters, since at the preliminary stage, plaintiffs do not have the usual means of finding evidence, in particular, the possibility of conducting discovery.¹³⁴

[123] Codifying this standard of proof would have the advantage of limiting the risk that courts will require evidence of the existence of a cause of action, a practice that occurs occasionally and that several survey respondents decry. Indeed, as Seddigh notes, courts in some provinces tend to require a factual basis demonstrating not only that at least one issue is common, but also that it exists, which amounts to requiring a factual basis for the corresponding cause of action.¹³⁵ However, it has been well established, notably by the Supreme Court of Canada, that such a factual basis should not be required in order to avoid turning the certification into a debate on the merits.¹³⁶

[124] Similarly, it does not seem appropriate to raise the standard to require proof on a balance of probabilities. As the Law Commission of Ontario rightly noted, such a requirement would encourage the filing of more voluminous evidence and thus, most likely, an increase in the costs and delays associated with the certification process. This would be contrary to the objectives of class actions.¹³⁷ Furthermore, if more robust evidence were required in the application, the plaintiffs would probably have to be given the means to gather such evidence, for example, through examinations or requests for document disclosure, which would further exacerbate the efficiency issue.

2.4.2. Evidence from defendants

[125] The *Uniform Act* contains no provisions relating to evidence from the defendants. The same is true in common law jurisdictions, where defendants are free to submit evidence at the certification stage, subject to the usual relevance criteria.

[126] A review of case law and several survey responses shows that in some cases, this evidence is particularly voluminous and tends to turn the certification stage into a “mini-trial,” with the corresponding costs and delays. The same situation prevailed in Quebec at the turn of the 2000s, when the Minister of Justice noted that [TRANSLATION] “debates on the authorization of class actions [...] had taken on ‘disproportionate proportions,’ such

¹³⁴ See, e.g., *Salamh v Alberta Health Services*, [2025 ABKB 383](#).

¹³⁵ Seddigh, *supra* note 76. The author refers, among other decisions, to *Dine v Biomet*, [2015 ONSC 7050](#) at para 15; *Hyundai Auto Canada Corp v Engen*, [2023 ABCA 85](#) at paras 12, 45; *Kane v FCA US LLC*, [2022 SKQB 69](#) at para 148; *Jensen c Samsung Electronics Co Ltd.*, [2023 FCA 89](#) at para 91.

¹³⁶ *Pro-Sys Consultants Ltd v Microsoft Corporation*, [2013 SCC 57](#) at para 110; see also *Hodge v Neinstein*, [2017 ONCA 494](#) at para 113; *Setoguchi v Uber BV*, [2023 ABCA 45](#) at para 28. See *contra* Medvedev, Sutton & Fuerst, *supra* note 76 (who argue in favour of the two-step test and therefore of analyzing the merits of the existence of common issues).

¹³⁷ *LCO Report*, *supra* note 26 at pp 36, 47.

that it could be considered that the trial was taking place at the authorization stage rather than on the merits”.¹³⁸

[127] Faced with this situation, Quebec chose to make the admissibility of evidence in defence at the authorization stage subject to prior permission from the court. Article 574 *in fine* of the *Code of Civil Procedure* provides as follows:

574. [...] An application for authorization may only be contested orally, and the court may allow relevant evidence to be submitted.

[128] Since then, this provision has enabled judges to ensure that the evidence submitted in defence truly addresses the authorization criteria—and therefore the *form* of the action—rather than the merits of the case. In a few rare cases, this provision has also been used to deny a plaintiff the opportunity to submit new evidence at a late stage.¹³⁹ Although this mechanism requires judicial intervention in order to file evidence, this can be done quickly and efficiently when the case is well-managed.

[129] The working group discussed the possibility of including this limitation in the *Uniform Act* but concluded that the change is not appropriate.

[130] On the one hand, this limit specific to Quebec is linked to other aspects of its regime – notably the more flexible interpretation of certain authorization criteria and the somewhat more limited evidence required of plaintiffs – which we do not suggest incorporating into the *Uniform Act*. In other words, while this limitation works reasonably well in the Quebec context, it is not clear that it would have the same effect in the rest of Canada or, at the very least, its implementation would require a more substantial analysis that takes into account the other dimensions of the applicable regime.

[131] Furthermore, imposing such a limit across the rest of Canada would risk provoking a significant outcry and giving the impression that certification does not protect defendants' interests. The working group's discussions themselves highlighted the significance of the issue and the reactions that might arise if this amendment were proposed.

[132] Finally, the data from the survey conducted as part of the project are inconclusive on this point, which also militates in favour of a cautious approach and therefore against the introduction of such a limit into the *Uniform Act*.¹⁴⁰

¹³⁸ See Piché, *L'action collective*, *supra* note 16 at p 70.

¹³⁹ *Lévesque c Nissan Canada inc.*, [2019 QCCS 609](#).

¹⁴⁰ Respondents from outside of Quebec on the defence side want the admissibility criteria for evidence on their side to remain unchanged (41.7%) or be tightened (45.8%), while those on the plaintiff side want

3. Multi-jurisdictional class actions

[133] The second theme discussed by the working group this year focuses on **multi-jurisdictional class actions**,¹⁴¹ i.e., those involving a class that includes some members located outside the jurisdiction seized of the action. As noted in the introduction, such actions may be national if the class includes members from elsewhere in Canada, or even international or global if it includes foreign members.

[134] This report does not claim to resolve every issue arising from these actions, which are becoming more frequent than ever.¹⁴² For example, it assumes that multi-jurisdictional actions are constitutional, even though several authors have expressed different views on this point.¹⁴³ Similarly, the report does not address the courts' jurisdiction *simpliciter* over members located in other jurisdictions, an issue governed by

those same criteria to remain unchanged (40%) or be relaxed (42.2%). It is possible that the question was misunderstood in a context where there are currently no limits on the admissibility of evidence from the defence. In Quebec, where the permission requirement is in force, we see significant fault lines between the plaintiff and defence sides. Respondents on the plaintiff side want this requirement to remain unchanged (59.1%) or be tightened (40.9%). Conversely, 56.3% of respondents on the defence side want the admissibility of their evidence to be relaxed.

¹⁴¹ The words “multi-jurisdictional” and “multi-territorial” are both used. In the English version of this report, we use the term “multi-jurisdictional” which appears more frequently. It should also be noted that, to make it easier to read sections 2 and 3 of the report separately, references are repeated in full in this section, even when they also appear in the previous section.

¹⁴² For example, one issue that appears less critical concerns the possibility for a representative to withdraw from a local case in order to make way for a national case, whether or not that case has been settled; this issue rarely arises and is not a priority for the working group: see e.g. *Bourgeois c Electronics Arts Inc.*, [2023 QCCS 910](#); *École communautaire Belz c Bernard*, [2021 QCCA 905](#) at para 27. The doctrine of *forum non conveniens*, which is rarely applied in the context of class actions, is also excluded from this report: see Justin Manoryk & Gordon McKee, “Canada’s Evolving Response to Overlapping Multi-Jurisdictional Class Actions” (2021) 88 Def Counsel J 1 at 3.

¹⁴³ In a recent judgment, the Supreme Court of Canada upheld the constitutionality of a multi-jurisdictional action, although the context differed from that of a “typical” action, as a statute specifically granted the province the right to bring such an action: *Sanis Health Inc. v British Columbia*, [2024 SCC 40](#). Nevertheless, the analysis reinforces the view that multi-jurisdictional actions are likely constitutional. See also *Thorpe v Honda Canada, Inc.*, [2011 SKQB 72](#) at paras 111–141; Catherine Piché, “Class Actions in Quebec: Highlights of a Unique Procedure” (2021) 22:3 Rev Eletrônica Direito Processual 170 at 186-187; Peter W Hogg & S Gordon McKee, “Are National Class Actions Constitutional? – A Reply To Walker” (2013) 31 NJCL 183; Joshua Krusell, “Are National Class Actions Constitutional? A Reply to Walker, Hogg and McKee” (2012) 70:1 UT Fac L Rev 9; JM Martin, “Sui Generis: Common Law Solutions to Constitutional Problems in Multijurisdictional Class Proceedings” (2011) 69:1 UT Fac L Rev 55; Janet Walker, “Are National Class Actions Constitutional? A Reply to Hogg and McKee” (2010) 48:1 Osgoode Hall LJ 144; Peter W Hogg & S Gordon McKee, “Are National Class Actions Constitutional?” (2009) 26:2 NCJL 279; Colin K. Irving & Mathieu Bouchard, “National Opt Out Class Actions: A Constitutional Assessment” (2009) 26:1 NCJL 111; Jeffrey Heylock, “The National Class as Extraterritorial Legislation” (2009) 32:2 Dal LJ 253; S Gordon McKee & Jeff Galway, “Constitutional Considerations Concerning National Class Actions” in Law Society of Upper Canada, *Special Lectures 2001. Constitutional and Administrative Law*, Toronto, Irwin Law, 2002, 27.

the rules of private international law of each jurisdiction.¹⁴⁴ Instead, the report focuses on two aspects pertaining to the *management* of class actions that the working group has identified as priorities, namely the management of overlaps between two or more concurrent proceedings brought in different jurisdictions, and the management of the multiplicity of laws applicable to such an action.

3.1. Context and public policy considerations

[135] Before examining these two issues in greater detail, it is worth identifying a few public policy considerations underpinning the analysis.

[136] First, in terms of benefits, multi-jurisdictional actions can **help to achieve the three objectives** of class actions, namely access to justice, judicial economy, and the modification of undesirable behaviour.¹⁴⁵ For example, if a company breaches a contract imposed uniformly on its Canadian clients, it seems more efficient for the justice system – and indeed for the defendants – to settle all claims in a single action.¹⁴⁶ The associated costs are then spread across a wider class, which promotes access to justice, and the consequences of such action may encourage a change in undesirable behaviour.¹⁴⁷ As the ULCC acknowledged in 2007,¹⁴⁸ multi-jurisdictional actions should, in principle, be permitted, as they often contribute to the objectives of class actions.¹⁴⁹

[137] However, these actions come with significant challenges that the applicable legal framework should seek to minimize.¹⁵⁰ First and foremost, they are **often more complex**.

¹⁴⁴ See e.g. Émilien Morin-Lévesque, “L’autorisation d’actions collectives mondiales au Canada : deux solitudes aux antipodes” (2022) 18:2 Can Class Action Rev 233 at 238-252; Paul-Erik Veel & Graham Henry, “Absent Foreign Claimants in Canadian Class Actions: Where to After *Airia Brands*?” (2018) 13:1 Can Class Action Rev 27; Rachael Mulheron, “Asserting Personal Jurisdiction Over Non-Resident Class Members: Comparative Insights for the United Kingdom” (2019) 15:3 J Priv Int’l L 445; Shaun Finn & Gadi Taj, “A Real and Substantial Look at Jurisdiction in the Civil and Class Action Settings” (2013) 8:2 Can Class Action Rev 203; Tanya J Monestier, “Personal Jurisdiction over Non-Resident Class Members: Have We Gone Down the Wrong Road” (2010) 45:3 Tex Int’l L J 537.

¹⁴⁵ *Western Canadian Shopping Centres Inc. v Dutton*, 2001 SCC 46 at paras 27-29.

¹⁴⁶ The laws of several provinces provide that, where possible, multiple proceedings should be avoided: see *Courts of Justice Act*, RSO 1990, c C.43, s 138; see also *Law and Equity Act*, RSBC 1996, c 253, s 10; *Judicature Act*, RSA 2000, c J-2, s 5(3)(f); *King’s Bench Act*, SS 2023, c 28, s 6-4(1)(b); *King’s Bench Act*, CCSM, c C280, s 94. Regarding the defendants’ interest, see e.g. Manoryk & McKee, *supra* note 142 at 1.

¹⁴⁷ See e.g. *Winder v Marriott International Inc.*, 2019 ONSC 5766 at paras 58-59.

¹⁴⁸ Through the adoption of a uniform act that recognized and provided a legal framework for this type of action: Uniform Law Conference of Canada, *Uniform Class Proceedings Act (Amendment) 2007*, online (pdf): <[https://www.ulcc-chlc.ca/ULCC/media/EN-Uniform-Acts/Uniform-Class-Proceedings-Act-\(Amendment\)-2007.pdf](https://www.ulcc-chlc.ca/ULCC/media/EN-Uniform-Acts/Uniform-Class-Proceedings-Act-(Amendment)-2007.pdf)> [*Uniform Act of 2007*].

¹⁴⁹ See e.g. *Sanis Health Inc. v British Columbia*, 2024 SCC 40 at para 3. Some authors and judges have expressed doubts as to whether such actions are appropriate, see e.g. *Option Consommateurs c Nippon Yusen Kabushiki Kaisha (NYK)*, 2022 QCCS 1338 at paras 171-174 (conf’d 2023 QCCA 513).

¹⁵⁰ For a brief overview of these challenges, see *Kowalyszyn v Valeant Pharmaceuticals International, Inc.*, 2016 ONSC 3819 at para 234; *Winder v Marriott International Inc.*, 2019 ONSC 5766 at paras 57-58; see

This is particularly true from a procedural standpoint, as preliminary issues of private international law must be dealt with in addition to the procedural steps specific to class actions. This is also the case on the merits, as the court may have to apply different laws depending on the class's composition. This complexity delays the outcome of the proceedings while consuming valuable judicial resources.

[138] Furthermore, if poorly managed, multi-jurisdictional proceedings **can exacerbate the very proliferation of litigation** that they are meant to prevent. Several actions may overlap but proceed in parallel for reasons pertaining to private international law. This situation places a strain on judicial resources and raises the spectre of conflicting judgments,¹⁵¹ both on preliminary motions and on the merits,¹⁵² making the outcome of the proceedings unpredictable for all. Members of the classes in question may not know which action will actually bind them, and the defendants may not know what outcome to comply with.

[139] Finally, multi-jurisdictional actions can sometimes be **used strategically**. Lawyers who are prevented from bringing an action in one province – for example, following a carriage dispute – may bring an action in another jurisdiction to circumvent that decision.¹⁵³ Defendants may also take advantage of multiple claims by settling with the weakest claimant and seeking to enforce that settlement elsewhere to bring competing claims to an end, which may affect the members' interests.¹⁵⁴

[140] In addition to these considerations specific to class actions, multi-jurisdictional actions raise issues of **private international law**. On the one hand, it can be difficult for a court hearing a multi-jurisdictional action to adequately protect the rights and interests of members located in other jurisdictions, particularly with regard to the substantive law from which they may benefit. International and interprovincial comity may therefore militate in favour of pursuing the action in other jurisdictions, at least in appropriate

also *Canada Post Corp. v Lépine*, [2009 SCC 16](#) at paras [56-57](#); Christopher Richter & Guillaume Laganière, “What Happens in Quebec: Stays in Overlapping Multijurisdictional Class Action Proceedings in Quebec” in Todd Archibald, ed, *Annual Review of Civil Litigation 2019*, Toronto, Thomson Reuters, 2019, 469 at 473.

