

Saskatchewan Court Stays Class Action as an Abuse of Process

Monday, January 14, 2019

On November 13, 2018, Justice Keene of the Queen's Bench for Saskatchewan released a decision staying a class action filed in Saskatchewan with respect to the Equifax cybersecurity breach incident that occurred in 2017. The court found the class action to be an abuse of process, as it served no legitimate purpose.

Five other class proceedings have been commenced in Canada in relation to the same incident, including proposed national class actions in Ontario and British Columbia.

Class counsel in the Saskatchewan action, Merchant Law Group, was also counsel of record for three of the five actions filed in other jurisdictions. In submissions made in connection with a carriage motion in one of the Ontario actions, class counsel articulated the purpose of the Saskatchewan action as follows:

In other provinces, including Saskatchewan, the primary concern is that without an extant action, limitation periods could become an issue for putative class members. Preliminary steps are being taken in these other proceedings to serve the claims and secure case management judges, but *these are protective (of putative class members' interests) only*.

In class counsel's own words, the only reason a Saskatchewan action was issued was to avoid difficulties with statutes of limitation.

The court held that this was not a legitimate purpose to commence an action, and therefore, an abuse of process. In reaching this decision, it cited numerous decisions admonishing the practice of issuing multiple class actions in respect of the same incident. The court was satisfied that its chief concern, that the proposed class members in the Saskatchewan action would be barred from the proceedings, was absent in this case, given that the proposed class members were captured by the proposed class in the Ontario actions.

While Justice Keene's decision demonstrates how the Saskatchewan courts are treating duplicative class actions filed in that province, it should be noted that the approach is not consistent across the country. In contrast, the Québec Superior Court's 2018 decision in *Li c. Equifax inc.*, refused to grant a stay of proceedings. In Québec, some courts have taken a restrictive approach with respect to the criteria for a stay of proceedings set out in the *Civil Code of Québec*, in light of Québec's *Rules of Civil Procedure*'s specific direction that courts are to consider "*the protection of the rights and interests of Québec residents*" when confronted with jurisdictional issues and stays of proceedings in class actions.

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