

BOOK 3: CLASS PROCEEDINGS FUND

The Law Foundation Of Ontario



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BOOK 3: CLASS PROCEEDINGS FUND

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This is one of four books comprising the LFO's 2010 annual report. You can view the entire report at www.lawfoundation.on.ca, or request a hard copy by emailing general@lawfoundation.on.ca

Class proceedings are an important means of advancing legal claims on behalf of large groups of people. The Class Proceedings Fund (CPF) provides financial support and plays an important role in helping more Ontarians make meritorious claims using this access to justice tool.

The CPF and the Class Proceedings Committee (“Committee”) support cases in which one or more representative plaintiffs make a common claim on behalf of a larger group. Class actions provide efficiencies and have resulted in many more claims being heard than would otherwise be the case.

Class actions are nevertheless expensive to pursue. Further, the potential benefit for representative plaintiffs can be small and the potential exposure to cost awards can be very significant. Support from the CPF and indemnification of plaintiffs against potential costs awards can address these barriers in appropriate cases.

The CPF and Committee were established by statute in 1992 and the fund was endowed with \$500,000 from the Law Foundation of Ontario (LFO) in 1993. The Committee is an independent body that hears applications for support. It has five members, one appointed by each of the LFO and the Attorney General of Ontario, and three appointed jointly.



Interest in the CPF continued to grow in 2010. More applications were received in 2010 than in 2009. However, fewer applications were heard than in the two preceding years because the bulk of these applications were received in the final quarter of 2010 and could not all be scheduled for hearing before year end. The Committee approved seven of the nine applications heard.

The total amount of funding approved for disbursements was also down, at \$2.0 million compared to \$3.6 million in 2009. This decrease reflected the lower number of applications heard, as well as a reduction in the amount of funding requested by applicants.

Taking into account all of the applications received during 2010, there is an upward trend in applications made to the CPF and in the number of cases funded. This is due, in part, to our ongoing efforts to raise the profile of the CPF. It is also likely due to higher costs awards made against unsuccessful plaintiffs in class actions.

APPLICATIONS HEARD AND APPROVED, 2001-2010

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Hearings Held	2	1	8	11	2	8	3	12	13	9
Applications Approved	0	1	6	7	1	5	2	9	12	7

While the CPF has existed since 1992, half of all applications and approvals have taken place since 2006.

In 2010 four funded cases were settled. In addition, there was activity in several funded cases which will have a significant impact on the financial state of the CPF. Favourable judgments were released in two cases which went to trial the previous year. If these judgments are upheld on appeal, the size of the CPF will grow substantially. On the other hand, a denial of certification resulted in the largest cost award to date in Canada against a plaintiff at a certification motion. If this decision is upheld, it will have a negative impact on the CPF. The Committee recognizes that litigation outcomes will increasingly influence the scope of funds available and continues to apply prudent financial management standards, informed by potential cost exposure.

In 2010 the CPF and Committee advanced access to justice by supporting cases which ultimately resulted in awards in favour of plaintiffs, as well as cases in which important principles were decided. In addition, people were able to prosecute their actions and ultimately have their day in court.

PUBLIC INTERESTS ADDRESSED

CASES APPROVED FOR FUNDING IN 2010 INVOLVED ALLEGATIONS OF:

- Wrongful dismissal of employees
- Price fixing
- Breach of trust with respect to pension plans
- Negligence with respect to residential facilities for disabled minors
- Environmental damage

CASES SETTLED OR DECIDED IN 2010 INVOLVED ALLEGATIONS OF:

- Copyright infringement
- Payday loan charges
- Product liability
- Environmental contamination
- Statutory non-compliance with respect to insurance policies

Developments in 2010 indicate that the CPF is ever more fully realizing its potential to advance access to justice.

I would like to extend my thanks to Lorne Sossin, who stepped down in 2010 after serving as a member of the Committee, and to Janet Minor, whom we were very pleased to have join the Committee during the year.

The Committee commends the plaintiffs and counsel who presented compelling applications in 2010 and looks forward to receiving new applications in the future. We also extend our thanks to our supportive partners at the LFO.