¹⁵¹ *Kutlu v Laboratorios Leon Farma, S.A.*, [2015 ONSC 7117](#) at para [8](#); see also *Kowalyshyn v Valeant Pharmaceuticals International, Inc.*, [2016 ONSC 3819](#) at paras [235-236](#); *Winder v Marriott International Inc.*, [2019 ONSC 5766](#).

¹⁵² Justice William Hourigan & Preston Jordan Lim, “The Case for a Canadian Panel on Multi-Jurisdictional Class Proceedings” (2024) [102:1 Can Bar Rev 240](#) at 243.

¹⁵³ *Kutlu v Laboratorios Leon Farma, S.A.*, [2015 ONSC 7117](#) at para [9](#); see also *Kowalyshyn v Valeant Pharmaceuticals International, Inc.*, [2016 ONSC 3819](#) at para [249](#); Manoryk & McKee, *supra* note 142 at 2.

¹⁵⁴ *Kutlu v Laboratorios Leon Farma, S.A.*, [2015 ONSC 7117](#) at para [10](#); see also *Kowalyshyn v Valeant Pharmaceuticals International, Inc.*, [2016 ONSC 3819](#) at para [251](#).

cases.¹⁵⁵ On the other hand, courts may be reluctant to rely on another jurisdiction and may be concerned about the protection of those located on their own territory. This presents a constant dilemma.

[141] Furthermore, the decision of a court in one jurisdiction does not automatically apply in other jurisdictions; those jurisdictions must first recognize it. There may therefore “be difficulty in determining with certainty which class members will be bound by which decisions”,¹⁵⁶ which once again undermines predictability for both class members and defendants.

[142] In short, the applicable legal framework, insofar as it permits multi-jurisdictional actions, must be tailored to avoid overlaps, except where justified, and to protect the rights and interests of all members. To achieve this, it is essential that the rules and principles governing these matters be harmonized as much as possible across Canada.

3.2. Managing overlaps in multi-jurisdictional actions

[143] The first question that arises concerns the management of overlaps between two or more actions brought in different jurisdictions. Such overlaps are more complex than those within a single jurisdiction, as they require coordination between separate, independent justice systems.

[144] The *Uniform Act of 2007* provides a useful starting point for addressing this issue (3.2.1). However, while some provinces have adopted its provisions, others deviate from them to a greater or lesser extent (3.2.2). Nevertheless, these provisions remain appropriate; the work that remains is to encourage the provinces to adopt them and to promote coordination between lawyers and courts (3.2.3). In our view, and despite what some authors have suggested, there is no need to formalize this collaboration by establishing a Canadian panel to manage multi-jurisdictional proceedings (3.2.4).

3.2.1. Starting point: the *Uniform Act of 2007*

[145] Since its adoption in 1996, the *Uniform Act* has contained – and still contains – a general provision stating that “[t]he court may at any time make any order it considers appropriate respecting the conduct of a class proceeding”,¹⁵⁷ including, for example, a stay of the proceedings. This power has, however, proved insufficient to deal effectively

¹⁵⁵ *Nippon Yusen Kabushiki Kaisha v Ewert*, [2023 BCCA 142](#) at para 66.

¹⁵⁶ *Uniform Act of 2007*, comments on section 1.

¹⁵⁷ *Uniform Act*, art 12.

with multi-jurisdictional overlaps,¹⁵⁸ which led the ULCC to adopt the *Uniform Class Proceedings (Amendment) Act, 2007*.

[146] This new Act made the following amendments to the *Uniform Act*:

- Any class action must be brought by a resident of the jurisdiction which is seized of the action (s 2(1)).
- When filing their application, that person must notify the representative plaintiffs in any proposed or ongoing multi-jurisdictional class action brought in Canada that involves the same or a similar subject matter (s 2(2)(b)).
- Representative plaintiffs in these other actions may make submissions at the certification hearing (s 3.1).
- The court must then determine, at the certification stage, “whether it would be preferable for some or all of the claims of the proposed class members to be resolved in” another multi-jurisdictional action already in progress (s 4(2)).
- To this end, the court must take into account the interests of all parties in the relevant jurisdictions, the ends of justice, avoid the risk of irreconcilable judgments, and promote judicial economy. It must also consider all relevant factors, including the alleged basis of liability (including the applicable laws), the stage of each proceeding, the proposed plan, the location of class members and representatives, and the location of evidence and witnesses (s 4(3)).¹⁵⁹
- The court has the following powers: it may certify the action if it determines that it is the appropriate forum; refuse to certify it if it concludes that the action should be brought elsewhere; or adjust the class to exclude members already included in another action (s 4.1(1)).
- When certifying the action, the court may establish subclasses, each with a separate representative, in particular to separate members residing in different jurisdictions (s 4.1(2)).
- Members may opt out of the multi-jurisdictional proceedings in the manner and within the time limit specified in the order (s 16).

¹⁵⁸ *Uniform Act of 2007*, comments on section 1. See the appendix for a copy of the relevant provisions.

¹⁵⁹ As several courts have noted, this analysis is similar to that of *forum non conveniens*, though not identical: see *Nippon Yusen Kabushiki Kaisha v Ewert*, [2023 BCCA 142](#) at para 71; *Winder v Marriott International Inc.*, [2019 ONSC 5766](#) at para 76.

[147] A few years later, the Canadian Bar Association adopted two measures to support the implementation of these new provisions. First, to facilitate the sharing of information with lawyers and judges in other jurisdictions, it established a Canada-wide class action registry.¹⁶⁰

[148] It then adopted a *Class Action Judicial Protocols* in 2011, which was amended in 2018. The aim of the Protocol is to provide the courts with guidelines “to facilitate the management of multijurisdictional class actions”, in the exercise of the broad discretionary powers conferred on them by the relevant legislative provisions.¹⁶¹ It therefore sets out best practices regarding the information to be provided to the court concerning the existence of other proceedings, the notices to be given to the parties and members in those proceedings, and the possibility for judges from different provinces to communicate with one another and hold joint hearings, either with the parties’ consent or on their own initiative after hearing the parties.

3.2.2. The uneven adoption of the provisions of the *Uniform Act of 2007*

[149] The amendments introduced by the *Uniform Act of 2007* have been implemented only in certain jurisdictions. On the one hand, the federal courts, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador have not adopted any provisions to manage overlaps in multi-jurisdictional actions, beyond the general power available to the court to stay any class action.¹⁶²

[150] On the other hand, British Columbia, Alberta, Saskatchewan, Prince Edward Island and Ontario have, for the most part, adopted the ULCC amendments.¹⁶³ Two of these provinces have made some adjustments. Alberta has added, as a factor to be considered when determining whether another action is preferable, “the advantages and disadvantages of litigation being conducted in more than one jurisdiction”.¹⁶⁴ Ontario,

¹⁶⁰ *Uniform Act of 2007*, comments on section 2.

¹⁶¹ Canadian Bar Association, “Class Action Judicial Protocols (2018)”, Resolution 18-03-A, online (pdf): <<https://cba.org/getmedia/5a91ee53-0d32-4395-b4ed-0928855621b7/18-03-A-ct.pdf>> [CBA Protocol].

¹⁶² *The Class Proceedings Act*, CCSM, c C130, ss 6(3) [**MB Act**] (providing for multi-jurisdictional actions by confirming the court’s ability to divide the class into subclasses of residents and non-residents),¹² (stay power); *Class Proceedings Act*, RSNB 2011, c 125, ss 8(2) [**NB Act**] (providing for multi-jurisdictional actions by requiring the court to divide the class into subclasses of residents and non-residents),¹⁴ (stay power); *Class Proceedings Act*, SNS 2007, c 28, s 15 [**NS Act**] (stay power); *Class Actions Act*, SNL 2001, c C-18.1, ss 7(2) [**NL Act**] (providing for multi-jurisdictional actions by requiring the court to divide the class into subclasses of residents and non-residents),¹³ (stay power). Federal courts, for their part, have no specific rules on this matter, but may draw on provincial rules of procedure: *Federal Courts Rules*, SOR/98-106, s 4.

¹⁶³ See e.g. *Class Proceedings Act*, RSBC 1996, c 50, s 4.1 [**BC Act**]; *Class Proceedings Act*, SA 2003, c 16.5, s 9.1 [**AB Act**]; *The Class Actions Act*, SS 2001, c C-12.01, s 6.1 [**SK Act**]; *Class Proceedings Act*, RSPEI 1988, c C-9.01, s 7 [**PEI Act**]; *Class Proceedings Act*, 1992, SO 1992, c 6, s 5.1 [**ON Act**].

¹⁶⁴ *AB Act*, s 5(8).

which adopted these amendments more recently, has clarified three further aspects of the framework proposed by the ULCC:

- Actions overlap only if their subject matter is identical or similar and the members of the class are the same in whole or in part, whereas this latter aspect is implicit in the *Uniform Act of 2007*;¹⁶⁵
- When deciding whether it is preferable to bring an action in another province, the court must consider, in addition to the factors listed in the *Uniform Act of 2007*, “the ease of enforceability in each applicable jurisdiction”;¹⁶⁶
- Even before the certification hearing, the proposed action may be stayed or made subject to certain conditions, which essentially codifies the stay powers described below.¹⁶⁷

[151] Depending on the province in which they are located, common law courts therefore have two ways of avoiding overlaps in multi-jurisdictional proceedings.

[152] First, even before the certification stage, courts in all common law provinces may **stay** proceedings to prevent such overlap. This discretionary mechanism is often linked to the courts’ inherent power to sanction abuse of process.¹⁶⁸ The courts have ruled that bringing a class action when another concurrent action is already pending may be abusive¹⁶⁹ if this new action does not pursue any “legitimate objective”.¹⁷⁰ Conversely, a new action is not abusive if, for example, it seeks to protect certain members’ interests that would not be protected by the existing action.¹⁷¹ In addition to cases of abuse, courts have a residual power to stay proceedings to prevent unnecessary and costly duplication of judicial resources.¹⁷²

¹⁶⁵ *ON Act*, s 2(4)(b); see also *PEI Act*, s 3(2)(b)(ii).

¹⁶⁶ *ON Act*, s 5(7)(b)(vi).

¹⁶⁷ *ON Act*, s 5(8).

¹⁶⁸ On abuse generally, see *Toronto (City) v C.U.P.E., Local 79*, [2003 SCC 63](#) at paras [35](#), [37](#); see also, in the class actions context, *Boehringer Ingelheim (Canada) Ltd. v Englund*, [2007 SKCA 62](#) at paras [33-37](#).

¹⁶⁹ *BCE Inc. v Gillis*, [2015 NSCA 32](#) at para [46](#); *Roy v The Calgary Airport Authority*, [2025 BCSC 481](#) at paras [96-99](#) (conf’d [2025 BCCA 442](#)); *InvestorCOM Inc. v L’Anton*, [2025 BCCA 40](#); *Abbott Laboratories, Ltd. v Spicer*, [2023 SKCA 55](#) at paras [81-85](#); see also *Kowalyszyn v Valeant Pharmaceuticals International, Inc.*, [2016 ONSC 3819](#) at para [263](#), citing decisions from many provinces on this point.

¹⁷⁰ *Fantov v Canada Bread Company, Limited*, [2019 BCCA 447](#) at paras [71-72](#); *Kirsh v Bristol-Myers Squibb*, [2020 ONSC 1499](#) at para [126](#); *Hafichuk-Walkin et al v BCE Inc et al*, [2016 MBCA 32](#) at para [40](#); *DALI 675 Pension Fund v SNC Lavalin*, [2019 ONSC 6512](#) at paras [21-24](#).

¹⁷¹ *Gomel v Ticketmaster Canada LLP*, [2019 BCSC 2178](#) at paras [45-46](#); see also *Hafichuk-Walkin et al v BCE Inc et al*, [2016 MBCA 32](#) at para [42](#).

¹⁷² *Fantov v Canada Bread Company, Limited*, [2019 BCCA 447](#) at para [53](#), citing *Ainsworth Lumber Co. v A.G. of Canada*, [2001 BCCA 105](#) at paras [14-15](#).

[153] Furthermore, in provinces that have adopted the ULCC provisions, judges called upon to rule on the **certification** of a new action must be informed of the existence of any concurrent action and must then consider whether that action would be preferable.¹⁷³ This helps to rule out actions that are not abusive but would lead to an undesirable duplication of resources.¹⁷⁴

[154] Finally, the courts in Quebec have stay powers similar to those in the rest of Canada.¹⁷⁵ On the one hand, article 3137 of the *Civil Code of Québec* provides that an action may be stayed when “another action, between the same parties, based on the same facts and having the same subject is pending before a foreign authority”¹⁷⁶ and may give rise to a decision that may be recognized in Québec.¹⁷⁷ The triple identity thus required is, however, applied flexibly to class actions, particularly with respect to the identity of parties.¹⁷⁸ Furthermore, by virtue of their inherent powers codified by articles 18 and 49 of the *Code of Civil Procedure*, Quebec courts may also stay proceedings at any time at their discretion, particularly where another action involves the same triple identity.¹⁷⁹

[155] However, in both cases, the courts must take into account an additional and overriding criterion, namely “the protection of the rights and interests of Québec residents”.¹⁸⁰ Consequently, the focus is on the interests of the Quebec members rather

¹⁷³ *Kirsh v Bristol-Myers Squibb*, [2021 ONSC 6190](#) at paras [69-72](#); *DALI 675 Pension Fund v SNC Lavalin*, [2019 ONSC 6512](#) at paras [37-43](#); *Britton v Ford Motor Company of Canada*, [2021 ABQB 17](#) at para [30](#); *Ennis v Johnson & Johnson*, [2024 BCSC 1759](#) at para [155](#); *Ammazzini v Anglo American PLC*, [2016 SKCA 164](#) at para [45](#); *Piett v Global Learning Group Inc.*, [2021 SKQB 232](#); *Fantov v Canada Bread Company, Limited*, [2019 BCCA 447](#) at paras [39, 66](#); *InvestorCOM Inc. v L'Anton*, [2025 BCCA 40](#) at para [16](#).

¹⁷⁴ *InvestorCOM Inc. v L'Anton*, [2025 BCCA 40](#) at paras [31-32](#).

