

**Class Proceedings Committee  
Practice Direction #1  
Application Process  
(Amended September, 2012)**

**Purpose of the Class Proceedings Committee**

1. The Class Proceedings Committee (the “Committee”) has been established under the *Law Society Amendment Act (Class Proceedings Funding)* 1992 S.O. 1992, c.7 to determine whether plaintiffs in class proceedings should receive financial support from the Class Proceedings Fund (the “Fund”) and the amount of such support.

**How to Contact the Committee**

2. The Committee’s address is Suite 3002, 20 Queen Street West, Toronto, M5H 3R3, and its telephone number is (416) 595-1425.

**How to Prepare an Application**

3. Section 3 of O. Reg. 771/92 sets out the materials required to be included in the first application. The Committee requests that the materials be submitted to the Committee in electronic format by way of CD. The CD should contain an index and be organized with Tabs corresponding to the paragraph numbers of subsection 3(1) of the regulation. If considered helpful, material under a numbered tab may be subdivided under tabs bearing the number and a letter (e.g. Tabs 5a, 5b, etc.).

4. With respect to Tabs 7 and 9 (the legal opinion describing and assessing the merits of the applicant’s case and the legal opinion assessing the likelihood of certification), please refer to the attached guidelines entitled “Opinion on the Merits” and “Opinion on Certification”. Counsel are asked to use this outline when providing their opinions concerning both the merits of the lawsuit, and the likelihood of certification. Counsel are reminded that this is not a typical advocacy process. In many cases, the Committee will not have the benefit of written submissions from the defendants, nor will the Committee have the opportunity to meet with defendant’s counsel to ask questions. We therefore ask plaintiff’s counsel to fairly present and comment on defences or positions which either have been raised by the defendants, or which plaintiff’s counsel anticipates could be raised by the defendants.

5. With respect to Tab 11 (corresponding to paragraph 11 of s.3(1)), the Committee is interested in knowing the amount, if any, of funds the applicant has or expects to raise to supplement any funding granted by the Committee taking into account the nature of the case and the circumstances of the plaintiff.

6. The first application record should also contain:

- (a) a tab (Tab 16) containing a list of the individual lawyers expected to participate in the prosecution of the case, a description of their experience

and qualifications, a statement whether a contingency fee agreement has been entered into under s.33 of the *Class Proceedings Act, 1992*, and an estimate of the aggregate number of hours the applicant's solicitors expect to and are prepared to devote to the case;

- (b) a tab (Tab 17) containing material addressing the issue of the defendant's ability to pay any judgment and comply with any non-monetary relief which may ultimately be granted against it, and, if it appears the defendant will not be able to pay or comply, explaining why financial support should nevertheless be granted;
- (c) a tab (Tab 18) containing the plan or draft plan which has been or is intended to be filed pursuant to s.5(l)(e)(ii) of the *Class Proceedings Act, 1992*;
- (d) a tab (Tab 19) containing a budget regarding disbursements expected to be required up to and including trial; and
- (e) a final tab (Tab 20) containing an Executive Summary concerning the application.

7. The materials for subsequent application, if any, should also be submitted electronically by way of CD and should be called a First or Second or Third etc. Supplementary Class Proceeding Funding Application (*as the case may be*). Supplementary Funding Applications should not duplicate the contents of any previous record, should be organized under tabs continuing the numbering sequence of the immediately preceding record, and should contain:

- (a) tabs containing whatever materials the applicant thinks necessary;
- (b) a tab containing copies of any pleadings filed and orders made by the court in the proceedings which have not already been included in a previous record;
- (c) a tab containing a concise report on the status of the class proceeding including an estimated timetable;
- (d) a tab containing written submissions concerning the application; and
- (e) a tab containing an Executive Summary.

8. Paragraph 5 of subsection 3(1) of O.Reg. 771/92 requires a copy of the pleadings be included in the application. It should be noted that this includes the statement of defence. The Committee will not consider an application regarding an action to be complete unless the statement of defence is included (or the defendant has been noted in default). Where the defendant does not deliver a statement of defence but rather brings a motion of any kind, it is sufficient to include a copy of the motion record in lieu of the statement of defence. Where the court proceeding has been commenced by Notice of Application, it is sufficient to include a copy of the

respondent's Notice of Appearance and any other materials filed with the court by the respondent.

### **Confidentiality**

9. Subsection 3(1) of O.Reg. 771/92 requires certain confidential documents or information, including legal opinions, to be included in the application. The Committee expects and encourages full and frank disclosure and will protect the confidentiality of such materials except as may be compelled by law. When information is disclosed by the Committee in the course of giving a direction to the Board of Trustees of The Law Foundation of Ontario (the "Board"), and when information is disclosed by the Committee in the course of its annual report to the Law Foundation, and in the event reasons for decision are issued by the Committee, disclosure of specific confidential information will be avoided.

### **How to Submit an Application**

10. Six copies of the CD should be mailed, couriered or hand delivered to the Committee's office. It is the applicant's responsibility to ensure proper delivery; however, the Secretary will acknowledge receipt of all records in writing.

### **How Applications will be Considered**

11. With respect to the applicant's first application, after a complete application is received the Committee will advise the applicant's solicitor of the time and place of the Committee's meeting to consider the application. It is expected the meetings will be held at the Committee's office regularly and may occur in either an afternoon or an evening session. The Committee will meet *in camera* with the applicant and the applicant's solicitor. The applicant's solicitor may make oral submissions not exceeding 20 minutes. The Committee will then discuss the application with the applicant and the applicant's solicitor. The Committee will reserve its decision and advise the applicant of its decision in writing in due course. Applications by conference call may be arranged if appropriate in the circumstances. The Committee's meetings will not be open to the public.

12. With respect to subsequent applications, the applicant may make written submissions as described in paragraph 6 but may not make oral submissions unless leave to do so is granted in special circumstances on written application for that purpose or on the Committee's own motion. The Committee will advise the applicant of its decision in writing in due course.

### **How Funding is Received**

13. In the event an application is granted in whole or in part the Board will make payments in accordance with the Class Proceedings Committee Funding Disbursement Policy. The Board, not the Committee, is responsible for disbursing the funds and the requirements of O.Reg. 771/92 should be considered in that regard. The Board's address is Suite 3002, 20 Queen Street West, Toronto, M5H 3R3, telephone number is (416) 595-1425, and fax number is (416) 598-1526.

**If Funding is Refused**

14. Where an application is refused, the applicant may re-apply if so desired in which case paragraphs 6 and 11 govern.

**Levy Against Awards and Settlement Funds**

15. If an applicant is financially supported by the Committee and the class proceeding is successful, the amount advanced to the plaintiff from the Fund plus 10% of the settlement funds or monetary award is to be paid to the Fund. Pursuant to rule 12.05 of the *Rules of Civil Procedure* payment of this levy will be addressed in the order approving the settlement or in the judgment.

**Applications for Defendant's Costs**

16. Applications regarding payments of defendant's costs are made to the Board, not to the Committee.

Dated the 22<sup>nd</sup> day of February, 1993

"original signed by"

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Anne Molloy  
Chair  
Class Proceedings Committee

Amended the 27<sup>th</sup> day of April, 2004

"original signed by"

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Robert B. Munroe  
Chair  
Class Proceedings Committee

Amended this 11<sup>th</sup> day of September, 2012

"original signed by"

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Wendy Earle  
Acting Chair  
Class Proceedings Committee