



EMPLOYMENT CLASS ACTIONS AND GROUP COMPLAINTS: PROCESSES AND RECENT CASE LAW

Presented By: Michael Watt, Kathryn McGoldrick, & Jason Ronsley

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Today we will cover:

- 1 Legislative Updates – Minimum Wage, BC, ON
- 2 Recent Noteworthy Cases
- 3 Introduction to Class Actions
- 4 Recent Employment Cases
- 5 Human Rights – Group/Class Claims
- 6 Employment Standards – Multiple Employee Claims
- 7 Tips for Employers



LEGISLATIVE UPDATES – MINIMUM WAGE, BC, ON

Minimum Wage

Canada

\$17.75 April 1

BC

\$17.85 June 1

Ontario

\$17.60
October 1

Pay Transparency Reports:

November 1, 2025 – for employers with 300 or more employees

November 1, 2026 – for employers with 50 or more employees

Collection of gender information, determination of pay gap and posting annual reports

Ontario

Working for Workers Six Act

Unpaid Leaves:

placement of child (16 weeks)
long-term illness (27 weeks)

OHSA amendments



RECENT NOTEWORTHY CASES

Pateman v. Kooltran Corporation, 2025 ONCA 224



29-year-old old employee found entitled to 18.5 months' notice of termination and associated damages



Trial judge reduced award by 3 months for failure to mitigate ('efforts half-hearted at best')



Appeal court overturned reduction on basis that ER burden to show both failure to take reasonable steps and that if reasonable steps were taken, they would have been expected to secure a comparable position

Baker v. Van Dolder's Home Team Inc., 2025 ONSC 952



Termination clause read as follows:



“We may terminate your employment at any time for just cause [...]. Just cause include the following conduct: poor performance, [etc.]”



Forms of misconduct listed were attempt to lower statutory threshold and rendered the termination clause unenforceable

Timmins v. Artisan Cells, 2025 CanLii 2387

- Employee dismissed after 3.5 years employment
- Termination clause allowed for dismissal on greater of minimum entitlements under ESA and 3 months' notice or pay in lieu of notice
- Employer only provided ESA minimum and requested signed release in exchange for full 3 months of pay
- Failure of employer to provide employee with contractual entitlement repudiated the employment agreement
- Employee entitled to 9 months' reasonable notice equal to close to \$500,000

Singh v. Clark Builders, 2025 ABKB 3

- Plaintiff employee hired as VP Corporate Operations
- Employment agreement stated that entitlement to 90 days' notice or pay in lieu of notice if terminated without cause
- Significant issues with respect to company's financial reporting discovered
- Employee terminated for just cause
- Defence of just cause abandoned and employer sought to rely on contractual without cause limitation
- Employer who initially alleges just cause in good faith is not precluded from subsequently relying on without cause termination provision to limit its liability



INTRODUCTION TO CLASS ACTIONS

Class Actions in British Columbia

What is a class action?

- Class actions are a procedural vehicle to bring claims with multiple similarly-situated plaintiffs to court in a more efficient way
 - Do not create a substantive legal claim where one would otherwise not exist
- Goals are access to justice, judicial economy, and behaviour modification

Class actions in BC are governed by the *Class Proceedings Act*

Certification

There are five requirements to certify a class proceeding in BC:

1. **A cause of action that has a reasonable chance of success – the claim is not plainly and obviously bound to fail.**
2. An identifiable class of two or more persons.
3. The claims of the class members raise at least one “common issue”
4. **A class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues.**
5. A suitable representative plaintiff.

Certification – Cause of Action

The cause of action criterion can raise interesting issues in class proceedings, because the cause of action will often be novel

- Plaintiffs often advance many causes of action, in hopes that at least one will be certified
- Novelty alone is not a reason to refuse to certify a class proceeding
- However, if it is plain and obvious from prior case law, or because it is otherwise so obvious that the claim cannot succeed, there will be no reasonable cause of action
- Court cannot consider any evidence at this step of the test; analysis is limited to the facts pleaded in the claim, unless those facts are patently incapable of proof

Certification – Common Issues

There must be at least one common issue – that is, an issue of fact or law that is common, but not necessarily identical, between class members

- E.g., whether a landlord was negligent in failing to ensure an apartment building had functioning smoke detectors; whether two entities are common employers; whether a financial institution charged a criminal rate of interest

The issue must be a substantial ingredient of each class member's claim and cannot be dependent upon findings of fact that have to be made with respect to each individual claimant

- E.g., damages will often be an individual issue

Certification – Preferable Procedure

The representative plaintiff must establish two things to succeed on the preferable procedure criterion:

- 1) a class proceeding would be a fair, efficient, and manageable method of resolving the common issues; and
- 2) it would be preferable to any other reasonably available means of resolving the class members' claims.