¹⁷⁵ See e.g. *Richter & Laganière*, *supra* note 150 at 474.

¹⁷⁶ Following a relaxation proposed by Hamilton J in *Chasles c Bell Canada inc.*, [2017 QCCS 5200](#) at para [46](#), the Quebec Court of Appeal confirmed that, in order to stay a Québec action under art 3137 CcQ, the competing action must necessarily have been brought first: *FCA Canada inc. c Garage Poirier & Poirier inc.*, [2019 QCCA 2213](#) at para [49](#); see more recently *Grescoe c Nvidia Corporation*, [2026 QCCS 1077](#) at para [4](#). This condition is also reiterated in art 577 CCP, as noted in *Li c Equifax inc.*, [2018 QCCS 1892](#) at para [34](#).

¹⁷⁷ *R.S. v P.R.*, [2019 CSC 49](#) at para [38](#); *Hammam c Dima Marketing & Distribution*, [2023 QCCA 198](#) at para [30](#). The same criterion has been applied in the class actions context; see, for example *FCA Canada inc. c Garage Poirier & Poirier inc.*, [2019 QCCA 2213](#) at para [41](#).

¹⁷⁸ See *FCA Canada inc. c Garage Poirier & Poirier inc.*, [2019 QCCA 2213](#) at para [49](#); *Patterson c Ticketmaster Canada Holdings*, [2021 QCCS 378](#) at para [39](#); *Li c Equifax inc.*, [2018 QCCS 1892](#) at para [34](#).

¹⁷⁹ Which essentially leaves the criterion of prior introduction unmet. See *Option Consommateurs c Nippon Yusen Kabushiki Kaisha (NYK)*, [2022 QCCS 1338](#) at paras [28-29](#) (conf'd [2023 QCCA 513](#)); see also *Micron Technology inc. c Hazan*, [2020 QCCA 1104](#) at paras [51-56](#); *FCA Canada inc. c Garage Poirier & Poirier inc.*, [2019 QCCA 2213](#) at para [73](#); see also e.g. *Grescoe c Nvidia Corporation*, [2026 QCCS 1077](#) at para [7](#); *Ryan c Attorney General of Canada*, [2025 QCCS 4](#) at para [12](#); *Zhang c Whirlpool Corporation*, [2025 QCCS 1174](#) at paras [16-19](#). There was a counter-current, but it was rejected: see *Li c Equifax inc.*, [2018 QCCS 1892](#) at para [35](#).

¹⁸⁰ Article 577 CCP; for an interesting analysis of the impact of this provision on the reasoning given by Quebec judges, see *Richter & Laganière*, *supra* note 150 at 507.

than on the relative merits of one action over the other. In any event, the court retains its discretion to refuse to stay the action on other grounds, including the complexity and costs associated with the other action and the differences between the applicable legal regimes.¹⁸¹

[156] Thus, contrary to the provisions of the *Uniform Act of 2007*, the Quebec court [TRANSLATION] “need not be convinced that the foreign court is better placed than the Quebec court to decide the issues raised”.¹⁸² However, when considering the interests of Quebec members, it may take into account factors similar to those set out in the *Uniform Act of 2007*, including the progress of proceedings in the other jurisdiction, the difference in applicable laws, and the litigation plan in the other action,¹⁸³ while emphasizing the role of Quebec members and representatives.¹⁸⁴ Cooperation between class counsel in the various actions may also help to convince the court that a stay is in the best interests of Quebec members.¹⁸⁵

3.2.3. The *Uniform Act of 2007* remains appropriate

[157] As the previous section shows, the legal framework governing overlaps in multi-jurisdictional proceedings grants judges broad discretion. They may, where necessary, stay or refuse to certify proceedings to avoid such overlaps, but they may also allow competing proceedings to run concurrently in appropriate cases. The question that then arises is whether this flexible framework remains appropriate or whether it should be amended, for example to constrain this judicial discretion and further limit overlaps.

[158] In our view, the framework set out in the *Uniform Act of 2007* remains appropriate, and its adoption across Canada should be encouraged.¹⁸⁶ Admittedly, this framework does not prevent all overlaps, which can sometimes frustrate parties (particularly defendants, who have to defend themselves simultaneously in several

¹⁸¹ *Li c Equifax inc.*, [2018 QCCS 1892](#) at para 34.

¹⁸² *Ibid.*

¹⁸³ *Micron Technology Inc. c Hazan*, [2020 QCCA 1104](#) at para 53.

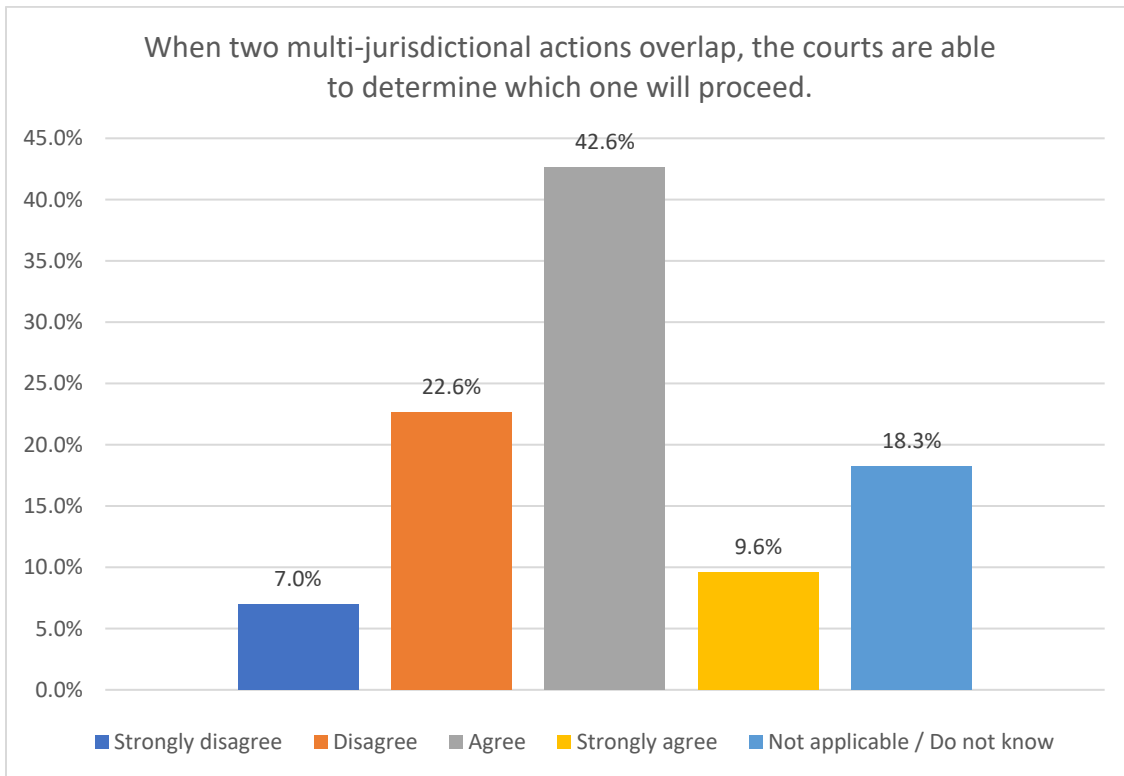
¹⁸⁴ *Li c Equifax inc.*, [2018 QCCS 1892](#) at para 34; see also Ministère de la Justice, *Commentaires de la ministre de la Justice – Code de procédure civile, Chapitre C-25.01*, Montréal, Wilson & Lafleur, 2015, art 577; Maxime Nasr & Thomas Kingsley, “La suspension d’une action collective en droit international privé – ou la mystérieuse affaire du justiciable québécois égaré à Regina” (2023) 544 *Colloque national sur l’action collective : développements récents au Québec, au Canada et aux États-Unis* 253 at 267-268; see also Faiz Munir Lalani, “Vers une approche harmonisée : la coordination et la gestion des actions collectives multiterritoriales au Canada” (2021) 498 *Colloque national sur l’action collective : développements récents au Québec, au Canada et aux États-Unis* 3.

¹⁸⁵ See *Basal c Allergan inc.*, [2020 QCCS 3859](#) at paras 6-7; *Hayon c Recochem inc.*, [2021 QCCS 7](#) at para 4; *Kozel c Novo Nordisk*, [2024 QCCS 2751](#) at paras 10-11.

¹⁸⁶ Richter & Laganière, *supra* note 150 at 507 similarly propose incorporating the criteria of the *Uniform Act of 2007* into Québec’s *Code of Civil Procedure*.

jurisdictions) and lead to a certain degree of duplication of judicial resources.¹⁸⁷ However, there are sometimes good reasons to maintain certain overlaps, particularly to protect members within a specific jurisdiction.

[159] In the end, these decisions are contextual, and the flexibility of the current rules allows courts to take into account the specific features of each action.¹⁸⁸ The criteria set out in the *Uniform Act of 2007* provide the courts with the necessary tools to either avoid or maintain overlaps, as they deem most appropriate.¹⁸⁹ Indeed, most respondents to the survey conducted as part of this project believe that courts are able to resolve overlaps using the tools currently at their disposal:



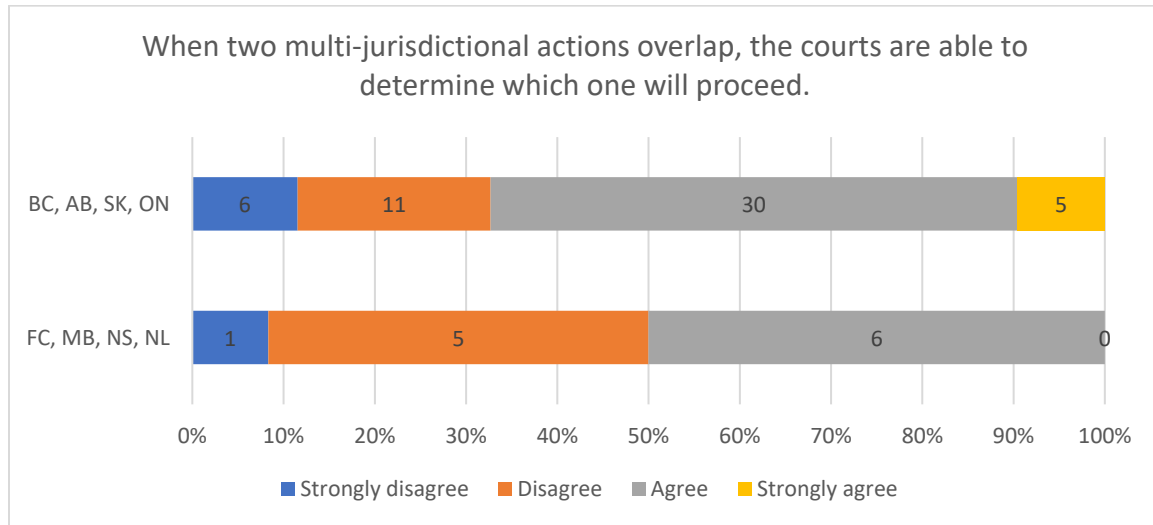
[160] Although the sample size per province is too small to draw scientifically significant conclusions at this level, it is nevertheless noteworthy that respondents from provinces that have adopted the provisions of the *Uniform Act of 2007* generally appear

¹⁸⁷ For a frequently cited example of a case that has highlighted these issues, see: *Mignacca v Merck Frosst Canada Ltd.*, [2009 CanLII 10059](#) (ON SCDC). See also *Option Consommateurs c Nippon Yusen Kabushiki Kaisha (NYK)*, [2022 QCCS 1338](#) (conf'd [2023 QCCA 513](#)).

¹⁸⁸ In the same vein, Richter & Laganière, *supra* note 150 at 475 say that “[i]ntroducing statutory guidelines in this area is a difficult task. Stays are fundamentally case management measures, decided on a case-by-case basis and rarely the subject of lengthy legal exposés or even reported judgments”.

¹⁸⁹ Voir Manoryk & McKee, *supra* note 142 at 8 (“The case law applying the ULCC Amendments demonstrates their usefulness as a tool for managing overlapping class actions”).

to be more positive regarding the courts’ ability to manage overlaps, which is consistent with the courts’ statements on this matter:

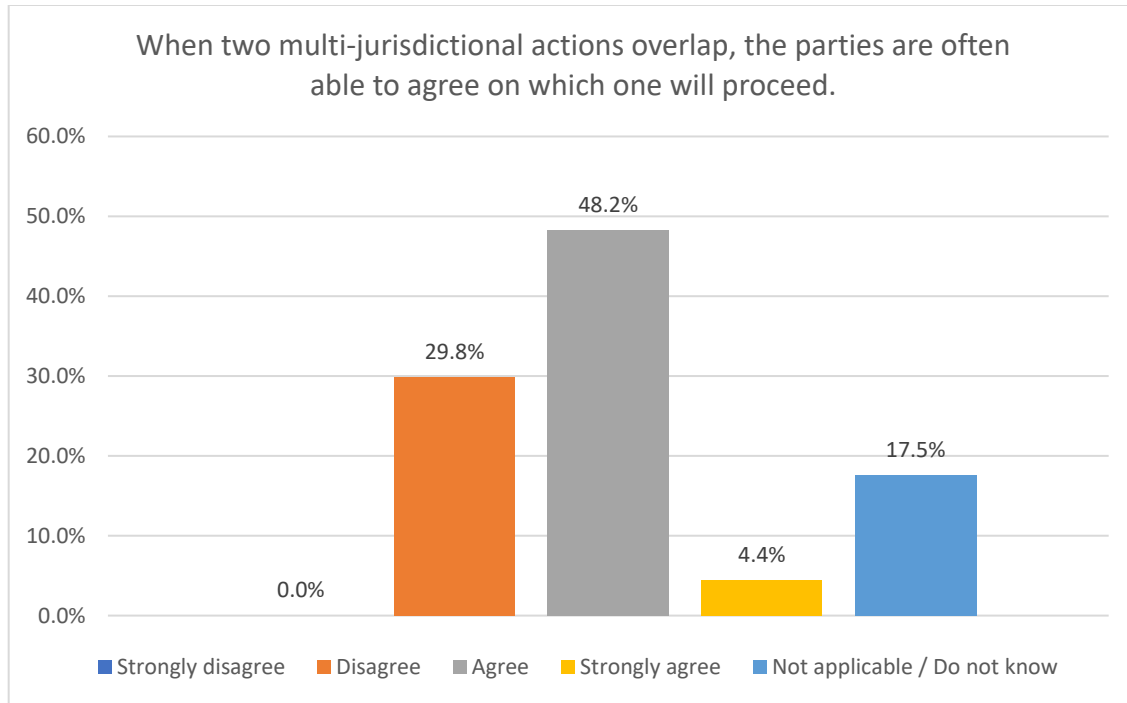


[161] Furthermore, the courts note that, in practice, multi-jurisdictional overlaps are often resolved through effective cooperation between the parties. The parties can avoid such overlaps if they agree to structure their respective actions to ensure they do not encroach upon one another.¹⁹⁰ They can also minimize the negative effects of overlaps by promoting the exchange of information and closely monitoring each action.¹⁹¹

[162] The members of the working group confirmed this impression, as did the survey conducted as part of this project, in which more than half of the respondents stated that the parties are often able to coordinate their efforts:

¹⁹⁰ *Kutlu v Laboratorios Leon Farma, S.A.*, [2015 ONSC 7117](#) at para 11 (“In practice, the internecine warfare among rival national class actions is often avoided by the lawyers forming a consortium and agreeing that one proposed class action will proceed and the others will formally or informally be stayed to be revived as necessary”); *Winder v Marriott International Inc.*, [2019 ONSC 5766](#) at para 63; for an example, see e.g. *McBain v Hyundai Auto Canada Corp.*, [2021 ONSC 1734](#); *Pelletant c Hyundai Auto Canada Corp.*, [2021 QCCS 793](#).

