

Law Commission of Ontario Class Actions Project

Background/ Qs and As

September 22, 2017

1. What is the Law Commission of Ontario (LCO) class actions project?

The LCO's class actions project is the first independent, evidence-based, and comprehensive review of class actions in Ontario since the enactment of the *Class Proceedings Act* in 1993.

The LCO project has two main objectives:

- Survey the experience with class actions in Ontario, and
- Provide an independent and practical analysis of class actions from the perspective of their three objectives: access to justice, judicial economy, and deterrence.

The project will produce an independent, balanced, and authoritative report on class actions issues. The report may make recommendations for law reform where appropriate to do so.

The project's Terms of Reference is attached to this note.

2. Why are class actions important?

Ontario's *Class Proceedings Act* is almost 25 years old. During this period, class actions have grown dramatically in volume, complexity, and impact in Ontario and across Canada. Class action proceedings have significant policy and financial implications for both potential class members and potential class action defendants. Class action issues also have systemic implications for access to justice, court procedures and efficiency, and government and corporate liability.

Notable class actions in Ontario since the *Class Proceedings Act* was passed include matters related to:

- Products liability, including implanted medical devices and food product recalls;
- Privacy breaches concerning credit cards and data security;
- Consumer protection issues such as payday loans and criminal interest rates;
- Environmental accidents, such as Walkerton, soil contamination and explosions;
- Mass personal injury involving blood, blood products and c. Difficile infections;
- Institutional abuse in residential schools and health care facilities;
- Labour and employment issues concerning pensions, gender discrimination, misclassification and unpaid overtime;
- Securities issues; and,
- Federal and provincial inmates held in solitary confinement.

3. How many class action lawsuits are there in Ontario?

The LCO's preliminary estimate is that there have been up to 900 class action lawsuits launched in Ontario in the last 20 years. The LCO's project is committed to providing an accurate statistical profile of class action matters in Ontario.

4. Why is the LCO class actions project important?

The LCO's class actions project is important because:

- **The project addresses outstanding, systemic, and controversial justice policy issues.** Class action legislation and proceedings have significant policy and financial implications for both class members and class action defendants. Class actions also have systemic implications for access to justice, court procedures and efficiency, and government and corporate liability.
- **The project is timely.** The LCO project will be the most comprehensive assessment of Ontario's *Class Proceedings Act* in more than 25 years. The last comprehensive review of class proceedings in Ontario was the 1990 report of the Ontario government's Advisory Committee on Class Action Reform.
- **The project is independent.** Class action discussions are controversial and often influenced by stakeholder interests and perspectives. This project is unique in that the LCO is independent of those interests and committed to a "public interest" analysis of class action issues.
- **The project is evidence-based.** There is a comparative lack of comprehensive consultations and empirical research on class actions issues. The LCO project will attempt to provide a firmer empirical foundation to assist the analysis of these issues.

5. What is the Law Commission of Ontario?

The LCO is an independent research organization located at Osgoode Hall Law School in Toronto. The LCO is Ontario's leading law reform agency.

The LCO's mandate is to make independent recommendations that provide principled and practical solutions to contemporary legal policy issues. The LCO is committed to evaluating laws impartially, transparently and broadly.

The LCO fulfills this mandate by combining legal and multi-disciplinary research, contemporary public policy techniques, evidence-based research, and a high level of public engagement. The LCO's analysis is tested through an independent, transparent, and comprehensive review process that engages a broad range of organizations and individuals.

LCO reports have led to legislative amendments and policy changes, promoted access to justice, and contributed to public debates surrounding important law reform issues.

The LCO's work is guided by a Board of Governors representing a broad cross-section of leaders within Ontario's justice community. The LCO board is uniquely positioned to influence the development of law reform in Ontario.

6. Will the project consult with lawyers and legal organizations?

Yes. The class actions project will organise consultations with the legal profession, legal organizations, governments, public and private organizations, academics and others who have an interest in class actions. The project will circulate a consultation paper and organize dedicated in-person meetings/consultations with key individuals, organizations, and stakeholders. Important project documents will be distributed in English and French, and a webpage will be developed for public outreach, information and consultations.

7. Who is working on the project?

The project is being supported by a distinguished group of academics, justice system leaders, and class action practitioners.

The project's Principal Researchers include:

- Professor Jasminka Kalajdzic, Faculty of Law, University of Windsor
- Professor Catherine Piché, Faculty of Law, Université de Montréal

The project's expert Reference Group includes:

- The Honourable Stephen T. Goudge, Chair and Board of Governors Liaison
- Tim Buckley, Partner, Borden Ladner Gervais LLP
- Michael A. Eizenga, Partner, Bennett Jones LLP
- Professor Trevor C. W. Farrow, Osgoode Hall Law School
- Celeste Poltak, Partner, Koskie Minsky LLP
- Linda Rothstein, Partner, Paliare Roland Rosenberg Rothstein

8. How long will the project take? What is the project timetable?

The LCO expects to release its report in late 2018. Consultations are expected to begin in late 2017.

9. Who will benefit from the project?

Beneficiaries of the project are likely to include:

- Government officials involved in class actions at the provincial, national, and municipal levels;
- Legal system professionals, including the class actions bar, the judiciary, and legal organizations;
- Current and potential class action plaintiffs (class members);
- Current and potential class action defendants (including corporations and governments);
- Community groups or legal organizations in fields related access to justice, civil justice reform, consumer protection, health, environmental protection, Indigenous issues, and related areas often subject of class actions lawsuits;
- Academics and experts working in fields related to class actions;
- Law schools; and,
- The general public.

10. How is the project funded?

Funding for this project is being provided by the LCO. The project is also supported by the Faculty of Law, University of Windsor and la Faculté de droit de l'Université de Montréal. The project will collaborate with other funders and supporters if it is appropriate to do so.

11. Where can I get more information?

More information about the project and the LCO is available on the LCO's website at www.lco-cdo.org. Individuals and organizations can also use the website to sign up for project updates.