



LCO Class Actions Consultation

Kenn Hale (ACTO)

to:

'lawcommission@lco-cdo.org'

06/27/2018 06:20 PM

Cc:

"Ivana Petricone (ACLCO)"

Hide Details

From: "Kenn Hale (ACTO)" <HaleK@lao.on.ca>

To: "'lawcommission@lco-cdo.org'" <lawcommission@lco-cdo.org>

Cc: "Ivana Petricone (ACLCO)" <petriconi@lao.on.ca>

History: This message has been forwarded.

Thank you for meeting with representatives of the specialty legal clinics on June 20. I am writing to provide a brief submission to the project concerning use of the class actions process by low-income Ontarians from the point of view of an organization that provides legal services to that population.

The Advocacy Centre for Tenants Ontario is a community legal clinic with a province-wide mandate to lead law reform initiatives on issues affecting low-income tenants, pursue housing test cases and to manage a tenant duty counsel program at the Landlord and Tenant Board. We have been operating since 2001 with funding from Legal Aid Ontario as part of the community legal clinic system.

While we have not undertaken any class action cases, we have significant litigation experience, particularly in statutory appeals from the Landlord and Tenant Board and Charter cases involving housing and privacy rights. As expressed in our recent meeting with the project team, we have not found that the class actions process is suited to addressing the problems that low-income tenants face. The obstacles to using this process discussed at our meeting include the fear of costs, the scale of resources needed to manage these cases and a lack of expertise in the procedure. In tenancy cases, we are also faced with the uncertainty of the boundaries between the jurisdiction of the Landlord and Tenant Board and the Courts.

The only case that I am aware of that reached the certification stage in Ontario is the case of *Blair v. Toronto Community Housing Corporation*, 2011 ONSC 4395 (Perell J.). The decision of the certification motion can be found here:

<http://www.canlii.org/en/on/onsc/doc/2011/2011onsc4395/2011onsc4395.pdf> The decision does not squarely address the jurisdiction issue but I had real concerns that ultimately that issue could have de-railed the case. In the end, the case was settled in the spring of 2013.

As I also expressed at the meeting, there is much to be said for “collective” actions in areas of law that are primarily adjudicated by administrative tribunals being dealt with by those tribunals. However, the Landlord and Tenant Board does not have rules or procedures that facilitate such cases except in very narrow circumstances such as the approval of rent increases. We heard at the meeting that similar limitations are encountered at the Human Rights Tribunal of Ontario. While it may be beyond your project’s mandate, I ask you to consider making recommendations that would encourage the Government of Ontario to empower its administrative tribunals to apply the lessons learned by the Courts about class actions to cases within their jurisdictions.

As well, we would welcome recommendations that encourage Legal Aid Ontario support for class actions in appropriate circumstances. There may be a place for clinics to work with private bar lawyers receiving such support along the lines of what was discussed by Dan Rohde from the Income Security Advocacy Centre at our meeting.

Thank you for seeking our views on this important matter. We look forward to your report and the possibility of

improved access to justice arising from its recommendations.

Kenneth Hale  
Director of Advocacy and Legal Services  
**Advocacy Centre for Tenants Ontario (ACTO)**  
**Tenant Duty Counsel Program (TDCP)**  
Phone: 416.597.5855 ext. 5163  
Toll Free: 1.866.245.4182 ext. 5163  
Email: [halek@lao.on.ca](mailto:halek@lao.on.ca)  
1500 – 55 University Avenue  
Toronto, ON M5J 2H7



Follow us on [Twitter](#)

This electronic transmission is intended only for the person or entity to whom it is addressed and may contain information which is confidential, legally privileged and/or exempt from disclosure under applicable law. Any review, copying, distribution or disclosure of its contents by anyone other than the intended recipient(s) is prohibited. If you have received this e-mail in error, please contact the sender immediately and delete this material from your computer. Thank you.

Le présent envoi électronique est réservé à la personne ou à l'entité à laquelle il est adressé et peut contenir de l'information qui soit confidentielle, légalement privilégiée et/ou soustraite à la communication par l'effet de dispositions juridiques. L'examen, la copie, la diffusion ou la communication de son contenu par toute personne autre que le ou les destinataires que vise le présent envoi sont interdits. Si vous avez reçu le présent courriel par erreur, veuillez en aviser l'expéditeur immédiatement et veuillez supprimer ce courriel de votre ordinateur. Merci.