¹⁹¹ *Mignacca v Merck Frosst Canada Ltd.*, [2009 CanLII 10059](#) (ON SCDC) at para 80 (“the presence of two overlapping multi-jurisdictional class proceedings is unfortunate, but the problems are solvable with co-operation, communication and direction from the courts”); see also *DALI 675 Pension Fund v SNC Lavalin*, [2019 ONSC 6512](#) at para 36; *LCO Report*, *supra* note 10 at 31.



[163] This cooperation can be facilitated by the application of the CBA Protocol, which also encourages *courts* hearing competing cases to collaborate.¹⁹² The courts of Saskatchewan, Ontario, British Columbia, Alberta and Manitoba have expressly adopted it and made its application mandatory.¹⁹³ The Superior Court of Québec, for its part, provides that judges *may* order the parties to apply the Protocol,¹⁹⁴ which will generally be the case if the parties consent to it or if the party contesting its application suffers no harm as a result.¹⁹⁵ In practice, the Protocol appears particularly useful in the context of settlements, where the parties can more readily agree to the measures it provides.¹⁹⁶

[164] Should the Protocol be incorporated into the *Uniform Act*, thereby turning it into a legislative instrument instead of a judicial one? This does not appear to be necessary or useful. The Protocol may not be appropriate in all cases, as everything depends on the

¹⁹² See *Nippon Yusen Kabushiki Kaisha v Ewert*, [2023 BCCA 142](#) at para 66.

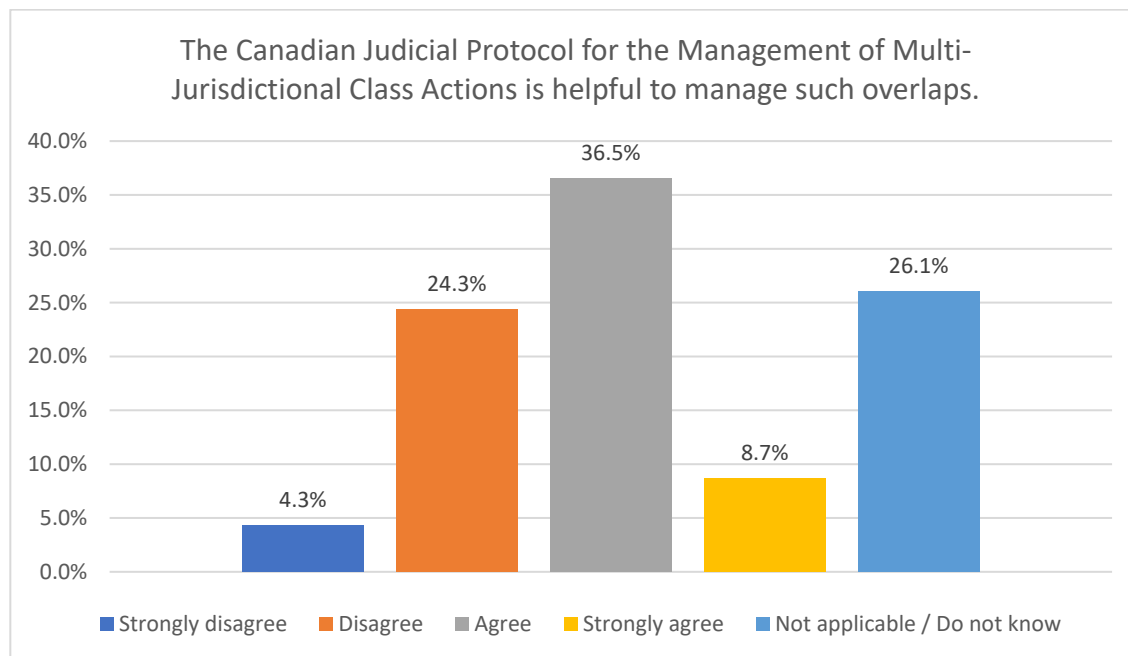
¹⁹³ Court of King’s Bench for Saskatchewan, [Civil Practice Directive #3 – Management of Multi-Jurisdictional Class Actions](#), s 1 (coming into force July 1, 2013); Ontario Superior Court of Justice, [Consolidated Civil Provincial Practice Direction](#), 17 March 2026, s 67 (coming into force June 1, 2019); Supreme Court of British Columbia, [Practice Direction PD-55](#), s 1 (coming into force July 1, 2019); Court of Queen’s Bench of Alberta, [Civil Practice Note No. 6](#) (coming into force September 4, 2018); Court of Queen’s Bench of Manitoba, [Practice Direction](#) (coming into force September 4, 2019).

¹⁹⁴ *Regulation of the Superior Court of Québec in civil matters*, CQLR, c C-25.01, r 0.2.1, s 62; [Directives de la Cour supérieure – Division de Montréal](#), January 1, 2026, s 126.

¹⁹⁵ *Option Consommateurs c Nippon Yusen Kabushiki Kaisha*, [2021 QCCS 4944](#) at para 40 (leave to appeal denied [2022 QCCA 66](#)).

¹⁹⁶ *Ibid*; see also *Underhill v Medtronic Canada*, [2023 ONSC 5919](#) at para 45.

specific circumstances of each case, as suggested by the mixed results of the survey, the comments provided by respondents, and other discussions held as part of this project:



[165] Furthermore, the mandatory provisions of the Protocol are, for the most part, more detailed versions of those found in the *Uniform Act of 2007*, particularly with respect to information sharing. This level of detail would make the legislative text cumbersome and seems more appropriate for judicial guidelines.

[166] Finally, the provisions of the Protocol that the parties or the courts *may* implement reflect powers that the courts already possess, whether by virtue of their inherent jurisdiction or under existing legislation. For example, it is accepted that courts may hold joint hearings and coordinate the *procedure* to be followed, without, however, coordinating their judgments on the merits.¹⁹⁷ The Protocol provides a mechanism to give effect to this discretion, but the courts may apply it even if it is not codified in the *Uniform Act*.

[167] In short, the CBA Protocol can be useful in a number of cases to facilitate cooperation between parties and courts located in different jurisdictions, and courts should be encouraged to adopt it; however, it does not seem appropriate to propose an amendment to the *Uniform Act*.

¹⁹⁷ See *Endean v British Columbia*, [2016 SCC 42](#) (it should be noted that, technically, there was no overlap in this case, as the classes were mutually exclusive from a geographical standpoint; nevertheless, the courts cooperated by holding a joint hearing on a Canada-wide settlement agreement).

3.2.4. There is no need to set up a multi-jurisdictional panel

[168] Finally, we must consider another reform proposed by some authors: the creation of a pan-Canadian judicial panel. In our view, although this proposal is interesting, it is neither necessary nor appropriate in the context of the *Uniform Act*.

[169] Authors Hourigan and Lim have recently set out the details of this proposal, which, in their view, would make multi-jurisdictional cooperation the *rule*, rather than an *option*.¹⁹⁸ They propose establishing a panel of judges drawn from all participating provincial jurisdictions and entrusting it with a threefold mandate: (1) to determine the appropriate venue for a national action and to stay other proceedings; (2) to give carriage to one or several law firms over the chosen action; and (3) to approve any settlement in the jurisdiction where the action is brought and make it enforceable in the other provinces.¹⁹⁹ Two respondents to our survey echoed this suggestion.

[170] The idea is inspired by the American model, where a *Judicial Panel on Multidistrict Litigation* was established in 1968 to improve the management of mass actions. Seven federal judges sit on the panel to determine whether cases brought in various federal districts raise common issues of fact; if so, the panel may consolidate them and designate a judge to hear them.²⁰⁰

[171] However, this proposal faces constitutional obstacles in the Canadian context.²⁰¹ Such a panel would go beyond mere procedural coordination and would require judges to coordinate their *decisions* on the three points identified above (choice of forum, choice of lawyers and approval of settlements). Yet, the courts of each province are independent, and their judges enjoy individual independence when issuing their rulings. In the same way that the courts of one province “cannot be empowered to stop or organize class actions in the courts of another province or territory even if that litigation is redundant, duplicative, or unnecessary”,²⁰² it is unclear whether judges might indirectly influence each other to reach the same outcome.

[172] In any event, even assuming that these constitutional obstacles could be overcome,²⁰³ the proposal carries several risks. An experienced judge could influence a

¹⁹⁸ Hourigan & Lim, *supra* note 152 at 245.

¹⁹⁹ *Ibid* at 246.

²⁰⁰ United States Judicial Panel on Multidistrict Litigation, “About the Panel”, online: <<https://www.jpml.uscourts.gov/about-panel>>.

²⁰¹ The courts refer to these difficulties, see *Kutlu v Laboratorios Leon Farma, S.A.*, [2015 ONSC 7117](#) at para 6; *Kowalyszyn v Valeant Pharmaceuticals International, Inc.*, [2016 ONSC 3819](#) at para 256.

²⁰² *Winder v Marriott International Inc.*, [2019 ONSC 5766](#) at para 70.

²⁰³ Hourigan & Lim sidestep the constitutional challenges by drawing a parallel with the securities regulatory system, which is based on active coordination between the federal and provincial governments.

colleague from another province who, without such influence, might have reached a different decision.²⁰⁴ Furthermore, the imperative of reaching a joint decision would essentially eliminate overlaps in the interests of efficiency, whereas, as we have seen above, such overlaps are sometimes appropriate to protect the interests of members in a given jurisdiction. It is for this reason, among others, that the CBA Protocol is limited to purely procedural coordination.²⁰⁵

[173] Finally, the authors themselves acknowledge that their proposal is at odds with Quebec’s distinctive character.²⁰⁶ The proposal is based on the premise that the law is sufficiently similar in substance across Canada for such a panel to reach decisions that are acceptable to all the judges involved.²⁰⁷ However, we know that the law sometimes differs significantly between Quebec and the rest of Canada, given their distinct legal traditions. In these circumstances, a panel would not allow for a complete harmonization of the management of multi-jurisdictional actions or, if it did, it would risk undermining the interests of Quebec members.

[174] For all these reasons, it does not seem appropriate to recommend amending the *Uniform Act* to provide for the establishment of a pan-Canadian panel responsible for the management of multi-jurisdictional class actions.

3.3. The multiplicity of laws applicable on the merits

[175] The second issue identified by the working group concerns the multiplicity of laws applicable to certain class actions. Indeed, particularly where a class includes members outside the jurisdiction in which the action is brought, their respective claims may be governed by different laws, depending on the applicable conflict-of-laws rules. If the action spans several jurisdictions, multiple legal systems may then apply to the substance of the dispute.

[176] That said, Canadian courts do not apply foreign law on their own motion: in the absence of pleadings and, where necessary, evidence of such law, the law of the forum prevails.²⁰⁸ In an individual action, this does not pose a major problem: if one of the

However, this system is primarily *administrative*, and therefore does not call into question the *judicial* power and, more specifically, the jurisdiction of the superior courts guaranteed by section 96 of the *Constitution Act, 1867*.

²⁰⁴ See *Option Consommateurs c Nippon Yusen Kabushiki Kaisha*, [2021 QCCS 4944](#) at paras [58-59](#).

²⁰⁵ CBA Protocol, *supra* note 161, s 10.

²⁰⁶ Hourigan & Lim, *supra* note 152 at 264.

²⁰⁷ *Ibid* at 265.

²⁰⁸ See Valérie Scott, “Access to Justice and Choice of Law Issues in Multi-Jurisdictional Class Actions in Canada” (2011) 43:2 Ottawa L Rev 233 at 240; citing Jean-Gabriel Castel, *Canadian Conflict of Laws*, 4th ed, Toronto, Butterworths, 1997 at 155-162; art 2809 CcQ; see also *Das v George Weston Limited*, [2017 ONSC 4129](#) at para [215](#) (conf’d [2018 ONCA 1053](#)).

parties wishes to apply foreign law, they will have the opportunity to raise the issue. In a class action, however, if the representative and the defendants do not themselves raise the issue of the application of foreign law, absent members will not benefit from that law and could thus lose the substantive rights they would otherwise enjoy in an individual action,²⁰⁹ not to mention the issues surrounding the extraterritorial application of a provincial law to members who have no connection to the province in question. Yet, class actions are procedural vehicles that are not intended to alter substantive law.²¹⁰

[177] This issue is of particular importance where a province's law provides protections that are not available in the forum where the action is heard. For example, it is well known that Quebec's *Consumer Protection Act* offers more extensive remedies than elsewhere, notably because it allows for the award of punitive damages in certain cases.²¹¹ However, if a multi-jurisdictional action brought in Ontario includes Quebec members and neither the representative nor the defendants invoke the *CPA*, nothing in the rules of private international law will direct the court to take it into account. Consequently, the Quebec members could be bound by the outcome of an action that does not take into account the protections to which they would otherwise be entitled.

[178] This failure to take account of the applicable law can have significant consequences for the conduct and outcome of the proceedings, whether at the stage of certification, settlement, judgment on the merits, or even the recognition and enforcement of a judgment or settlement. However, the issue has received little attention to date, since the vast majority of multi-jurisdictional proceedings have ended without a decision on the merits and since courts, when they approve a settlement, do not have to rule directly on the law applicable to the merits. Although the issue is often avoided in this way, it remains significant, particularly since the members of the working group believe that an increasing number of multi-jurisdictional actions are likely to proceed to the merits.