Valerie A. Edwards
Chair, Class Proceedings Committee



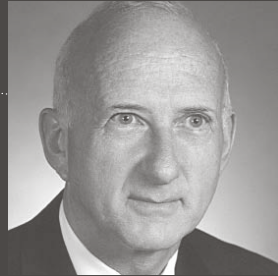
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General Counsel,
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effective July 1, 2010



E. Paul Morrison²

Partner,
McCarthy Tétrault LLP



Lorne M. Sossin³

Professor, Faculty of Law,
University of Toronto –
until July 1, 2010

¹ Appointed jointly

² Appointed by the Attorney General of Ontario

³ Appointed by the LFO

2010 RESULTS

STATEMENT OF FINANCIAL POSITION

	For period from Jan. 1, 2010 to Dec. 31, 2010	For period from 1993 to Dec. 31, 2010
	\$	\$
Opening balance	9,749,476	500,000
Total funding awarded	(2,024,362)	(7,954,196)
Funding repaid/cancelled	27,822	806,088
Administration costs/expenses	(382,417)	(1,416,872)
Interest received	110,328	1,464,944
10% levies received	3,932,787	19,220,935
Costs awards in favour of defendants	(1,174,003)	(2,381,268)
Balance as at Dec. 31, 2010	10,239,631	10,239,631

As required by O.Reg.771/92, s.13, we report as follows:

1. NUMBER OF NEW APPLICATIONS, BY STAGE IN THE PROCEEDING AT THE TIME OF APPLICATION.

Stage in the Proceeding	Number of New Applications 2010	Number of New Applications 2009
Pre Certification	9	8
Appeal re: Certification	-	-
Discovery	-	2
Determination of Common Issues	-	3
Appeal re: Common Issues	-	-
Post Common Issue Stage	-	-
Total	9	13

2. NEW APPLICATIONS GRANTED AND REFUSED, BY STAGE IN THE PROCEEDING, AT THE TIME OF APPLICATION.

Stage in the Proceeding	Granted	Refused	Pending*/Stayed, etc	Total
2010				
Pre Certification	7	2	-	9
Discovery	-	-	-	-
Other	-	-	-	-
Total	7	2	-	9
2009				
Pre Certification	8	-	-	8
Discovery	2	-	-	2
Other	2	1	-	3
Total	12	1	-	13

*Carried forward to the next year.

- In 2010 financial support was awarded for seven new cases under section 59.3(1) of the Act¹ and further financial support was awarded for 13 cases which had previously been approved, as a result of supplementary funding applications under section 59.3(5) of the Act. In 2009 financial support was awarded for 12 new cases under section 59.3(1) of the Act and further financial support was awarded for 10 cases which had previously been approved, as a result of supplementary funding applications under section 59.3(5) of the Act.

¹ References are to the Law Society Amendment Act, 1992

4. TOTAL AWARDS, BY DISBURSEMENT TYPE IS \$2,024,361.

Type of Disbursement	Total Amount Awarded 2010
Administrative Expenses	\$346,506
Travel	\$151,360
Examiners' Charges	\$99,701
Experts' Fees	\$945,435
Notice to Class	\$376,295
Other	\$100,199
Goods and Services Tax	\$4,865
Total	\$2,024,361

Under regulation 771/92, this section includes only amounts awarded during 2010. Total amounts paid out of the CPF during 2010 may vary as amounts awarded are reimbursed to applicants on an ongoing basis after funded disbursements have been duly incurred and paid by the applicant.

5. The total amount of money paid from the CPF to applicants under section 59.3 of the Act: 2010, \$1,164,421; 2009, \$2,357,960. At December 31, 2010, the balance of all awards outstanding which had not yet been paid to applicants was \$2,780,248.
6. In 2010, eight funded proceedings were certified. In 2009, three funded proceedings were certified.
7. In 2010, four applicants who had received financial support settled their proceedings such that the classes involved in these proceedings received or will receive a monetary payment. In addition there were two cases where applicants received judgment on common issues in their favour at trial. In 2009, six applicants who had received financial support settled their proceedings.
8. In 2010, 10 defendants made applications to the CPF for payment of costs awards made in their favour pursuant to section 59.4 of the Act; 26 applications were received in 2009. This results from the indemnification of plaintiffs against cost awards.
9. In 2010, \$1,174,003 was paid to defendants under section 59.4 of the Act. In 2009, \$643,112 was paid to defendants under section 59.4 of the Act. This results from the indemnification of plaintiffs against cost awards.

10. Proceedings for which the plaintiff was awarded financial support under section 59.3 of the Act (including both newly approved cases and previously approved ones for which supplementary funding was awarded during 2010).