In its analysis on preferable procedure, the court must consider “all relevant matters”, including certain specific questions. These include:

- whether questions of fact or law common to the members of the class predominate over any questions affecting only individual members;
- whether a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate actions;
- whether other means of resolving the claims are less practical or less efficient;

Class Actions – Costs and Multi-jurisdictional Claims

British Columbia, unlike some other provinces such as Ontario, is a “no-costs” jurisdiction for class actions

- Except in certain specific circumstances (e.g., misconduct by a party or other “exceptional circumstances”), the court cannot award costs in a certification application, common issues trial, or appeal

This makes BC a more attractive place to start a proceeding against a defendant with national reach, because the representative plaintiff will not be responsible for paying the defendant’s legal costs if the claim is unsuccessful

BC courts are permitted to certify multi-jurisdictional class proceedings, although they will take into account factors such as whether there are similar proceedings in other provinces already ongoing



RECENT EMPLOYMENT CASES

Use of Class Proceedings for Employment Cases



Plaintiffs have used class proceedings to pursue employment related claims



Examples include claims based on wrongful dismissal and entitlements pursuant to pension plan; breach of employment contracts with temporary foreign workers (overtime, work hours, agency fees)



The requirement is that a decision may be made that will apply to all employees or former employees



Other practical considerations are whether the nature of the claim(s) and number of claimants justify the use of the class proceeding process where issues may be complex

Escobar v. Ocean Pacific Hotels Ltd. 2024 BCSC 1575



Pan Pacific Hotel faced loss of business due to Covid-19 pandemic



Regular hourly employees had contract which stated that ‘assignment of hours will be subject to business demand, and may be increased or reduced due to seasonal fluctuations’



Employees had hours reduced to zero in March 2020 indefinitely, and services were intermittent in the following months



The Hotel communicated with the employees throughout the pandemic regarding the effect on their business

Escobar v. Ocean Pacific Hotels Ltd. 2024 BCSC 1575 (Cont'd)

In 2021 Court certified various issues and proceeded to common issues trial

In 2024 at common issues trial court resolved the following:

- Ceasing providing hours for an indefinite and lengthy period of time was a fundamental breach of contract
- The COVID-19 pandemic detrimentally impacted the availability of alternate employment for class members during 2020
- Communications with employees did not create a misleading impression that class members' jobs were safe

Takeaway – class proceedings may be used to determine whether a contract has been breached where the issue is common to the class of employees and can be determined once, and the outcome apply to all employees

Flesch v. Apache Corporation, 2022 ABCA 374

- Plaintiff employees claimed entitlement to payment pursuant to compensation plan cancelled by US parent company on sale of Canadian subsidiary
- Employees sought to claim directly against US parent company in employment law
- The compensation plan was intended to provide incentives to encourage long term service with the organization
- Employees claimed against US parent based on compensation plan constituting a contract between the employees and the US parent
- Court certified class action for claim against parent company

Flesch v. Apache Corporation, 2022 ABCA 374 (cont'd)

Takeaway

Class proceedings may be used to pursue contract claim against parent company

Webb v. 3584747 Canada Inc., [2000] OJ No. 1454



Court asked to certify issue of whether a notice of termination letter was effective notice (clear and unequivocal)



The case involved the closure of Kmart stores on the sale to Zellers, and the resultant termination of employment through working notice



The court declined to certify on the basis that the determination of the legal effect of the letter required individual analysis for each specific employee, including evidence of what the particular employee may have been led to believe regarding their chances of continuing employment despite the formal letter

Webb v. 3584747 Canada Inc., [2000] OJ No. 1454 (cont'd)



Takeaways – issues requiring individual analysis may not proceed as a class action



Note – decision in *Linza v. Metric Modular*, 2023 BCSC 1196 declined certification of proposed class action to determine issue of common employer where assessment could turn into individual determinations, but court allowed amendment and further application



HUMAN RIGHTS – GROUP/CLASS CLAIMS

Group & Class Complaints at the BCHRT



BC Human Rights Code s. 21(4)(b): A complaint may be filed “on behalf of a group or class of persons whether or not the person filing the complaint is a member of that group or class”



Group = List of individually identifiable complainants



Class = Class of complainants where individuals cannot be identified

Screening Stage - CSWU Local 1611 v. SELI Canada, 2007 BCHRT 423 (“SELI”)

Considerations for accepting group or class proceeding:

- Can the facts alleged, if proven, amount to a breach of the Code?
- Is the complaint, as framed, appropriate for a group or class complaint?
 - Is the group or class defined, or is capable of definition, by clear parameters or characteristics?
 - Is the alleged contravention similar for all members of the group or class and are there issues in common for all members?
 - Is proceeding with the complaint in the interest of the group or class?
- Concerns regarding representative complainant, notification of class members and potential conflicts of interest.

