



March 17, 2020

The Standing Committee on Justice Policy
Room 1405, Whitney Block
Queen's Park, Toronto, ON
M7A 1A2

Re: Class Proceedings Amendments, Bill 161, the Smarter and Stronger Justice Act

Please find enclosed CARP's submission regarding Class Proceedings Amendments, Bill 161, the Smarter and Stronger Justice Act.

CARP is Canada's largest advocacy association for older Canadians. Formerly the Canadian Association of Retired Persons, CARP has 320,000 members aged 50+. Headquartered in Toronto, CARP has 26 member chapters across the country, including 180,000 members in Ontario. CARP is committed to working with all levels of government to advocate for older Canadians. We advocate for better health care, enhanced financial security, and freedom from ageism and abuse for older adults.

Sincerely,

A handwritten signature in black ink, appearing to read "MLennox", written in a cursive style.

Marissa Lennox
Chief Policy Officer
CARP



CARP is pleased to participate in the Standing Committee on Justice Policy's consultation on Bill 161, *Smarter and Stronger Justice Act 2020*. CARP is a national seniors' advocacy organization with 320,000 members across the country.

The Ontario Government has introduced Bill 161, *Smarter and Stronger Justice Act 2020*. It is an omnibus justice reform bill that, among many other changes, proposes major reforms to Ontario's class action laws.

Bill 161 proposed extensive changes to Ontario's *Class Proceedings Act*. While some of these changes are minor changes, some of the proposed changes fundamentally alter the test for the certification of class proceedings in favour of defendants. The two most significant changes are the new predominance requirement – which requires that the issues in common “predominate” over the individual issues that would remain after the conclusion of the class proceedings – and the superiority requirement – which requires that a class proceeding be superior to all reasonably available means of determining class members entitlement to relief.

These amendments will unfairly compromise seniors' access to justice by making it much more difficult for certain types of actions to be litigated in class action.

The cases that will most be affected by these changes are those in which individual issues remain after the conclusion of the common issues trial. This can occur in cases where issues such as the calculation of damages payable requires an assessment of a person's individual circumstances. Under the new predominance test under Bill 161, it is unlikely that such cases will be certified.

CARP is calling on the Ontario government to protect the interests of Ontario seniors and withdraw the proposed changes under Bill 161 to limit access to class actions. To date, Ontario seniors, many of who have limited funds and capacity to mount legal action, have had their legal rights protected in class action proceeding. This includes **medical and pharmaceutical class actions**, including actions involving issues with hip implants, heart devices such as defibrillators and heart lead products, as well as the **Walkerton tainted water** case, and the **General Motors retiree benefits** class action.

Let's work together to protect seniors' access to justice in Ontario.



June 4, 2020

The Standing Committee on Justice Policy
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The Ontario Government has introduced Bill 161, *Smarter and Stronger Justice Act 2020*. It is an omnibus justice reform bill that, among many other changes, proposes major reforms to Ontario's class action laws.

Bill 161 proposed extensive changes to Ontario's *Class Proceedings Act*. While some of these changes are minor changes, some of the proposed changes fundamentally alter the test for the certification of class proceedings in favour of defendants. The two most significant changes are: (1) The new predominance requirement, which requires that the issues in common "predominate" over the individual issues that would remain after the conclusion of the class proceedings, and (2) The superiority requirement, which requires that a class proceeding be superior to all reasonably available means of determining class members entitlement to relief.

These amendments will unfairly compromise seniors' access to justice by making it much more difficult for certain types of actions to be litigated in class action.

For example, long-term care class action lawsuits are often made up of plaintiffs with very distinct claims. The new predominance requirement, if passed in its current form, would make it more difficult for future class action lawsuits against long-term care homes to be certified. Moreover, under current jurisprudence, the defendant must show that there are better alternatives to a class action lawsuit; under the new superiority requirement, that burden would likely shift to the plaintiff to show that no other procedures are superior.

CARP is calling on the Ontario government to protect the interests of Ontario seniors and withdraw these proposed changes under Bill 161 to limit access to class actions. To date, Ontario seniors, many of whom have limited funds and capacity to mount legal action, have had their legal rights protected in class action proceeding. This includes **medical and pharmaceutical class actions**, including actions involving issues with hip implants, heart devices such as defibrillators and heart lead products, as well as the **Walkerton tainted water** case, and the **General Motors retiree benefits** class action.

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