



LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

LCO CLASS ACTION PROJECT Stage One Interviews

October 2017

Background

Broadly speaking, the purpose of this project is to research whether class actions are fulfilling their three-part promise to improve access to justice, foster judicial efficiency, and promote behaviour modification. The 25th anniversary of the passage of the *Class Proceedings Act, 1992* represents an important milestone and an opportune time to take stock of the class action regime in Ontario. The purpose is not to repeat the work of the original Law Reform Commission Report of 1982, nor to overhaul the entire statute. Rather, it is to evaluate the class action regime through broad consultation with stakeholders, and focus on the most important areas of shared concern.

The work of the Project will proceed in two stages. *First*, we are working to identify the research questions to be studied. Those questions will be developed in consultation with a wide cross-section of the key actors in the class action regime: judges, lawyers on both sides of the bar, policymakers, representatives from industry and members of consumer groups. Our aim is to identify the most prevalent and serious concerns about the operation of the Act from the perspective of those who use the system, and then circulate a Consultation Paper that sets out the key issues in context.

Attached below are a series of questions designed for the first stage of the project. These questions seek to elicit your views about what is working in the class action regime, and what needs improvement. There are both general, open-ended questions that allow you to identify your own concerns, as well as more specific questions related to recurring debates in class actions over the years. You are encouraged, but not required, to answer all questions.

In the *second stage* of the Project, we will solicit formal submissions from all interested parties to the research questions posed in the Consultation Paper. We will conduct our own research, consider the formal submissions as well as the empirical data to be collected, and then present our findings and proposals for reform in a report to be released in the fall of 2018.

General Questions

1. Access to justice is one of three objectives in the class action regime. Is this objective being fulfilled?
2. Most class actions take several years to reach resolution. What accounts for the delay? What change in legislation or practice would make class actions more efficient or improve judicial economy?
3. What is the evidence that class actions have deterred wrongdoing? Are you seeing indicia of behaviour modification resulting from class proceedings in Ontario (among your clients or elsewhere)? What are these indicia?

Specific Questions

4. What, if anything, should be changed in the s. 5 CPA certification test?
5. Currently, defendants must obtain leave to appeal a certification order. Should this appeal route be amended and if so, how and why?
6. Should the two-way costs rule be altered?
7. Is the current test for approval of counsel fees adequate?
8. Is the current test for approval of litigation funding arrangements adequate?
9. Should the governing rules or practices of the Class Proceedings Fund be reformed? If so, how?
10. Do you find that the interests of absent members are being well protected during class settlement approvals? If not, how could those be better protected?
11. What do you think of settlement distribution schemes and management in Ontario class actions?
12. How accessible and clear do you find class notices to be for the class members?
13. Is the use of cy près distribution of settlements a positive development for access to justice and/or behaviour modification? Should a cy près award affect counsel fees?

14. Is the current judicial coordination of multi-jurisdictional (“national”) class actions adequate? If not, do you have suggestions for improvement?

Priorities

15. Of all of the above, how would you prioritize the issues meriting attention and reform? Please list your top three areas of concern.

Further Advice and Names to Contact

16. Do you have any further advice for us as we begin this project? Who do you recommend we talk to during the course of the project?