Reconsideration process, including written submissions, utilized with increasing frequency

Gatica Migrante obo Temporary Foreign Workers from Guatemala v. Golden Eagle Blueberry Farm (“Gatica”)

■ Complaint filed on behalf of temporary foreign workers who worked at the Respondent’s farm

■ Complaint alleged human rights violations arising from working and living conditions on the farm

■ Tribunal issued screening decision – accepted as class complaint

■ Respondent applied for reconsideration - application accepted in part, but complaint allowed to continue as group complaint

Gatica (cont'd)

Broad group of complainants with diverse issues:

- Employees vs. prospective employees
- Various housing situations
- Sexual abuse allegations

Complaint to proceed with three groups:

- Male employees
- Female employees
- Un-hired females

Gatica Takeaways

- Tribunal more open to reconsideration of screening decision, with written submissions
- It is not essential that the group members be identically situated vis-à-vis the opposing party
- Complainants can have many “uncommon” issues
- The resolution of common issues need not be determinative of each member’s claim
- Tribunal willing to create sub-groups, in effect joining more than one group/class to resolve these issues



EMPLOYMENT STANDARDS – MULTIPLE EMPLOYEE CLAIMS

Employment Standards Tribunal - Group Complaints

ESA Issues include:

- Unpaid Wages
- Vacation Pay
- Overtime Pay
- Compensation for length of service

ESB Permits individual complainants or groups of complainants

Employment Standards Act (“ESA”) s. 73.1: the director may investigate without a complainant - which can apply to a single person or group

ESA s.76(1.4): the director may expand scope of investigation resulting from a complaint

Investigations Process

- Complaint initiated by complainants or by ESB member
- Investigator appointed
- Investigator notifies respondents of complaint and demands documents
- Preliminary report summarizing evidence
- Invitation for parties to respond to preliminary report
- Issuance of determination
- Appeal process

Sinorama Travel Vancouver Inc., 2019 BCEST 34

- Consumer Protection BC suspended Sinorama's travel agency license and froze bank accounts
- 5 former employees filed a group complaint seeking unpaid wages, annual vacation pay, statutory holiday pay, and compensation for length of service
- Determination: employer ordered to pay unpaid wages and administrative penalties
- Employer's brought further evidence on appeal
- Appeal dismissed: evidence was not "new"

Overstory Media Inc., 2024 BCEST 109

Complaint concerning the sale of a business to the Respondent

The complainant employees were terminated as part of the transaction

Employees initiated complaint seeking unpaid wages, vacation pay, and termination pay

ESA s.97 (the “successorship provision”): Employment is deemed to be “continuous and uninterrupted by the disposition”

Asset Purchase Agreement:

- Purchase price due September 22, 2022
- Vendor agreed to terminate the complainants by September 27, 2022

Overstory Media Inc., (cont'd)

Determination:

- respondent purchaser found liable for termination pay, lost wages, and vacation pay (even amounts that accrued during employees' tenure with predecessor)

Appeal Dismissed:

- “The fundamental quid pro quo in an asset sale agreement is the vendor’s promise to transfer the assets in question given in exchange for the purchaser’s promise to pay for those assets ... the purchase price was paid on September 22, 2022, a fact supporting the delegate’s finding that the asset sale closed on September 22, 2022.

Employment Standards Complaints - Takeaways

- Complaint process moves quickly – employers should be proactive in response
- BCEST unlikely to accept further information/documents on appeal
- Group complaints may be brought during reorganization/sale of businesses
- Employers should be apprised of the implications of the ESA, which can override common law contractual presumptions



TIPS FOR EMPLOYERS

Tips for Employers

- Determine whether your insurance covers class actions which may involve different claims
- Be aware of risks when making decisions affecting multiple employees
 - Termination
 - Pension
 - Benefits
 - ESA
- Consider proper forum for claims i.e. are statutory claims required to be filed with the Tribunal vs. the Court



 **ANY QUESTIONS?**

THANK YOU



Contact



Michael Watt
Partner
T: 604-484-1733
mwatt@ahbl.ca



Kathryn McGoldrick
Associate Counsel
T: 604-484-1763
kmcgoldrick@ahbl.ca



Jason Ronsley
Associate
T: 604-484-1777
jronsley@ahbl.ca

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OFFICES

Vancouver

TD Tower
2700 – 700 West Georgia Street
Vancouver, BC V7Y 1B8
Canada

T: 604 484 1700

Toronto

Bay Adelaide Centre
2740 – 22 Adelaide Street West,
Toronto, ON M5H 4E3
Canada

T: 416 639 9060

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Kelowna

Regus Landmark
1100 – 1631 Dickson Avenue
Kelowna, BC V1Y 0B5
Canada

T: 604 484 1700



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