

Class Proceedings Fund

MESSAGE FROM THE CHAIR

The year 2018 will mark the Class Proceeding Fund's (the "Fund") 25th anniversary. As we review the year ending December 31, 2017 and embark on this anniversary year, it is important to reflect on where we came from and where we are going.

I joined the Class Proceedings Committee (the "Committee") in 2006 as a member and in 2015 I became the Chair. I think it is fair to say that the Fund has grown from being relatively unknown and underutilized to a significant part of the class action landscape. For example, in 1993, (its first year), it received two applications. In 1994 it received three and in 1995 it received none. Up until 2002, the Fund had only received a total of 33 applications and funded eight. However, as the years progressed more applications were brought, and more were funded. By the end of 2017, the Fund had received 246 applications and funded 146. We estimate that the Fund provides funding to 10% of class actions commenced in Ontario.

When I looked back over recent annual reports, each Chair's message has referred to outcomes that shattered previous years' records: a record number of applications; a record number of hearings; a record number of cases funded; a record amount of total disbursement funding; a record total Fund balance; and in some cases a record quantum of costs paid by the Fund. This year we again broke many records. We opened a record number of application files (37), held a record number of hearings (27), funded a record number of cases (18), and paid a record quantum of costs (\$3.5M) -- in part because of costs settled when a funded case proceeded to trial and was unsuccessful. These costs were partly offset by levies earned in funded cases which were successful (\$3.2M).

Over the years, a broad array of cases have been funded including:

- Alleged abuse at residential facilities where children and/or persons with disabilities have resided
- General Crown liability for alleged negligence
- Alleged Charter infringement as a result of the manner in which protesters were treated at the G20 Summit
- Alleged Charter infringement as a result of the manner in which inmates have been treated in prison facilities
- Professional negligence claims against auditors, accountants, financial advisors, lawyers, physicians, and hospitals
- Product liability claims arising from medical appliances, prescription drugs, and consumer products
- Consumer protection actions, including cases relating to interpretation of standard form contracts such as prepayment provisions in financial instruments
- Alleged misrepresentations to students in accredited colleges
- Undisclosed fees, alleged criminal rates of interest, and alleged breaches of privacy
- Employment cases, such as failure to pay overtime
- Pensions cases, including alleged mismanagement, breach of trust, and denial of pension benefits
- Franchise cases, including alleged breach of franchise agreements and duty of fair dealing
- Insurance cases, such as an alleged breach of Insurance Act, and misappropriation of policy-holders funds
- Competition law cases involving alleged price-fixing
- Environmental law matters alleging nuisance and negligence
- Securities law matters
- Copyright cases

Many of these cases have been successful. Some have not. Nevertheless, all of these cases provide access to justice, are in the public interest, and/or raise novel issues. As noted by former Chair Anne Molloy in *Edwards v. the Law Society* (1994), 36 CPC (3d) 116:

[16]...Generally speaking, the committee would lean towards funding a case which raises issues of broad public importance or which is directed towards improving the situation of persons or groups who are historically disadvantaged in society. One of the central purposes of the Class Proceedings Fund is to provide access to justice for those who would otherwise not be able to enforce their rights. It is in the public interest that the fund be administered so as to provide access to justice to those who otherwise would be unable to enforce their rights.

This year, we are in the midst of a wholesale review of all our policies and procedures so that we can accommodate the foreseeable ongoing growth. As stewards, this includes our ongoing meticulous consideration of how we can manage our risk and remain sustainable. We also provided a detailed submission to the Law Commission of Ontario in respect of its Class Actions: Objectives, Experiences and Reforms project.

I want to thank all the Committee members – I am sure it is far more work and time than any of them volunteered for. Hopefully the thoughtful discussions about the issues before us and the challenges we grapple with are of some recompense. I would like to thank as well our counsel Gina Papageorgiou; Director, Strategic Finance and Administration, Judy Mark, and administrative assistant, Linda Patki. Their dedication, hard work, and intelligence are extraordinary and essential to the work of the Committee without which we could not continue.



Wendy J. Earle
Chair, Class Proceedings Committee

Class Proceedings Fund

financial highlights

NEW APPLICATIONS HEARD AND APPROVED – 2008-2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Hearings held	12	13	9	22	12	13	20	17	22	27
New applications approved	9	12	7	15	7	7	11	12	17	18

2017 RESULTS

Statement of financial position

	<u>For the period from Jan. 1, 2017 to Dec. 31, 2017</u>	<u>For the period from 1994 to Dec. 31, 2017</u>
Opening balance	\$19,861,537	\$500,000
Total funding awarded	(4,048,853)	(24,642,181)
Funding repaid/cancelled	1,241,220	7,637,303
Administration costs/expenses	(487,380)	(4,540,080)
Interest received	348,269	3,334,257
10% levies received	3,242,185	47,807,957
Cost awards in favour of defendants	(3,506,975)	(13,447,253)
Balance as at Dec. 31, 2017	\$16,650,003	\$16,650,003

AS REQUIRED BY O.REG.771/92, S.13, WE REPORT AS FOLLOWS:

1. Number of new applications made, by stage in proceeding, at the time of application.

<u>Stage in the proceeding</u>	<u>Number of new applications</u>	
	<u>2017</u>	<u>2016</u>
Pre-certification	25	19
Appeal re: certification		
Discovery	1	2
Determination of common issues	1	1
Appeal re: common issues		
Post common issue stage		
Total	27	22

2. New applications granted and refused or pending/withdrawn, by stage in the proceeding, at the time of application.

Stage in the proceeding	Granted	Refused	Deferred/Pending*/ Stayed, etc.	Total
2016				
Pre-certification	14	3	2	19
Discovery	2			2
Other (common issues)	1			1
Total	17	3	2	22
2017				
Pre-certification	17	6	2	25
Discovery		1		1
Other (common issues)	1			1
Total	18	7	2	27

*Carried forward to the next year.

3. In 2017, financial support was awarded for eighteen (18) new cases under section 59.3(1) of the Act¹ and further financial support was awarded for eleven (11) cases which had previously been approved, as a result of supplementary funding applications under section 59.3(5) of the Act. In 2016, financial support was awarded for seventeen (17) new cases under section 59.3(1) of the Act and further financial support was awarded for eight (8) cases which had previously been approved, as a result of supplementary funding applications under section 59.3(5) of the Act.

4. Total awards, by disbursement type is \$4,048,853.

<u>Type of disbursement</u>	<u>Total amount awarded 2017</u>
Administrative expenses	\$ 595,213
Travel	312,306
Examiners' charges	141,027
Experts' fees	2,837,662
Notice to class	91,783
Other	70,862
Total	\$4,048,853

Under regulation 771/92, this section includes only amounts awarded during 2017. Total amounts paid out by the Class Proceedings Fund (CPF) during 2017 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: 2017, \$2,862,888; 2016, \$1,080,364. At December 31, 2017, the balance of all awards outstanding which had not yet been paid to applicants was \$5,231,474.

6. In 2017, nine (9) funded proceedings were certified. In 2016, seven (7) funded proceedings were certified.

¹References are to the *Law Society Act*.

7. In 2017, one (1) applicant who had received financial support settled their proceedings such that the classes involved in these proceedings would receive or will receive a monetary payment. In 2016, four (4) applicants who had received financial support settled their proceedings such that the classes involved in these proceedings would receive or will receive a monetary payment.

8. In 2017, four (4) defendants made applications to the CPF for payment of costs awards made in their favour pursuant to section 59.4 of the Act; two (2) applications were received in 2016. This results from the indemnification of plaintiffs against cost awards.

9. In 2017, \$3,506,975 was paid from the CPF to defendants under section 59.4 of the Act. In 2016, \$528,767 was paid from the CPF to defendants under section 59.4 of the Act. This results from the indemnification of plaintiffs against cost awards.

10. Proceedings for which plaintiff was awarded financial support under section 59.3 of the Act (these included both newly approved cases and previously approved cases for which supplementary funding was awarded during 2017).

	Administrative expenses	Travel expenses	Examiners' charges	Experts' fees	Notice to class	Other	Total
2017	\$	\$	\$	\$	\$	\$	\$
Crown liability – general breach of duty	33,103	19,850	7,309	33,700	24,713		118,675
Crown liability – Charter infringement of human rights				11,300			11,300
Crown liability – Prisoners' rights	84,500	83,000	55,000	411,000		500	634,000
Investments / Securities	51,289	39,604	30,000	531,763	2,070	35,362	690,088
Product liability – Medical products	26,426	1,807	273	1,845			30,351
Employment	35,000			40,000	15,000		90,000
Consumer protection – Interpretation of contracts	96,440	23,560		602,184			722,184
Product liability – Consumer products	34,155	31,485	20,445	260,000		25,000	371,085
Competition	80,000	20,000		366,370			466,370
General negligence	45,000	30,000		125,000			200,000
Solicitors negligence	40,000	22,000		300,000		10,000	372,000
Consumer protection – Breach of privacy	27,300	19,000	13,000	64,500			123,800
Sexual abuse	17,000	18,000	10,000	75,000	50,000		170,000
General professional negligence – Investment advisor	25,000	4,000	5,000				34,000
Breach of trust				15,000			15,000
Total	595,213	312,306	141,027	2,837,662	91,783	70,862	4,048,853
2016							
All cases	548,966	224,343	165,692	1,917,299	26,984	261,089	3,144,373

Class Proceedings Committee

The Class Proceedings Committee has five members, one appointed by each of The Law Foundation of Ontario and the Attorney General of Ontario, and three appointed jointly.



Wendy J. Earle
Chair
Advocate and Arbitrator



Sandra Barton
Partner, Gowling WLG (from August 2017)



Paul J. Evraire, Q.C.
Special Counsel (Retired), Department of Justice



Scott C. Hutchison
Senior Partner, Henein, Hutchison LLP



Jasminka Kalajdzic
Associate Dean, Associate Professor, Faculty of Law, University of Windsor (until June 2017)



Kim Twohig
General Counsel (Retired), Ministry of the Attorney General