

# **RULES OF CIVIL PROCEDURE**

## **R.R.O. 1990, REGULATION 194**

under the *Courts of Justice* Act, R.S.O. 1990, CHAPTER C.43

### **RULE 12 CLASS PROCEEDINGS AND OTHER REPRESENTATIVE PROCEEDINGS**

#### **DEFINITIONS**

**12.01** In rules 12.02 to 12.06,

“Act” means the *Class Proceedings Act, 1992*; (“Loi”)

“Foundation” means The Law Foundation of Ontario; (“Fondation”)

“Fund” means the Class Proceedings Fund of the Foundation. (“Fonds”) O. Reg. 770/92, s. 5; O. Reg. 465/93, s. 2 (2).

#### **TITLE OF PROCEEDING**

**12.02** (1) In a proceeding commenced under subsection 2 (1) of the Act, the title of the proceeding shall include, after the names of the parties, “Proceeding under the *Class Proceedings Act, 1992*”. O. Reg. 770/92, s. 5.

(2) In a proceeding referred to in section 3 or 4 of the Act, the notice of motion for an order certifying the proceeding, the order certifying it and all subsequent documents shall include, after the names of the parties, “Proceeding under the *Class Proceedings Act, 1992*”. O. Reg. 770/92, s. 5.

#### **DISCOVERY OF CLASS MEMBERS**

**12.03** (1) For the purpose of subrule 31.11 (1) (reading in examination), a class member who is examined for discovery under subsection 15 (2) of the Act is examined in addition to the party. O. Reg. 770/92, s. 5.

(2) Rule 31.10 (discovery of non-parties) and clause 34.15 (1) (b) (sanctions for default or misconduct) do not apply when a class member is examined for discovery under subsection 15 (2) of the Act. O. Reg. 770/92, s. 5.

#### **COSTS**

##### *Application of Rule*

**12.04** (1) This rule applies to class proceedings in which the plaintiff or applicant has received financial support from the Fund. O. Reg. 770/92, s. 5.

Notice to Foundation, Opportunity to Participate

(2) If the court is of the opinion that the defendant or respondent may be entitled to an award of costs, the court shall direct the plaintiff or applicant to give notice to the Foundation. O. Reg. 113/01, s. 1.

(3) When the court has made a direction under subsection (2),

(a) no order for costs or assessment of costs shall be made unless the Foundation has had an opportunity to present evidence and make submissions in respect of costs; and

(b) the Foundation is a party for the purpose of an appeal in relation to costs. O. Reg. 113/01, s. 1.

Failure to Accept Defendant's Offer

(4) Subrule 49.10 (2) (costs consequences of offer) does not apply. O. Reg. 113/01, s. 1.

## **CONTENTS OF JUDGMENTS AND ORDERS**

**12.05** (1) A judgment in a class proceeding or an order approving a settlement, discontinuance or abandonment of a class proceeding under section 29 of the Act shall contain directions with respect to,

(a) the distribution of amounts awarded under section 24 or 25 of the Act, and the costs of distribution;

(b) the payment of amounts owing under an enforceable agreement made under section 32 of the Act between a solicitor and a representative party;

Note: On July 1, 2008, clause (b) is amended by striking out "solicitor" and substituting "lawyer". See: O. Reg. 575/07, ss. 1, 39 (1).

(c) the payment of the costs of the proceeding; and

(d) the payment of any levy in favour of the Fund under clause 59.5 (1) (g) of the *Law Society Act*. O. Reg. 770/92, s. 5.

(2) An order certifying two or more proceedings as a class proceeding under section 3 of the Act or decertifying a class proceeding under section 10 of the Act shall contain directions with respect to pleadings and other procedural matters. O. Reg. 770/92, s. 5.

## **LEAVE TO APPEAL**

### *Leave to be Obtained from Another Judge*

**12.06** (1) Leave to appeal to the Divisional Court under subsection 30 (2), (9), (10) or (11) of the Act shall be obtained from a judge other than the judge who made the order. O. Reg. 465/93, s. 2 (3).

Certification Order — Grounds

(2) Leave to appeal from an order under subsection 30 (2) of the Act shall be granted only on the grounds provided in subrule 62.02 (4). O. Reg. 465/93, s. 2 (3).

Order Awarding \$3,000 or less or Dismissing Claim — Grounds

(3) Leave to appeal from an order under subsection 30 (9), (10) or (11) of the Act shall not be granted unless,

(a) there has been a miscarriage of justice; or

(b) the order may be used as a precedent in determining the rights of other class members or the defendant in the proceeding under section 24 or 25 of the Act and there is good reason to doubt the correctness of the order. O. Reg. 465/93, s. 2 (3).

Procedure

(4) Subrules 62.02 (2), (3), (5), (6), (7) and (8) (procedure on motion for leave to appeal) apply to the motion for leave to appeal. O. Reg. 465/93, s. 2 (3).

## **PROCEEDING AGAINST REPRESENTATIVE DEFENDANT**

**12.07** Where numerous persons have the same interest, one or more of them may defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so. O. Reg. 465/93, s. 2 (3).

## **PROCEEDING BY UNINCORPORATED ASSOCIATION OR TRADE UNION**

**12.08** Where numerous persons are members of an unincorporated association or trade union and a proceeding under the *Class Proceedings Act, 1992* would be an unduly expensive or inconvenient means for determining their claims, one or more of them may be authorized by the court to bring a proceeding on behalf of or for the benefit of all. O. Reg. 288/99, s. 9.