[179] It is therefore worth trying to harmonize the legal framework governing the management of the applicability of multiple laws in multi-jurisdictional proceedings. Canadian courts currently adopt two main approaches: an 'opt-in' model for members outside the jurisdiction, which circumvents the issue by ensuring that these members

²⁰⁹ In *Duguay c General Motors du Canada ltée*, [2023 QCCS 3223](#), for instance, the Court notes at para [7](#) that [TRANSLATION] "[a]lthough the class action is being brought at the national level, the parties waive their right to argue and establish the substance of the law outside Quebec, inviting the Tribunal to apply Quebec law in accordance with [article 2809](#) of the *Civil Code of Québec*, which the Court will do". However, the court's decision takes no account whatsoever of the rights and interests of class members outside Quebec. This had no impact, however, as the claim was dismissed on its merits. See also *Lamoureux c Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM)*, [2021 QCCS 1093](#) (conf'd [2022 QCCA 685](#)) (applying Quebec law to members outside Quebec, without any discussion of applicable law).

²¹⁰ See e.g. *Sanis Health Inc. v British Columbia*, [2024 SCC 40](#) at para [72](#).

²¹¹ *Consumer Protection Act*, CQLR, c P-40.1, s 272.

voluntarily submit to the law pleaded in the proceedings (3.3.1); or a ‘wait-and-see’ approach, which refuses to decide the question of applicable law at the certification stage and defers it to the merits (3.3.2). Both of these approaches pose problems, and a third option must therefore be considered (3.3.3).

3.3.1. The opt-in approach should be ruled out

[180] The first approach involves circumventing the issue by adopting a hybrid model that combines an opt-out procedure for members within the jurisdiction with an opt-in procedure for members outside that jurisdiction. This model currently exists in New Brunswick and Newfoundland and Labrador.²¹² In these provinces, a court that certifies a multi-jurisdictional action must establish a subclass for members outside the jurisdiction, which they are *invited to join voluntarily*.²¹³

[181] This requirement for members outside the jurisdiction to submit to the court’s authority largely resolves the issues of private international law arising from multi-jurisdictional proceedings, including those concerning applicable law.²¹⁴ Indeed, since choice of law is optional, a foreign member’s decision to join the proposed action implies acceptance of the causes of action raised therein and of their legal basis.²¹⁵

[182] Despite its simplicity, this approach to inclusion was rejected by the ULCC in the *Uniform Act of 2007*, as well as by several Canadian jurisdictions since then, and it does not seem appropriate to reconsider this decision. Indeed, the adoption of an ‘opt-in’ model would deal a severe blow to multi-jurisdictional class actions, since experience shows that as soon as class members are required to take action – whether to join the action or to claim compensation – inertia and barriers to access to justice mean that few of them come forward.²¹⁶

[183] Some believe that multi-jurisdictional actions cause more problems than they solve and might see this as a positive development. However, as we noted in the introduction, and as the ULCC itself concluded in 2007, multi-jurisdictional actions can

²¹² *NB Act*, s 18(3); *NL Act*, s 17(2). Other provinces initially adopted this model before deciding to apply an opt-out model to all members. The opt-in model can also be found elsewhere in the world, see Mulheron, *supra* note 144.

²¹³ Morin-Lévesque, *supra* note 144 at 238; Mulheron, *supra* note 144 at 452.

²¹⁴ See Mulheron, *supra* note 144 at 458; see also *Nantais v Teletronics Proprietary (Canada) Ltd*, [1995 CanLII 7113](#) (ONSC) (“Perhaps prudence would dictate that such questionnaires include an opting in provision for non-residents, to avoid any doubt as to jurisdiction”); *Harrington v Dow Corning Corp*, [2000 BCCA 605](#) at para 74.

²¹⁵ On this point, see e.g. *Hocking c Haziza*, [2008 QCCA 800](#) at para 161.

²¹⁶ See Joseph Marcus, “National Class Actions in Canada: Yet Another Call for Clarity and Coordination” (2012) 8:1 Can Class Action Rev 41 at 48.

contribute to achieving the objectives of class actions when properly regulated. It therefore does not seem desirable to restrict their scope in this way.

3.3.2. The ‘wait and see’ approach is problematic

[184] The other approach, which is predominant outside New Brunswick and Newfoundland and Labrador, is the so-called ‘wait and see’ approach, whereby courts at the certification stage avoid considering the multitude of laws that might apply to the merits. For proponents of this approach, determining the applicable law is a matter that should be resolved at the hearing on the merits, not at certification.²¹⁷

[185] Several Quebec courts have adopted this wait-and-see approach. They generally conclude, primarily in consumer protection law, that the certification judge may [TRANSLATION] “presume, ... until proven otherwise, that the law [in question] does not vary significantly from one Canadian province to another, at least in substance”.²¹⁸ However, on the merits, [TRANSLATION] “the law applicable outside Quebec is no longer presumed”.²¹⁹ Consequently, if the case reaches this stage, the court must apply foreign law and might even, in the event of “substantial differences between the applicable legal schemes”, conclude that the action has lost “its collective nature”.²²⁰

[186] Similarly, a wait-and-see approach prevails in the common law provinces. Author Valérie Scott provided a comprehensive overview of the situation in 2012 and concluded that “it is extremely unlikely that certification will be denied in Ontario, even when the applicability of multiple laws is acknowledged”.²²¹ Morin-Lévesque confirms that this observation remains valid in 2022.²²² Consequently, most courts, as in Quebec, avoid ruling on the applicable law or considering the differences between various laws at certification, taking the view that any problem can be resolved at a later stage: for instance, any “practical difficulties ... can be met by amending the order in question to adjust the size of the class”.²²³

²¹⁷ *Benamor c Air Canada*, [2020 QCCA 1597](#) at para [125](#); *Chevalier c Air Transat AT inc.*, [2021 QCCS 1105](#) at para [100](#); *Brito c Pfizer Canada inc.*, [2008 QCCS 2231](#) at para [153](#).

²¹⁸ *Union des consommateurs c Bell Canada*, [2012 QCCA 1287](#) at para [125](#) (“présumer, [...] jusqu’à preuve du contraire, que le droit [en question] ne varie pas tellement d’une province canadienne à l’autre, quant au fond du moins”); *Air Canada c P.A.*, [2021 QCCA 873](#) at para [173](#).

²¹⁹ *Air Canada c P.A.*, [2021 QCCA 873](#) at para [173](#) (“le droit applicable à l’extérieur du Québec ne se présume plus”).

²²⁰ *Vivendi Canada Inc. v Dell’Aniello*, [2014 SCC 1](#) at para [62](#) (our emphasis).

²²¹ Scott, *supra* note 208 at 249.

²²² Morin-Lévesque, *supra* note 144 at 259.

²²³ *Nantais v Teletronics Proprietary (Canada) Ltd.*, [1995 CanLII 7113](#) (ONSC); *LeFrançois v Guidant Corp.*, [2008 CanLII 15770](#) (ONSC) at para [69](#); see also *Silver v Imax Corporation*, [2009 CanLII 72334](#) (ONSC) at paras [155](#), [164](#); more recently *Airia Brands v Air Canada*, [2017 ONCA 792](#) at paras [130-131](#).

[187] The advantage of this wait-and-see approach is that it facilitates the certification of the proceedings. Indeed, if the court assumes that the law of its forum applies, it can more readily conclude that there are common issues and assess the proposed legal argument.²²⁴ The parties may then reach a settlement – which, incidentally, is what happens in most cases – and thereby sidestep the issue of applicable law, since settlements do not have to strictly reflect the legal framework in order to be approved as fair and reasonable. In this sense, a wait-and-see approach is perhaps the most efficient at the certification stage.

[188] This approach nevertheless has significant drawbacks downstream, particularly with regard to the protection of the rights of members located outside the jurisdiction in which the proceedings are taking place.

[189] First, the absence of a decision on the applicable law may affect the dynamics of negotiations between the parties. On the one hand, a defendant against whom a multi-jurisdictional action has been certified, while the question of applicable law remains unresolved, might end up settling the dispute with respect to foreign members without taking into account the law applicable to them, and sometimes on less favourable terms. On the other hand, a defendant who knows that the action has been certified on the basis of a law more favourable to plaintiffs, while other laws might apply to part of the class, might be reluctant to settle the action on that basis, which could delay the outcome of the case.²²⁵ In both cases, unpredictability can hinder negotiations.

[190] If the case settles, the absence of a decision on the applicable law may further complicate the court's assessment of whether the settlement is "fair, reasonable and in the best interests of the class or subclass members".²²⁶ Indeed, some courts have considered the applicable law in their analysis and, on occasion, have been reluctant to approve settlements that failed to account for these differences.²²⁷ Knowing the applicable law at an earlier stage would enable the parties to prepare and present their settlement proposal in accordance with that law.

[191] If the case is not settled and proceeds to a hearing on the merits, the court must then rule on the applicable law. However, the courts are then reluctant to rule on a claim

²²⁴ Scott, *supra* note 208 at 240.

²²⁵ In the context of global actions, see Veel & Henry, *supra* note 144 at 65.

²²⁶ *ON Act*, s 27.1(5). A similar criterion is applied in the various Canadian jurisdictions when approving settlements that bring class actions to an end.

²²⁷ Scott, *supra* note 208 at 248; *Abdulrahim v Air France*, [2009 CanLII 72086](#) (ON SC) (taking into account the different laws applicable to various members of the class in order to assess the reasonableness of the settlement).

governed by multiple laws.²²⁸ Instead, they may decide to amend the class to limit its scope to their own jurisdiction, particularly to avoid the burden of analyzing multiple applicable laws.²²⁹ While this approach has the merit of simplifying the analysis, it raises serious issues for the parties and absent members. On the one hand, the parties may have invested time and money in a substantive debate concerning various applicable laws, which is ultimately set aside. On the other hand, absent members, excluded from the proceedings, must then bring another action elsewhere to assert their rights, which delays any potential compensation.²³⁰ Taking the applicable law into account at an early stage would help to avoid this problem.

[192] Finally, if the court issues a judgment on the merits or approves a settlement without taking into account any foreign law applicable to the action, its judgment may be more difficult to recognize and enforce in other jurisdictions. In *Hocking*, for example, the Quebec Court of Appeal refused to recognize a decision approving a settlement that appeared to bind the Quebec members, concluding, amongst other things, that the Ontario court should have taken Quebec law into account in the context of its approval.²³¹ Bich J (writing alone on this point, as the other two judges did not express the same reservations) noted with dismay that

[TRANSLATION] by authorizing a class action without even considering whether there is a real and substantial connection on the merits between each and every member of the class (in this case, Canadians who have had certain contractual dealings with HSBC) and the court seized (that of Ontario), the Ontario judgment at the heart of the dispute apparently serves to make applicable to all non-residents of Ontario, and in particular to Quebecers, not only the recognition procedure applicable to class actions in Ontario, but above all the substantive law of that province.²³²

[193] In short, as Scott notes, the wait-and-see approach poses numerous problems, some more obvious than others, and “might be just as problematic as the non-examination of the choice of law issue in the approval of the settlement”.²³³ For all these reasons, continuing with such an approach does not seem any more desirable than the opt-in approach.

²²⁸ See *P.A. c Air Canada*, [2019 QCCS 606](#), at para [44](#) (conf’d [2021 QCCA 873](#)) ([TRANSLATION] “the Court must rule on the obligation to compensate for damages in accordance with the law of each province where tickets were purchased, that is, where a contract was entered into, meaning a potential thirteen (13) sets of different rules”).

²²⁹ See, e.g., *Air Canada c P.A.*, [2021 QCCA 873](#); see also *Nantais v Teletronics Proprietary (Canada) Ltd*, [1995 CanLII 7113](#) (ONSC).

²³⁰ Following *Air Canada*, precited, an action was in fact filed in British Columbia, but was only certified in 2024... 13 years after the initial action was authorized in Quebec: *Gauthier v Air Canada*, [2024 BCSC 231](#) (conf’d [2025 BCCA 134](#)).

²³¹ *Hocking c Haziza*, [2008 QCCA 800](#) at para [158](#).

²³² *Hocking c Haziza*, [2008 QCCA 800](#) at para [151](#) (our emphasis).

²³³ Scott, *supra* note 208 at 249.

3.3.3. A third option: taking into account the applicable law at certification

[194] However, a third option is possible.²³⁴ This would involve amending the *Uniform Act* so that a court called upon to certify a multi-jurisdictional action must, expressly: (a) identify the law or laws applicable to the action; and (b) take that law or those laws into account in its analysis of the certification criteria, in particular the existence of identifiable causes of action and common issues.²³⁵

[195] In practical terms, this would mean that claimants wishing to give their action a multi-jurisdictional scope would, at the very least, have to: (a) plead the relevant conflict-of-laws rules to identify the law or laws applicable to their action; (b) plead any foreign law applicable to some of the members of the proposed class; and (c) provide evidence of such law on the court's request. Defendants could participate in this debate and argue in favour of applying other laws. The court would then have all the information required to identify the applicable law, at the very least on a preliminary basis, and protect the interests of absent members.

[196] This proposal has the drawback that, in certain cases, it could complicate the certification proceedings and require the court to rule on questions of fact specific to conflict-of-laws issues, whereas certification is intended to be a relatively straightforward screening stage in which the facts are taken as averred. The complexity is likely to be even greater where the applicable law may be affected by factual circumstances, such as the content and validity of a choice-of-law clause.²³⁶ Possibilities of appeal on this question may also complicate these cases.

[197] This drawback is, however, offset by the fact that an early decision on the law applicable to the dispute serves both to protect the rights and interests of absent members and to make the subsequent stages of the action more efficient. Furthermore, complex and detailed evidence—such as an expert report—should not be required when it is not absolutely necessary to make a preliminary determination of the applicable law.

²³⁴ For an outstanding study of this issue, accompanied by similar recommendations, see Guillaume Laganière, “L'action collective multiterritoriale et multinormative” (2026) 55:2 RDUS (forthcoming). A similar but less detailed proposal is put forward by Scott, *supra* note 208 at 266.

²³⁵ See, on this last point, *Benamor c Air Canada*, [2020 QCCA 1597](#) at para 123 ([TRANSLATION] “the variety of applicable legal regimes may nevertheless affect the commonality of the issues that are the subject of a class action”); on the cause of action, see *Lachaine c Air Transat AT inc.*, [2012 QCCA 726](#) at para 45 ([TRANSLATION] “it is not sufficient for the appellants, even as a minimal demonstration of the applicable law, to invoke ‘rules derived from the common law’ or ‘various consumer protection laws’ in order to meet this burden and establish a legal syllogism within the meaning of Article 575(2) CCP”). As such, Quebec courts already frequently conduct this analysis, as we explain in more detail below.

