

**Class Proceedings Committee
Practice Direction #2
Defendant Submissions
(Amended September, 2012)**

Defendants' Submissions Regarding Funding Applications

1. An application for funding brought by a representative plaintiff (the "Plaintiff") under s. 59.3 of the *Law Society Amendment Act (Class Proceedings Funding)* 1992 S.O. 1992, c.7 is not an adversarial proceeding and the Act does not provide the defendant in the class proceeding (the "Defendant") with a right to oppose the application. However the Class Proceedings Committee (the "Committee") does have a broad discretion under s.59.3(4)(e) to consider any matter relevant to the application for funding and is at liberty to seek information from any available source including the Defendant.

Plaintiff's Consent Required

2. The committee may ask the Plaintiff to consent to the Committee requesting the Defendant to provide written submissions subject to certain safeguards to protect the Plaintiff and the funding process.
3. Without the express consent of the Plaintiff the Committee will never:
 - (a) request submissions from a Defendant;
 - (b) review unsolicited submissions from a Defendant; or
 - (c) confirm or deny to a Defendant that the Plaintiff has submitted an application.

Acknowledgment and Undertaking

4. If the Plaintiff consents to the Committee requesting written submissions from a Defendant, the Committee will request the Defendant to file the submissions together with a written Acknowledgment and Undertaking directed to both the Committee and the Plaintiff agreeing to specific conditions which the Committee considers appropriate in the circumstances and which may include the following:
 - (a) An acknowledgment that the Defendant will not be entitled to make oral submissions to the Committee;
 - (b) An acknowledgment that the Defendant will not be entitled to any information about, or materials from, the Plaintiff's application;

(c) An acknowledgment that the Defendant's written submissions will not be treated as confidential, a copy of the Defendant's submissions will be provided to the Plaintiff for response, and the Defendant will not be informed of the Plaintiff's response or be given a right of reply;

(d) An undertaking that, in consideration of the delay in the determination of the Plaintiff's application for funding which may result from the Defendant's submissions, the Defendant will consent to any extensions of time for the certification motion, or any other steps in the class proceeding, requested by the Plaintiff until the Committee has either granted or refused the Plaintiff's application;

(e) an undertaking that, in consideration of the extra expense to the Plaintiff which may result from responding to the Defendant's submissions, the Defendant will consent to the discontinuance of the class proceeding without costs in the event the Plaintiff's application for funding is refused and the Plaintiff subsequently seeks leave from the court to discontinue the class proceeding; and

(f) An acknowledgment that the Committee's request for written submissions from the Defendant, and the Defendant's filing of written submissions, do not confer any rights whatsoever on the Defendant, such as, without limitation, the right to a copy of the Committee's reasons for decisions or the right to apply for judicial review of the Committee's decision.

Form of Defendant's Written Submissions

5. The Defendant's written submissions may include any materials it considers relevant and should be organized appropriately and bound into a Class Proceeding Funding Defendant's Record (the "Defendant's Record"). Six CD copies of the Defendant's Record should be provided to the Committee at Suite 3002, 20 Queen Street West, Toronto, Ontario, M5H 3R3 together with proof of service of one copy on the solicitors for the Plaintiff.

Communication of Decision

6. In a case where the Defendant is requested to file, and does file, written submissions, the Committee shall advise the Defendant of the Committee's decision whether to grant or deny funding but the Committee will not disclose to the Defendant any reasons for decision or the amount of any funding granted. In the event the Committee adjourns or temporarily stays the Plaintiff's application for the purpose of permitting the Plaintiff to take certain steps or provide certain information, or for any other reason, the Committee will not advise the Defendant of such adjournment or temporary stay or the reasons therefore.

Dated this 20th day of September 1995.

“original signed by”

Michael McGowan
Chair
Class Proceedings Committee

Amended this 11th day of September, 2012.

“original signed by”

Wendy Earle
Acting Chair
Class Proceedings Committee