

# Class Proceedings Fund



## MESSAGE FROM THE CHAIR

The Class Proceedings Committee (the Committee) has been very busy, with the trend of hearing and funding more and more cases continuing in 2016.

We held 22 hearings and funded 17 new applications. The Class Proceedings Fund received levies of \$5,961,678 and paid cost awards in favour of defendants in the amount of \$528,767. The balance in the Fund at the end of 2016 was \$19,861,537.

These numbers are significant yet it is ultimately the contribution to our mandate that gives the greatest return. This year the Committee was especially active with cases concerning such diverse issues as prisoners' rights, privacy rights, employee overtime, and, at the other end of the spectrum, misrepresentations to the holders and purchasers of securities in the capital markets. Whether upholding basic rights and freedoms or the integrity of our capital markets, the Fund's support of cases in the public interest has the potential to fundamentally affect not only the lives of the class plaintiffs but every single member of the public by helping to achieve justice, accountability, and transparency in our society's institutions, both public and private.

The increasing number of applications requires our Committee to focus on monitoring our levels of disbursement funding, assessing the risk of costs exposure in unsuccessful outcomes as well as projecting levies from successful cases. This is a complex ongoing analysis, which the Committee examines at its meetings and more intensely at our retreat.

On a personal note, I would like to thank: the members of the Committee – Paul Evraire, Scott Hutchison, Jasminka Kalajdzic, and Kim Twohig; our Counsel, Gina Papageorgiou and Legal Assistant, Linda Patki; and the Committee's Secretary, Judy Mark. It is a great joy to work with such talented and astute people who, without exception, devote an enormous amount of time and hard work to the Committee's activities.

Finally, I would like to give a special acknowledgement to Jasminka Kalajdzic. After six years of dedicated service (including a monthly commute from Windsor for meetings), Jasminka stepped down from the Committee. We are grateful for the many ways that Jasminka served and advanced the Committee's work. Her commitment, hard work, and encyclopedic knowledge of class action law and procedure will be greatly missed.

A handwritten signature in black ink, reading "Wendy Earle". The signature is fluid and cursive, with the first name "Wendy" being more prominent than the last name "Earle".

**Wendy J. Earle**  
Chair, Class Proceedings Committee

# Class Proceedings Fund financial highlights

## NEW APPLICATIONS HEARD AND APPROVED – 2007-2016

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Hearings held	3	12	13	9	22	12	13	20	17	22
New applications approved	2	9	12	7	15	7	7	11	12	17

## 2016 RESULTS

### Statement of financial position

	<u>For the period from Jan. 1, 2016 to Dec. 31, 2016</u>	<u>For the period from 1994 to Dec. 31, 2016</u>
Opening balance	\$16,750,105	\$500,000
Total funding awarded	(3,144,373)	(20,593,328)
Funding repaid/cancelled	964,008	6,396,083
Administration costs/expenses	(504,308)	(4,052,700)
Interest received	363,194	2,985,988
10% levies received	5,961,678	44,565,772
Cost awards in favour of defendants	(528,767)	(9,940,278)
<b>Balance as at Dec. 31, 2016</b>	<b>\$19,861,537</b>	<b>\$19,861,537</b>

## 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>2016</u>	<u>2015</u>
Pre-certification	19	16
Appeal re: certification		
Discovery	2	
Determination of common issues	1	1
Appeal re: common issues		
Post common issue stage		
<b>Total</b>	<b>22</b>	<b>17</b>

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
<b>2015</b>				
Pre-certification	11	4	1	16
Discovery				
Other (common issues)	1			1
<b>Total</b>	<b>12</b>	<b>4</b>	<b>1</b>	<b>17</b>
<b>2016</b>				
Pre-certification	14	3	2	19
Discovery	2			2
Other (common issues)	1			1
<b>Total</b>	<b>17</b>	<b>3</b>	<b>2</b>	<b>22</b>

\*Carried forward to the next year.

3. In 2016, financial support was awarded for seventeen (17) new cases under section 59.3(1) of the Act<sup>1</sup> 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. In 2015, financial support was awarded for twelve (12) new cases under section 59.3(1) of the Act and further financial support was awarded for seventeen (17) cases that 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 \$3,144,373.