²³⁶ As in *Benamor c Air Canada*, [2020 QCCA 1597](#) at para 79.

[198] Lastly, this change would be consistent with the provisions of the *Uniform Act* and certain trends in case law. Indeed, the “applicable laws” must already be taken into account under the *Uniform Act of 2007* when the court decides whether a multi-jurisdictional action already brought elsewhere should take precedence over a proposed new action.²³⁷ The court then has the power to take this factor into account when deciding whether to certify.²³⁸ In such circumstances, the parties must therefore already argue the applicable laws at the certification stage.

[199] Furthermore, several courts have already departed from the wait-and-see approach and determined the applicable law at the certification stage. In *Lépine*, although it did not specifically rule on this issue, the Supreme Court of Canada suggested that, in the context of a multi-jurisdictional action, the courts have “a duty to ensure that the conduct of the proceeding, the choice of remedies and the enforcement of the judgment effectively take account of each group’s specific interests”.²³⁹ As Scott notes, this may also extend to issues of choice of law at the certification stage.²⁴⁰ In a similar vein, albeit in a different context, Bich J held in *Hocking* that it is preferable for judges to consider the applicable law at the stage of certification and to contemplate [TRANSLATION] “the possibility of applying different laws to various subclasses of litigants, based on a division by province”.²⁴¹

[200] In line with these views, more recent decisions have required evidence that the legal regimes applicable to the claim were sufficiently similar. In some cases, they have even created subclasses reflecting the diversity of applicable laws.²⁴² The following cases provide some examples of instances in which the courts have thus departed from the wait-and-see approach:

- In *Benamor*, while acknowledging that, generally speaking, the applicable law is a matter of substance, the Québec Court of Appeal limited the scope of the class to Canada rather than the whole world, citing, amongst other arguments, the potential diversity of applicable laws.²⁴³

²³⁷ *Uniform Act of 2007*, s 4(3).

²³⁸ *Ibid*, s 4.1.

²³⁹ *Canada Post Corp. v Lépine*, [2009 SCC 16](#) at para [56](#).

²⁴⁰ Scott, *supra* note 208 at 243.

²⁴¹ *Hocking c Haziza*, [2008 QCCA 800](#) at para [152](#) (“la possibilité d’appliquer différents droits aux divers sous-groupes de justiciables, selon une division par province”); see also *Silver c IMAX*, [2013 ONSC 1667](#) at paras [120-122](#); *Canada Post Corp. v Lépine*, [2009 SCC 16](#) at para [56](#).

²⁴² See Scott, *supra* note 208 at 247.

²⁴³ *Benamor c Air Canada*, [2020 QCCA 1597](#) at paras [124-125](#); see also *Décary-Gilard c General Motors of Canada*, [2023 QCCS 92](#) at paras [27-34](#) which adopts similar reasoning (conf’d [2024 QCCA 471](#)).

- In *Raleigh*, the Superior Court of Québec refused to authorize the proposed action, stating, amongst other arguments, that [TRANSLATION] “the geographical scope of the class members, as defined in the proposed class definition, extends across ten Canadian provinces and two territories, fifty US states and one US federal district” and that “[n]o evidence was presented, even after a request by the Court to that effect, of the existence of similar legal standards regarding civil liability, limitation periods and the statutory laws invoked for the protection of consumers”.²⁴⁴
- In *Das*, the Ontario Superior Court of Justice refused to certify a class action, concluding that Bangladeshi law applied to the dispute and that, consequently, the claim was time-barred.²⁴⁵
- In *Berg*, the Ontario Superior Court of Justice concluded that the complexity involved in applying multiple sets of Canadian and US laws made the action unworkable and, for that reason and others, that it was not a preferable mechanism with respect to the defendants located in the United States.²⁴⁶

[201] In short, several Canadian courts already consider the applicable law at the certification stage and tailor their orders accordingly, whether by limiting the scope of the class, creating subclasses, or refusing certification in whole or in part where the applicable laws differ or have not been established. The proposed amendment to the *Uniform Act* would codify this practice in order, on the one hand, to make multi-jurisdictional actions more effective at the subsequent stages, particularly on the merits, and, on the other hand, to ensure that the interests and substantive rights of members outside the jurisdiction in which the action is brought are adequately protected. Furthermore, the practice is not currently applied uniformly, so such an amendment to the *Uniform Act* would provide greater predictability and reduce the confusion that currently exists.²⁴⁷

4. Next steps and proposed resolution

[202] If the ULCC accepts this policy report, the working group will have completed its analysis of the five issues identified in its 2024 progress report. The remaining work consists in preparing draft amendments to the *Uniform Act* that reflect the recommendations set forth in the two policy reports, as endorsed by the ULCC.

²⁴⁴ *Raleigh c Maibec inc.*, [2016 QCCS 2533](#) at paras [67-68](#); citing *Albitia c Apple inc.*, [2013 QCCS 2805](#) at para [50](#); *Nova c Apple inc.*, [2014 QCCS 6169](#) at para [88](#).

²⁴⁵ *Das v George Weston Limited*, [2017 ONSC 4129](#) (conf’d [2018 ONCA 1053](#)).

²⁴⁶ *Berg v Canadian Hockey League*, [2017 ONSC 2608](#) at paras [208-216](#) (overturned but not on this point [2019 ONSC 2106](#)).

²⁴⁷ On that point, see Laganière, *supra* note 234 (section 1.2).

[203] The working group proposes to focus on this drafting work in 2026-2027 and to submit a draft uniform act and a final report for discussion and adoption at the 2027 annual meeting.

[204] Based on the above, the working group proposes the following resolution for adoption by the Civil Section:

BE IT RESOLVED

THAT the Second Policy Report of the Class Actions working group be accepted;

THAT draft amendments to the *Uniform Class Proceedings Act* be prepared based on the recommendations of the first and second policy reports, and any further directions provided by the ULCC; and

THAT the working group submit these draft amendments and its final report to the ULCC at the 2027 meeting.

APPENDIX I

Provisions on certification

Federal Courts

Federal Courts Rules, SOR/98-106

Proceedings That May Be Certified as Class Proceedings

By class member

334.12 (1) Despite rule 302, a member of a class of persons may commence an action or an application on behalf of the members of that class, in which case the originating document shall be prefaced by the heading “Proposed Class Proceeding”.

Motion for certification of proceeding

(2) The member shall bring a motion for the certification of the proceeding as a class proceeding and for the appointment of the member as representative plaintiff or applicant.

Who may be representative

(3) The representative of a class shall be a person who may act as a plaintiff or an applicant under these Rules.

[...]

By defendant or respondent

334.13 (1) A defendant to an action or a respondent to an application may, at any time, bring a motion for the certification of the proceeding as a class proceeding and for the appointment of a representative plaintiff or applicant.

Application of rule 334.16

(2) Rule 334.16 applies to the certification of a proceeding referred to in subsection (1) as a class proceeding, with the exception, unless a judge orders otherwise, of subparagraphs 334.16(1)(e)(ii) and (iv) and paragraphs 334.16(3)(b) and (d).

[...]

Certification

Conditions

334.16 (1) Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if

- (a)** the pleadings disclose a reasonable cause of action;
- (b)** there is an identifiable class of two or more persons;
- (c)** the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;
- (d)** a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and
- (e)** there is a representative plaintiff or applicant who
 - (i)** would fairly and adequately represent the interests of the class,

Uniform Law Conference of Canada

- (ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,
- (iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and
- (iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

Matters to be considered

(2) All relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether

- (a) the questions of law or fact common to the class members predominate over any questions affecting only individual members;
- (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings;
- (c) the class proceeding would involve claims that are or have been the subject of any other proceeding;
- (d) other means of resolving the claims are less practical or less efficient; and
- (e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

[...]

334.19 A judge may, on motion, amend an order certifying a proceeding as a class proceeding or, if the conditions for certification are no longer satisfied with respect to the proceeding, decertify it.

British Columbia

Class Proceedings Act, RSBC 1996, c 50

Plaintiff's class proceeding

2 (1) A resident of British Columbia who is a member of a class of persons may commence a proceeding in the court on behalf of the members of that class.

(2) The member who commences a proceeding under subsection (1) must

- (a) make an application to the court for an order
 - (i) certifying the proceeding as a class proceeding, and
 - (ii) subject to subsection (4), appointing the member as the representative plaintiff for the class proceeding, and
- (b) give notice of the application for certification to
 - (i) the representative plaintiff for any multi-jurisdictional class proceeding, and
 - (ii) the representative plaintiff for any proposed multi-jurisdictional class proceeding

that has been commenced elsewhere in Canada and that involves the same or similar subject matter.

[...]

Defendant's class proceeding

3 A defendant to 2 or more proceedings may, at any stage of one of the proceedings, make an application to a judge of the court for an order certifying the proceedings as a class proceeding and appointing a representative plaintiff.

[...]

Class certification

4(1) Subject to subsections (3) and (4), the court must certify a proceeding as a class proceeding on an application under section 2 or 3 if all of the following requirements are met:

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class of 2 or more persons;
- (c) the claims of the class members raise common issues, whether or not those common issues predominate over issues affecting only individual members;
- (d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues;
- (e) there is a representative plaintiff who
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on 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 common issues, the court must consider all relevant matters including the following:

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

[...]

If conditions for certification not satisfied

10 (1) Without limiting section 8 (3), at any time after a certification order is made under this Part, the court may amend the certification order, decertify the proceeding or make any other order it considers appropriate if it appears to the court that the conditions mentioned in section 4 or 6 (1) are not satisfied with respect to a class proceeding.

(2) If 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 9](#) (a) to (c) in relation to each of those proceedings.

Alberta

Class Proceedings Act, SA 2003, c 16.5

Plaintiff's class proceeding

2(1) One member of a class of persons may commence a proceeding in the Court on behalf of the members of that class.

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

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

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

[...]

Defendant's class proceeding

3(1) A defendant to a proceeding may, at any stage of the proceeding, make an application to the Court for an order certifying the proceeding as a class proceeding and appointing a person who on certification will be a member of the class as the representative plaintiff, whether or not more than one proceeding has been commenced against the defendant.

[...]

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

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

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

- (a) whether questions of fact or law common to the prospective class members predominate over any questions affecting only individual prospective class members;
- (b) whether a significant number of the prospective class members have a valid interest in individually controlling the prosecution of separate actions;
- (c) whether the class proceeding would involve claims that are or have been the subject of any other proceedings;
- (d) whether other means of resolving the claims are less practical or less efficient;
- (e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

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

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

[...]

11(1) Without limiting [section 9\(4\)](#), if at any time after a certification order is made under this Part the Court, with respect to the class proceeding, determines that it is no longer satisfied as to the matters referred to in [section 5](#) or [7\(1\)](#), the Court may do one or more of the following:

- (a) amend the certification order;
- (b) decertify the proceeding;
- (c) make any other order, not referred to in clause (a) or (b), that the Court considers appropriate.

(2) If the Court makes an order under subsection (1) decertifying a proceeding as a class proceeding, the Court may

- (a) permit the proceeding to continue as one or more proceedings between different parties, and
- (b) make any order referred to in [section 10](#) in relation to each of those proceedings.

Saskatchewan

The Class Actions Act, SS 2001, c C-12.01

Plaintiff's class action

4(1) A resident of Saskatchewan who is a member of a class of persons 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);
- (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; and

Uniform Law Conference of Canada

(c) give notice of the application for certification to the representative plaintiff in any multi-jurisdictional class action, or any proposed multi-jurisdictional class action, commenced elsewhere in Canada that involves the same or similar subject-matter.

(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 King'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.

[...]

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.

[...]

Class certification

6(1) Subject to subsections (2) and (3), 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.

[...]

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.

Manitoba

The Class Proceedings Act, CCSM, c C130

Member of class may commence proceeding

2(1) One or more members of a class of persons may commence a proceeding in the court on behalf of the members of that class.

Motion for certification by plaintiff

2(2) A person who commences a proceeding under subsection (1) must make a motion to the court for an order

- a) certifying the proceeding as a class proceeding; and
- b) appointing a representative plaintiff.

[...]

Motion for certification by defendant

3 A defendant to two or more proceedings may, at any stage of one of the proceedings, make a motion to the court for an order certifying some or all of the proceedings as a class proceeding and appointing a representative plaintiff.

[...]

Certification of class proceeding

4. The court must certify a proceeding as a class proceeding on a motion under section 2 or 3 if

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class of two or more persons;
- (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 common issues; and
- (e) there is a person who is prepared to act as the representative plaintiff 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, on the common issues, an interest that conflicts with the interests of other class members.

[...]

If conditions for certification not satisfied

10(1) Without limiting subsection 8(3), at any time after a certification order is made, the court may amend the order, decertify the proceeding or make any other order it considers appropriate, if it appears to the court that the conditions mentioned in section 4 or 6 are not satisfied with respect to a class proceeding.

Consequences of decertification

10(2) If 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 clauses 9(a) to (c) in relation to each of those proceedings.

Ontario

Class Proceedings Act, 1992, SO 1992, c 6

Plaintiff's class proceeding

2 (1) One or more members of a class of persons may commence a proceeding in the court on behalf of the members of the class.

Registration of proceeding

(1.1) A person who commences a proceeding under subsection (1) shall register the proceeding in accordance with the regulations.

Motion for certification

(2) A person who commences a proceeding under subsection (1) shall make a motion to a judge of the court for an order certifying the proceeding as a class proceeding and appointing the person representative plaintiff.

[...]

Defendant's class proceeding

3 A defendant to two or more proceedings may, at any stage of one of the proceedings, make a motion to a judge of the court for an order certifying the proceedings as a class proceeding and appointing a representative plaintiff.

[...]

Certification

5(1) The court shall, subject to subsection (6) and to section 5.1, certify a class proceeding on a motion under section 2, 3 or 4 if,

- (a) the pleadings 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 the representative plaintiff or defendant;
- (c) the claims or defences of the class members raise common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff or defendant who,
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

Same

(1.1) In the case of a motion under section 2, a class proceeding is the preferable procedure for the resolution of common issues under clause (1) (d) only if, at a minimum,

- a) it is superior to all reasonably available means of determining the entitlement of the class members to relief or addressing the impugned conduct of the defendant, including, as applicable, a quasi-judicial or administrative proceeding, the case management of individual claims in a civil proceeding, or any remedial scheme or program outside of a proceeding; and
- b) the questions of fact or law common to the class members predominate over any questions affecting only individual class members.