	Administration Expenses	Travel Expenses	Examiners' Charges	Experts' Fees	Notice to Class	Other	GST	Total
2010	\$	\$	\$	\$	\$	\$	\$	\$
Case A	-	-	-	69,000	-	-	3,450	72,450
Case B	25,200	-	-	31,000	-	-	1,415	29,715
Case C	-	-	-	-	200,000	-	-	200,000
Case D	8,531	678	2,825	-	11,300	-	-	23,334
Case E	8,543	-	1,588	26,603	5,250	5,442	-	47,426
Case F	4,725	-	3,150	-	3,150	-	-	11,025
Case G	40,645	68,363	-	133,697	-	17,603	-	260,308
Case H	6,739	1,941	10,607	1,628	-	1,276	-	22,191
Case I	52,559	1,037	10,374	186,030	-	-	-	250,000
Case J	-	-	-	-	9,461	-	-	9,461
Case K	27,850	21,500	25,000	75,650	-	-	-	150,000
Case L	-	-	-	-	-	17,005	-	17,005
Case M	25,538	6,780	5,650	22,600	79,100	-	-	139,668
Case N	5,590	-	-	1,130	-	-	-	6,720
Case O	44,989	226	1,363	-	12,642	1,654	-	60,874
Case P	65,682	38,591	11,410	140,747	9,742	55,714	-	321,886
Case Q	11,300	-	22,600	56,500	16,900	-	-	107,300
Case R	15,820	11,300	2,825	226,000	28,250	-	-	284,195
Case S	2,794	945	2,311	2,750	500	1,503	-	10,803
All cases	346,505	151,361	99,703	945,435	376,295	100,197	4,865	2,024,361
2009								
All cases	755,083	103,023	147,583	2,392,346	137,262	6,573	86,980	3,628,850

CASE A

Alleged environmental contamination

CASE B

Alleged breach of insurance contract with respect to disability payments

CASE C

Alleged negligence and breach of fiduciary duty with respect to government run facility for disabled minors

CASE D

Alleged constructive dismissal as a result of changes in employment contracts

CASE E

Alleged misrepresentation by a nursing college to students with respect to its nursing program

CASE F

Alleged Crown liability for failure to notify tenants of rent rate reductions

CASE G

Alleged breach of insurance policies

CASE H

Alleged medical negligence with respect to failure to diagnose tuberculosis

CASE I

Alleged criminal rates of interest charged on bank withdrawals

CASE J

Alleged negligence and breach of fiduciary duty with respect to privately run residential school for minors with perceived learning disabilities

CASE K

Alleged environmental contamination

CASE L

Alleged negligence with respect to pension fund investment

CASE M

Alleged negligence and breach of fiduciary duty with respect to government run facility for disabled children

CASE N

Alleged conspiracy and unjust enrichment with respect to fees charged on ticket sales

CASE O

Alleged breach of trust regarding pension benefits

CASE P

Alleged breaches of *Insurance Companies Act*

CASE Q

Alleged copyright infringement

CASE R

Alleged price fixing conspiracy with respect to packaged ice

CASE S

Alleged trespass to land caused by electric company's dam management

Among other requirements, initial applications must include legal opinions on the likelihood of certification and merits of the case and a statement of the financial support requested. Details, including guidelines and standard forms, are available online.

After a completed application is received, a private hearing is scheduled in Toronto at which both counsel and the representative plaintiff are asked to speak.

If funding is awarded, proof of disbursements incurred and ongoing reporting is required, as well as written applications for supplemental support at subsequent stages of an approved proceeding.

For more information visit www.lawfoundation.on.ca/cpcabout.php, and to discuss a potential application please contact:

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The Law Foundation of Ontario (LFO) is a non-profit corporation established by provincial statute in 1974. It has a unique mandate to help more people understand the law and use it to improve their lives.

Enhanced access to justice, particularly for disadvantaged groups, is an underlying objective of all of the LFO's work. It makes carefully selected grants and provides other support to groups with relevant mandates, fosters excellence on the part of legal professionals, and promotes the pursuit of careers in public interest law.

The LFO is primarily funded by the interest from the mixed trust accounts into which Ontario lawyers and paralegals deposit funds they hold in trust for clients.

The LFO operates the Access to Justice Fund, established in late 2009 with proceeds from a class action and launched in 2010 to improve specific aspects of access to justice across Canada; and administers the Class Proceedings Fund, established with an LFO endowment in 1993 to support pursuit of class actions in the public interest.

Further information on all of these initiatives, including application procedures, is available at www.lawfoundation.on.ca



The Law Foundation of Ontario
Building a better foundation for justice in Ontario

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