<u>Type of disbursement</u>	<u>Total amount awarded 2016</u>
Administrative expenses	\$ 548,966
Travel	224,343
Examiners' charges	165,692
Experts' fees	1,917,299
Notice to class	26,984
Other	261,089
<b>Total</b>	<b>\$3,144,373</b>

Under regulation 771/92, this section includes only amounts awarded during 2016. Total amounts paid out by the Class Proceedings Fund (CPF) during 2016 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.

<sup>1</sup> References are to the *Law Society Act*.

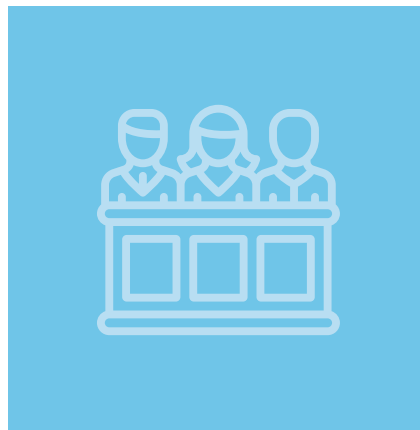
5. The total amount of money paid from the CPF to applicants under section 59.3 of the Act: 2016, \$1,080,364; 2015, \$2,079,284. At December 31, 2016, the balance of all awards outstanding which had not yet been paid to applicants was \$4,479,767.

6. In 2016, 7 (seven) funded proceedings were certified. In 2015, 2 (two) funded proceedings were certified.

7. In 2016, 4 (four) 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, and summary judgement was obtained in another case. In 2015, 1 (one) 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.

8. In 2016, 2 (two) defendants made applications to the CPF for payment of costs awards made in their favour pursuant to section 59.4 of the Act; seven (7) applications were received in 2015. This results from the indemnification of plaintiffs against cost awards.

9. In 2016, \$528,767 was paid from the CPF to defendants under section 59.4 of the Act. In 2015, \$676,520 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 2016).

	Administrative expenses	Travel expenses	Examiners' charges	Experts' fees	Notice to class	Other	Total
<b>2016</b>	\$	\$	\$	\$	\$	\$	\$
Consumer protection	48,413	22,742	12,700		1,000		<b>84,855</b>
Crown liability - general breach of duty	3,795	638			2,622		<b>7,055</b>
Crown liability - prisoners' rights	30,000	20,000	10,000	125,000			<b>185,000</b>
Employment	35,000	45,000	35,000	390,000			<b>505,000</b>
General negligence	26,463	8,317	53,992	11,353	362	5,634	<b>106,121</b>
Investments/ Securities	153,150	75,050	27,000	1,061,750		91,360	<b>1,408,310</b>
Physician negligence	21,000	15,000	15,000	15,000		10,000	<b>76,000</b>
Product liability	12,000		3,000	185,000			<b>200,000</b>
Product liability - drugs						195	<b>195</b>
Product liability - medical products	5,645	96		52,196		153,900	<b>211,837</b>
Residential schools	213,500	37,500	9,000	77,000	23,000		<b>360,000</b>
<b>Total</b>	<b>548,966</b>	<b>224,343</b>	<b>165,692</b>	<b>1,917,299</b>	<b>26,984</b>	<b>261,089</b>	<b>3,144,373</b>
2015							
<b>All cases</b>	<b>269,459</b>	<b>24,013</b>	<b>28,592</b>	<b>1,344,275</b>	<b>120,000</b>	<b>66,256</b>	<b>1,852,595</b>

# 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 Earle, Chair**  
Advocate and Arbitrator



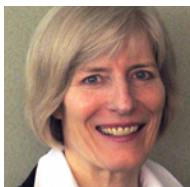
**Paul J. Evraire, Q.C.**  
Special Counsel (Retired), Department of Justice



**Scott C. Hutchison**  
Senior Partner, Henein, Hutchison LLP



**Jasminka Kalajdzic**  
Associate Dean, Associate Professor, Faculty of Law, University of Windsor



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