[...]

Where it appears conditions for certification not satisfied

10 (1) On the motion of a party or class member, where it appears to the court that the conditions mentioned in subsections 5 (1) and (2) are not satisfied with respect to a class proceeding, the court may amend the certification order, may decertify the proceeding or may make any other order it considers appropriate.

Proceeding may continue in altered form

(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.

Quebec

Code of Civil Procedure, CQLR, c C-25.01

Chapter II – Authorization to Institute Class Action

574. Prior authorization of the court is required for a person to institute a class action.

The application for authorization must state the facts on which it is based and the nature of the class action, and describe the class on whose behalf the person intends to act. It must be served on the person against whom the person intends to institute the class action, with at least 30 days' notice of the presentation date.

An application for authorization may only be contested orally, and the court may allow relevant evidence to be submitted.

575. The court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that

- 1° the claims of the members of the class raise identical, similar or related issues of law or fact;
- 2° the facts alleged appear to justify the conclusions sought;
- 3° the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and
- 4° the class member appointed as representative plaintiff is in a position to properly represent the class members.

576. The judgment authorizing a class action describes the class whose members will be bound by the class action judgment, appoints the representative plaintiff and identifies the main issues to be dealt with collectively and the conclusions sought in relation to those issues. It describes any subclasses created and determines the district in which the class action is to be instituted.

The judgment orders the publication of a notice to class members; it may also order the representative plaintiff or a party to make information on the class action available to the class members, including by setting up a website.

The judgment also determines the time limit for opting out of the class. The opting-out period cannot be shorter than 30 days or longer than six months after the date of the notice to class members. The time limit for opting out is a strict time limit, although a class member, with leave of the court, may opt out after its expiry on proving that it was impossible in fact for the class member to act sooner.

[...]

588. The court may at any time, on the application of a party, revise or annul the authorization judgment if it considers that conditions relating to the issues of law or fact or to the composition of the class are no longer satisfied.

If the court revises the authorization judgment, it may allow the representative plaintiff to amend the conclusions sought. In addition, if circumstances so require, the court may, even on its own initiative, modify or divide the class at any time.

If the court annuls the authorization judgment, the proceeding continues between the parties before the competent court according to the procedure set out in Book II.

New Brunswick

Class Proceedings Act, RSNB 2011, c 125

Motion by plaintiff for certification of proceeding

3(1) One member of a class of persons who are resident in New Brunswick may commence a proceeding in the court on behalf of the members of that class.

3(2) In a proceeding referred to in subsection (1), the originating process shall indicate that the proceeding is brought under this Act.

3(3) The person who commences a proceeding under subsection (1) shall make a motion 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.

[...]

Motion by defendant for certification of proceeding

4 A defendant in two or more proceedings, at any stage of one of the proceedings, may make a motion 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.

[...]

Certification of class proceeding

6(1) The court shall certify a proceeding as a class proceeding on a motion under section 3 or 4 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,
- (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 person seeking to be appointed as representative plaintiff for the class 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.

6(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 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.

[...]

If conditions for certification not satisfied after certification

12(1) Without limiting [subsection 10\(4\)](#), if at any time after a certification order is made under this Part it appears to the court that the conditions referred to in [section 6](#) or [subsection 8\(1\)](#) 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.

12(2) If 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 11 in relation to each of those proceedings.

Nova Scotia

Class Proceedings Act, SNS 2007, c 28

Application for certification of proceeding

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.

[...]

Application by defendant for certification

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. *2007, c. 28, s. 5.*

[...]

Certification by the court

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.

[...]

Where conditions for certification not satisfied after certification

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. 2007, c. 28, s. 13.

Prince Edward Island

Class Proceedings Act, RSPEI 1988, c C-9.01

3. Plaintiff's class proceeding

(1) A person who is a member of a class of persons may commence a proceeding in the court on behalf of the members of that class.

Motion for certification

(2) The member who commences a proceeding under subsection (1) shall

- (a) make a motion to the court for an order
 - (i) certifying the proceeding as a class proceeding, and
 - (ii) subject to subsection (4), appointing the member as the representative plaintiff for the class proceeding; and
- (b) give notice of the motion for certification to the representative plaintiff in any class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, that
 - (i) was commenced in another Canadian jurisdiction, and
 - (ii) involves the same or similar subject matter and some or all of the same class members

[...]

4. Defendant's class proceeding

A defendant to two or more proceedings may, at any stage of one of the proceedings, make a motion to a judge of the court for an order certifying the proceedings as a class proceeding and appointing a representative plaintiff. 2021,c.30,s.4.

[...]

6. Criteria for certification

(1) Subject to subsections (2), (3) and (4), the court shall certify a proceeding as a class proceeding on a motion under section 3 or 4 if

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class of two or more persons who would be represented by the representative plaintiff;
- (c) the claims of the class members raise one or more common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff who
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and

Uniform Law Conference of Canada

(iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.

Superiority of class proceeding

(2) In the case of a motion under section 3, a class proceeding is the preferable procedure for the resolution of common issues only where, at a minimum,

(a) it is superior to all reasonably available means of determining the entitlement of the class members to relief or addressing the impugned conduct of the defendant, including, as applicable, a quasi-judicial or administrative proceeding, the case management of individual claims in a civil proceeding or any remedial scheme or program outside of a proceeding; and

(b) the questions of fact or law common to the class members predominate over any questions affecting only individual class members.

[...]

13. Other powers of court

(1) Without limiting subsection 11(3), at any time after a certification order is made under this Part, the court may amend the certification order, decertify the proceeding or make any other order it considers appropriate if it appears to the court that the conditions mentioned in section 6 or clause 7(1)(a) are not satisfied with respect to a class proceeding.

Effect of decertification order

(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 clauses 12(a) to (c) in relation to each of those proceedings.

Newfoundland and Labrador

Class Actions Act, SNL 2001, c C-18.1

Plaintiff can apply to certify class action

3. (1) One member of a class of persons who reside in the province may commence an action in the court on behalf of the members of that class.

(2) The member who commences the action shall apply to a judge of the court within the time period in subsection (3) for an order certifying the action as a class action and appointing the member as the representative plaintiff.

[...]

Defendant can apply to certify class action

4. A person who is named as a defendant in more than one action in the court may apply to a judge of the court for an order certifying the actions as a class action and appointing a person to be the representative plaintiff.

[...]

When court shall certify class action

5. (1) On an application made under [section 3](#) or [4](#), the court shall certify an action as a class action where

(a) the pleadings disclose a cause of action;

(b) there is an identifiable class of 2 or more persons;

- (c) the claims of the class members raise a common issue, whether or not the common issue is the dominant issue;
- (d) a class action is the preferable procedure to resolve the common issues of the class; and
- (e) there is a person who
 - (i) is able to fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the 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 the other class members.

(2) In determining whether a class action would be the preferable procedure for the fair and efficient resolution of the common issues, the court may consider all relevant matters including whether

- (a) questions of fact or law common to the members of the class predominate over questions affecting only individual members;
- (b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate actions;
- (c) the class action would involve claims that are or have been the subject of another action;
- (d) other means of resolving the claims are less practical or less efficient; and
- (e) the administration of the class action would create greater difficulties than those likely to be experienced if relief were sought by other means.

[...]

Decertification or amendment where conditions no longer satisfied

11. (1) The court may amend a certification order, decertify an action or make another order it considers appropriate where it appears to the court that the conditions in section 5 or subsection 7 (1) are not satisfied with respect to a class action.

(2) Where the court makes an order decertifying an action under subsection (1), the court may permit the action to continue as one or more non-class actions and may make an order referred to in [section 10](#) in relation to those actions.

APPENDIX II
Provisions on multi-jurisdictional actions

Uniform Class Proceedings Act (as amended in 2007)

Definitions

1 In this Act: [...]

“multi-jurisdictional class proceeding” means a proceeding that

- (a) is brought on behalf of a class of persons that includes persons who do not reside in *[enacting jurisdiction]*; and
- (b) is certified as a class proceeding under Part 2.

[...]

Plaintiff’s class proceeding

2(1) A resident of *[enacting jurisdiction]* who is a member of a class of persons may commence a proceeding in the court on behalf of the members of that class.

(2) The (...) member who commences a proceeding under subsection (1) must (...)

- (a) apply to the court for an order
 - (i) certifying the proceeding as a class proceeding, and
 - (ii) subject to subsection (4), appointing the member as the representative plaintiff for the class proceeding; and
- (b) give notice of the application for certification to
 - (i) the representative plaintiff in any multi-jurisdictional class proceeding, and
 - (ii) the representative plaintiff in any proposed multi-jurisdictional class proceeding,

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

[...]

Plaintiff in other proceeding may appear

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

Class certification

4(1) Subject to subsections (2) and (3), the court must certify a proceeding as a class proceeding on an application under section 2 or 3 if

- (a) the pleadings disclose a cause of action,
- (b) there is an identifiable class of 2 or more persons,
- (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 resolution of the common issues, and
- (e) there is a representative plaintiff who

- (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.
- (2) If a multi-jurisdictional class proceeding or a proposed multi-jurisdictional class proceeding has been commenced elsewhere in Canada that involves the same or similar subject matter to that of the proceeding being considered for certification, the court must determine whether it would be preferable for some or all of the claims of the proposed class members to be resolved in that proceeding.
- (3) When making a determination under subsection (2), the court must
- (a) be guided by the following objectives:
 - (i) ensuring that the interests of all parties in each of the relevant jurisdictions are given due consideration,
 - (ii) ensuring that the ends of justice are served,
 - (iii) where possible, avoiding irreconcilable judgments,
 - (iv) promoting judicial economy; and
 - (b) consider all relevant factors, including the following:
 - (i) the alleged basis of liability, including the applicable laws,
 - (ii) the stage each of the proceedings has reached,
 - (iii) the plan for the proposed multi-jurisdictional class proceeding, including the viability of the plan and the capacity and resources for advancing the proceeding on behalf of the proposed class.
 - (iv) the location of class members and class representatives in the various proceedings, including the ability of class representatives to participate in the proceedings and to represent the interests of class members,
 - (v) the location of evidence and witnesses.

Orders in multi-jurisdictional certification

4.1(1) The court may make any order it considers appropriate in an application to certify a multi-jurisdictional class proceeding, including an order

- (a) certifying the proceeding as a multi-jurisdictional class proceeding if
 - (i) the criteria in subsection 4(1) have been satisfied, and
 - (ii) having regard to subsections 4(2) and (3), the court determines that *[enacting jurisdiction]* is the appropriate venue for the multi-jurisdictional class proceeding;
- (b) refusing to certify the proceeding if the court determines that it should proceed as a multi-jurisdictional class proceeding in another jurisdiction; or
- (c) refusing to certify a portion of a proposed class if that portion of the class contains members who may be included within a proposed class proceeding in another jurisdiction.

Uniform Law Conference of Canada

- (2) If the court certifies a multi-jurisdictional class proceeding, it may
- (a) divide the class into resident and non-resident subclasses;
 - (b) appoint a separate representative plaintiff for each subclass; and
 - (c) specify the manner in which and the time within which members of each subclass may opt out of the proceeding.

[...]

Court may determine conduct of proceeding

12 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 it considers appropriate.

Federal Courts

Federal Courts Rules, SOR/98-106

Matters not provided for

4 On motion, the Court may provide for any procedural matter not provided for in these Rules or in an Act of Parliament by analogy to these Rules or by reference to the practice of the superior court of the province to which the subject-matter of the proceeding most closely relates.

British Columbia

Class Proceedings Act, RSBC 1996, c 50

1 In this Act:

[...]

“**multi-jurisdictional class proceeding**” means a proceeding that is brought on behalf of a class of persons that includes persons who do not reside in British Columbia;

[...]

Plaintiff in other proceeding may appear

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

[...]

Class certification

4(3) [...] If a multi-jurisdictional class proceeding or a proposed multi-jurisdictional class proceeding has been commenced elsewhere in Canada and involves the same or similar subject matter to that of the proceeding being considered for certification, the court must determine whether it would be preferable for some or all of the claims of the proposed class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced elsewhere.

(4) When making a determination under subsection (3), the court must

(a) be guided by the following objectives:

- (i) to ensure that the interests of all parties in each of the relevant jurisdictions are given due consideration;
 - (ii) to ensure that the ends of justice are served;
 - (iii) to avoid irreconcilable judgments, if possible;
 - (iv) to promote judicial economy, and
- (b) consider relevant factors, including the following:
- (i) the alleged basis of liability, including the applicable laws;
 - (ii) the stage that each of the proceedings has reached;
 - (iii) the plan for the proposed multi-jurisdictional class proceeding, including the viability of the plan and the capacity and resources for advancing the proceeding on behalf of the proposed class;
 - (iv) the location of class members and representative plaintiffs in each of the proceedings, including the ability of representative plaintiffs to participate in the proceedings and to represent the interests of class members;
 - (v) the location of evidence and witnesses.

Orders in multi-jurisdictional certification

4.1 (1) The court may make any order it considers appropriate in an application to certify a multi-jurisdictional class proceeding, including an order

- (a) certifying the proceeding as a multi-jurisdictional class proceeding, if
 - (i) the requirements in section 4 (1) are met, and
 - (ii) the court determines, having regard to section 4 (2) and (3), that British Columbia is the appropriate venue for the multi-jurisdictional class proceeding,
- (b) refusing to certify the proceeding, if the court determines that it should proceed as a multi-jurisdictional class proceeding in another jurisdiction, or
- (c) refusing to certify a portion of a proposed class, if that portion of the class contains members who may be included within a proposed class proceeding in another jurisdiction.

(2) If the court certifies a multi-jurisdictional class proceeding, it may

- (a) divide the class into resident and non-resident subclasses,
- (b) appoint a separate representative plaintiff for each subclass, and
- (c) specify the manner in which and the time within which members of each subclass may opt out of the proceeding.

[...]

Court may determine conduct of proceeding

12 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 it considers appropriate.

[Law and Equity Act, RSBC 1996, c 253](#)

Avoidance of multiplicity of proceedings

10 In the exercise of its jurisdiction in a cause or matter before it, the court must grant, either absolutely or on reasonable conditions that to it seem just, all remedies that any of the parties may

appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters may be avoided.

Alberta

Class Proceedings Act, SA 2003, c 16.5

1 In this Act,

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

[...]

Right to appear

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

[...]

5(6) If a multi-jurisdictional class proceeding or a proposed multi-jurisdictional class proceeding has been commenced elsewhere in Canada that involves subject-matter that is the same as or similar to that of a proceeding being considered for certification under this section, the Court must determine whether it would be preferable for some or all of the claims or common issues raised by the prospective class members to be resolved in the proceeding commenced elsewhere.

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

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

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

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

[...]

Orders in multi-jurisdictional certification

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

- (a) the criteria set out in section 5(1) have been satisfied, and
- (b) having regard to section 5(7) and (8), the Court determines under section 5(6) that Alberta is the appropriate venue for the determination of the proceeding.

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

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

[...]

Court may determine conduct of proceeding

13(1) The Court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure the fair and expeditious determination of the proceeding and, for that purpose, may impose on one or more of the parties any terms or conditions that the Court considers appropriate.

Judicature Act, RSA 2000, c J-2

5(3) For the purpose of removing any doubt, but not so as to restrict the generality of subsections (1) and (2), it is declared that the Court has the like jurisdiction and powers that by the laws of England were, on July 15, 1870, possessed and exercised by the Court of Chancery in England in respect of

[...]

- (f) preventing the multiplicity of actions,

Saskatchewan

The Class Actions Act, SS 2001, c C-12.01

Definitions

2 In this Act:

[...]

“multi-jurisdictional class action” means an action that is brought on behalf of a class of persons that includes persons who reside in Saskatchewan and persons who do not reside in Saskatchewan; (« recours collectif multiterritorial »)

[...]

Person may appear

5.1 A person who receives notice of an application for certification pursuant to clause 4(2)(c) may make submissions at the certification hearing.

[...]

Class certification

Uniform Law Conference of Canada

6 (2) If a multi-jurisdictional class action, or a proposed multi-jurisdictional class action, has been commenced elsewhere in Canada that involves subject-matter that is the same as or similar to that of the action being considered pursuant to this section, the court shall determine whether it would be preferable for some or all of the claims or common issues raised by those claims of the proposed class members to be resolved in that class action.

(3) For the purposes of making a determination pursuant to subsection (2), the court shall:

- a) be guided by the following objectives:
 - (i) ensuring that the interests of all of the parties in each of the relevant jurisdictions are given due consideration;
 - (ii) ensuring that the ends of justice are served;
 - (iii) avoiding, where possible, the risk of irreconcilable judgments;
 - (iv) promoting judicial economy; and
- b) consider all relevant factors, including the following:
 - (i) the alleged basis of liability, including the applicable laws;
 - (ii) the stage each of the actions has reached;
 - (iii) the plan for the proposed multi-jurisdictional class action, including the viability of the plan and the capacity and resources for advancing the action on behalf of the proposed class;
 - (iv) the location of the representative plaintiffs and class members in the various actions, including the ability of representative plaintiffs to participate in the actions and to represent the interests of the class members;
 - (v) the location of evidence and witnesses.

Orders in multi-jurisdictional certification

6.1(1) The court may make any order it considers appropriate in an application to certify a multi-jurisdictional class action, including the following:

- a) an order certifying the action as a multi-jurisdictional class action if:
 - (i) the criteria set out in subsection 6(1) have been satisfied; and
 - (ii) having regard to subsections 6(2) and (3), the court determines that Saskatchewan is the appropriate venue for the multi-jurisdictional class action;
- b) an order refusing to certify the action if the court determines that it should proceed as a multi-jurisdictional class action in another jurisdiction;
- (c) an order refusing to certify a portion of a proposed class if the members of that portion of the class contains members who may be included in a pending or proposed class action in another jurisdiction.

(2) If the court certifies a multi-jurisdictional class action, the court may:

- a) divide the class into resident and non-resident subclasses;
- (b) appoint a separate representative plaintiff for each subclass; and
- (c) specify the manner in which, and the time within which, members of each subclass may opt out of the action.

[...]

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.

King's Bench Act, SS 2023, c 28

Multiplicity of proceedings avoided

6-4(1) The court shall grant to the parties to an action or matter all remedies to which the parties appear to be entitled with respect to any legal or equitable claims that they have properly brought forward so that:

(a) all issues in controversy between the parties are determined as completely and finally as possible; and

(b) a multiplicity of legal proceedings concerning the issues is avoided.

(2) Relief pursuant to subsection (1) may be granted either absolutely or on any terms and conditions that a judge considers appropriate.

[...]

Stay of proceedings

6-13(1) Nothing in this Act prevents a judge from directing a stay of proceedings in any action or matter before the court if the judge considers it appropriate.

(2) Any person, whether a party or not to an action or matter, may apply to the court for a stay of proceedings, either generally or to the extent that may be necessary for the purposes of justice, if the person may be entitled to enforce a judgment, rule or order, and the proceedings in the action or matter or a part of the proceedings may have been taken contrary to that judgment, rule or order.

(3) On an application pursuant to subsection (2), a judge shall make any order that the judge considers appropriate.

Manitoba

The Class Proceedings Act, CCSM, c C130

Residency

6(3) A class that comprises persons resident in Manitoba and persons not resident in Manitoba may be divided into resident and non-resident subclasses.

[...]

Court may determine conduct of proceeding

12 The court may at any time make any order that 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 it considers appropriate.

Ontario

Class Proceedings Act, 1992, SO 1992, c 6

1 (1) In this Act,

[...]

« **multi-jurisdictional class proceeding** » means a proceeding,

- (a) brought on behalf of a class of persons that includes residents from two or more provinces or territories of Canada, and
- (b) certified as a class proceeding under this Act or under the law of another Canadian jurisdiction, as the case may be; (“recours collectif multiterritorial”)

[...]

Notice of certification motion to others

2(4) In addition to giving notice of a motion for certification in accordance with the rules of court, the person shall give notice of the motion to the representative plaintiff of any class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, that,

- (a) was commenced in a Canadian jurisdiction other than Ontario; and
- (b) involves the same or similar subject matter and some or all of the same class members.

Submissions

(5) A person to whom notice is given under subsection (4) is entitled to make submissions at the hearing of the motion for certification.

[...]

Existence of other class proceeding

5 (6) If a class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, has been commenced in a Canadian jurisdiction other than Ontario involving the same or similar subject matter and some or all of the same class members as in a proceeding under this Act, the court shall determine whether it would be preferable for some or all of the claims of some or all of the class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced in the other jurisdiction instead of in the proceeding under this Act.

Same, considerations

(7) In making a determination under subsection (6), the court shall,

- a) be guided by the following objectives:
 - (i) ensuring that the interests of all parties in each of the applicable jurisdictions are given due consideration,
 - (ii) ensuring that the ends of justice are served,
 - (iii) avoiding irreconcilable judgments where possible,
 - (iv) promoting judicial economy; and
- (b) consider all relevant factors, including,
 - (i) the alleged basis of liability in each of the proceedings, and any differences in the laws of each applicable jurisdiction respecting such liability and any available relief,
 - (ii) the stage each proceeding has reached,
 - (iii) the plan required to be produced for the purposes of each proceeding, including the viability of the plan and the available capacity and resources for advancing the proceeding on behalf of the class,

- (iv) the location of class members and representative plaintiffs in each proceeding, including the ability of a representative plaintiff to participate in a proceeding and to represent the interests of class members,
- (v) the location of evidence and witnesses, and
- (vi) the ease of enforceability in each applicable jurisdiction.

Motion for determination under subs. (6)

(8) The court, on the motion of a party or class member made before the hearing of the motion for certification, may make a determination under subsection (6) with respect to a proceeding under this Act, and, in doing so, may make any orders it considers appropriate respecting the proceeding, including,

- (a) staying the proceeding; and
- (b) imposing such terms on the parties as the court considers appropriate.

Motion to certify, multi-jurisdictional class proceeding

5.1 (1) The court may make any order it considers appropriate on a motion to certify a multi-jurisdictional class proceeding, including,

- a) certifying the proceeding if,
 - (i) the conditions set out in subsection 5 (1) are met, and
 - (ii) the court determines, having regard to subsections 5 (6) and (7), that Ontario is the appropriate venue for the proceeding;
- (b) refusing to certify the proceeding if the court determines that it should proceed as a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding in another jurisdiction; or
- (c) refusing to certify the proceeding with respect to class members that the court determines may be included as class members in a class proceeding or proposed class proceeding in another Canadian jurisdiction.

Same

(2) In making an order under clause (1) (a), the court may,

- a) divide the class into Ontario resident and non-resident subclasses;
- (b) appoint a separate representative plaintiff for each subclass; and
- (c) specify, for the purposes of section 9, the manner and time of opting out of the multi-jurisdictional class proceeding with respect to each subclass.

[...]

Court may determine conduct of proceeding

12 The court, on its own initiative or on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a proceeding under this Act to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

Québec

Civil Code of Québec, CQLR, c CCQ-1991

Uniform Law Conference of Canada

3137. On the application of a party, a Québec authority may stay its ruling on an action brought before it if another action, between the same parties, based on the same facts and having the same subject is pending before a foreign authority, provided that the latter action can result in a decision which may be recognized in Québec, or if such a decision has already been rendered by a foreign authority.

[...]

3155. A decision rendered outside Québec is recognized and, where applicable, declared enforceable by the Québec authority, except in the following cases:

- 1° the authority of the State where the decision was rendered had no jurisdiction under the provisions of this Title;
- 2° the decision, at the place where it was rendered, is subject to an ordinary remedy or is not final or enforceable;
- 3° the decision was rendered in contravention of the fundamental principles of procedure;
- 4° a dispute between the same parties, based on the same facts and having the same subject has given rise to a decision rendered in Québec, whether or not it has become final, is pending before a Québec authority, first seized of the dispute, or has been decided in a third State and the decision meets the conditions necessary for it to be recognized in Québec;
- 5° the outcome of a foreign decision is manifestly inconsistent with public order as understood in international relations;
- 6° the decision enforces obligations arising from the taxation laws of a foreign State.

Code of Civil Procedure, CQLR, c C-25.01

49. The courts and judges, both in first instance and in appeal, have all the powers necessary to exercise their jurisdiction.

They may, at any time and in all matters, even on their own initiative, grant injunctions or issue protection orders or orders to safeguard the parties' rights for the period and subject to the conditions they determine. As well, they may make such orders as are appropriate to deal with situations for which no solution is provided by law.

[...]

577. The court cannot refuse to authorize a class action on the sole ground that the class members are part of a multi-jurisdictional class action already under way outside Québec.

If asked to decline jurisdiction, to stay an application for authorization to institute a class action or to stay a class action, the court is required to have regard for the protection of the rights and interests of Québec residents.

If a multi-jurisdictional class action has been instituted outside Québec, the court, in order to protect the rights and interests of class members resident in Québec, may disallow the discontinuance of an application for authorization, or authorize another plaintiff or representative plaintiff to institute a class action involving the same subject matter and the same class if it is convinced that the class members' interests would thus be better served.

New Brunswick

Class Proceedings Act, RSNB 2011, c 125

Subclasses

8(2) A class that comprises persons resident in New Brunswick and persons not resident in New Brunswick shall be divided into resident and non-resident subclasses.

[...]

Court may determine conduct of class proceeding

14 At any time, the court may 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.

[...]

Opting out and opting in

18(3) Subject to subsection (5), a person who is not a resident of New Brunswick and who would otherwise be a member of a class involved in the class proceeding may opt into 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.

Nova Scotia

Class Proceedings Act, SNS 2007, c 28

Court may determine conduct of class proceeding

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.

Prince Edward Island

Class Proceedings Act, RSPEI 1988, c C-9.01

1. Definitions

In this Act,

(g) “**multi-jurisdictional class proceeding**” means a proceeding that

- (i) is brought on behalf of a class of persons that includes persons who do not reside in Prince Edward Island, and
- (ii) is certified as a class proceeding under Part 2;

[...]

Motion for certification

3(2) The member who commences a proceeding under subsection (1) shall

[...]

(b) give notice of the motion for certification to the representative plaintiff in any class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, that

- (i) was commenced in another Canadian jurisdiction, and
- (ii) involves the same or similar subject matter and some or all of the same class members.

[...]

Plaintiff in other proceeding may appear

3(5) A plaintiff in another proceeding who receives notice of a motion for certification under clause (2)(b) may make submissions at the certification hearing.

[...]

Existence of other class proceeding

6(3) Where a multijurisdictional class proceeding or a proposed multijurisdictional class proceeding has been commenced elsewhere in Canada that involves the same or similar subject matter to that of the proceeding being considered for certification, the court shall determine whether it would be preferable for some or all of the claims of the proposed class members to be resolved in that proceeding.

Objectives and factors in making determination

6(4) When making a determination under subsection (3), the court shall

(a) be guided by the following objectives:

- (i) ensuring that the interests of all parties in each of the relevant jurisdictions are given due consideration,
- (ii) ensuring that the ends of justice are served,
- (iii) where possible, avoiding irreconcilable judgments,
- (iv) promoting judicial economy; and

(b) consider all relevant factors, including the following:

- (i) the alleged basis of liability, including the applicable laws,
- (ii) the stage each of the proceedings has reached,
- (iii) the plan for the proposed multi-jurisdictional class proceeding, including the viability of the plan and the capacity and resources for advancing the proceeding on behalf of the proposed class,
- (iv) the location of class members and class representatives in the various proceedings, including the ability of class representatives to participate in the proceedings and to represent the interests of class members,
- (v) the location of evidence and witnesses.

[...]

7. Orders in multi-jurisdictional class proceeding

(1) The court may make any order it considers appropriate in a motion to certify a multi-jurisdictional class proceeding, including an order

(a) certifying the proceeding as a multi-jurisdictional class proceeding if

- (i) the criteria in subsection 6(1) have been satisfied, and
- (ii) having regard to subsections 6(3) and (4), the court determines that Prince Edward Island is the appropriate venue for the multi-jurisdictional class proceeding;

(b) refusing to certify the proceeding if the court determines that it should proceed as a multi-jurisdictional class proceeding in another jurisdiction; or

(c) refusing to certify a portion of a proposed class if that portion of the class contains members who may be included within a proposed class proceeding in another jurisdiction.

Authority of court - multi-jurisdictional class proceeding

- (2) Where the court certifies a multi-jurisdictional class proceeding, it may
- (a) divide the class into resident and non-resident subclasses;
 - (b) appoint a separate representative plaintiff for each subclass; and
 - (c) specify the manner in which and the time within which members of each subclass may opt out of the proceeding
- [...]

15. Court may determine conduct of class proceeding

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 it considers appropriate.

Newfoundland and Labrador

Class Actions Act, SNL 2001, c C-18.1

Subclass certification

7. [...]
- (2) 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.
- [...]

Court may determine conduct of action

13. Notwithstanding [section 12](#), the court may make an 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 the terms it considers appropriate.