

CLASS PROCEEDINGS ACT, 1992
(AS AMENDED BY BILL 161, SMARTER AND STRONGER JUSTICE ACT, 2020)

Definitions

1 In this Act,

“common issues” means,

- (a) common but not necessarily identical issues of fact, or
- (b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;

“court” means the Superior Court of Justice but does not include the Small Claims Court;

“defendant” includes a respondent;

“plaintiff” includes an applicant.

“Minister” means the Attorney General or such other member of the Executive Council to whom the administration of this Act is assigned under the *Executive Council Act*;

“multi-jurisdictional class proceeding” means a proceeding,

- (a) brought on behalf of a class of persons that includes residents from two or more provinces or territories of Canada, and
- (b) certified as a class proceeding under this Act or under the law of another Canadian jurisdiction, as the case may be;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act.

Interpretation, proceeding under this Act

(2) For greater certainty, unless the context requires otherwise, a reference to a proceeding under this Act includes reference to,

- (a) a proceeding commenced under section 2, regardless of whether it has been certified as a class proceeding; and
- (b) a proceeding or proceedings referred to in section 3 or 4, once a motion for certification is made in respect of the proceeding or proceedings.

Interpretation, representative party, etc.

(3) If the context so requires, a reference in this Act to a representative plaintiff, defendant or party, or to a class or subclass member, includes a reference to a person who would, if a proceeding under this Act were certified as a class proceeding, be a representative plaintiff, defendant or party or class or subclass member, as the case may be.

Interpretation, success in a class proceeding

(4) For the purposes of this Act, success in a class proceeding includes,

- (a) a judgment on common issues in favour of some or all class members; and
- (b) a settlement that benefits one or more class members.

Determining same or similar subject matter

1.1 A determination under this Act as to whether two or more proceedings involve the same or similar subject matter shall include consideration of whether the proceedings involve the same or similar causes of action and the same or affiliated defendants.

Plaintiff's class proceeding

2 (1) One or more members of a class of persons may commence a proceeding in the court on behalf of the members of the class.

Registration of proceeding

(1.1) A person who commences a proceeding under subsection (1) shall register the proceeding in accordance with the regulations.

Motion for certification

(2) A person who commences a proceeding under subsection (1) shall make a motion to a judge of the court for an order certifying the proceeding as a class proceeding and appointing the person representative plaintiff.

~~Idem~~

~~(3) A motion under subsection (2) shall be made,~~

~~(a) within ninety days after the later of,~~

~~(i) the date on which the last statement of defence, notice of intent to defend or notice of appearance is delivered, and~~

~~(ii) the date on which the time prescribed by the rules of court for delivery of the last statement of defence, notice of intent to defend or a notice of appearance expires without its being delivered; or~~

~~(b) subsequently, with leave of the court.~~

Proof of registration

(3) The person shall, in an affidavit filed for use on the motion for certification, provide proof that the proceeding was registered in accordance with subsection (1.1).

Notice of certification motion to others

(4) In addition to giving notice of a motion for certification in accordance with the rules of court, the person shall give notice of the motion to the representative plaintiff of any class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, that,

(a) was commenced in a Canadian jurisdiction other than Ontario; and

(b) involves the same or similar subject matter and some or all of the same class members.

Submissions

(5) A person to whom notice is given under subsection (4) is entitled to make submissions at the hearing of the motion for certification.

Defendant's class proceeding

3 A defendant to two or more proceedings may, at any stage of one of the proceedings, make a motion to a judge of the court for an order certifying the proceedings as a class proceeding and appointing a representative plaintiff.

Classing defendants

4 Any party to a proceeding against two or more defendants may, at any stage of the proceeding, make a motion to a judge of the court for an order certifying the proceeding as a class proceeding and appointing a representative defendant.

Early resolution of issues

4.1 If, before the hearing of the motion for certification, a motion is made under the rules of court that may dispose of the proceeding in whole or in part, or narrow the issues to be determined or the evidence to be adduced in the proceeding, that motion shall be heard and disposed of before the motion for certification, unless the court orders that the two motions be heard together.

Certification

5 (1) The court shall, subject to subsection (6) and to section 5.1, certify a class proceeding on a motion under section 2, 3 or 4 if,

- (a) the pleadings or the notice of application discloses a cause of action;
- (b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff or defendant;
- (c) the claims or defences of the class members raise common issues;
- (d) a class proceeding would be the preferable procedure for the resolution of the common issues; and
- (e) there is a representative plaintiff or defendant who,
 - (i) would fairly and adequately represent the interests of the class,
 - (ii) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and
 - (iii) does not have, on the common issues for the class, an interest in conflict with the interests of other class members.

Same

(1.1) In the case of a motion under section 2, a class proceeding is the preferable procedure for the resolution of common issues under clause (1) (d) only if, at a minimum,

- (a) it is superior to all reasonably available means of determining the entitlement of the class members to relief or addressing the impugned conduct of the defendant, including, as applicable, a quasi-judicial or administrative proceeding, the case management of individual claims in a civil proceeding, or any remedial scheme or program outside of a proceeding; and
- (b) the questions of fact or law common to the class members predominate over any questions affecting only individual class members.

Idem, subclass protection

(2) Despite subsection (1), where a class includes a subclass whose members have claims or defences that raise common issues not shared by all the class members, so that, in the opinion of the court, the protection of the interests of the subclass members requires that they be separately represented, the court shall not certify the class proceeding unless there is a representative plaintiff or defendant who,

- (a) would fairly and adequately represent the interests of the subclass;

- (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the subclass and of notifying subclass members of the proceeding; and
- (c) does not have, on the common issues for the subclass, an interest in conflict with the interests of other subclass members.

Evidence as to size of class

(3) Each party to a motion for certification shall, in an affidavit filed for use on the motion, provide the party's best information on the number of members in the class.

Adjournments

(4) The court may adjourn the motion for certification to permit the parties to amend their materials or pleadings or to permit further evidence.

Certification not a ruling on merits

(5) An order certifying a class proceeding is not a determination of the merits of the proceeding.

Existence of other class proceeding

(6) If a class proceeding or proposed class proceeding, including a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding, has been commenced in a Canadian jurisdiction other than Ontario involving the same or similar subject matter and some or all of the same class members as in a proceeding under this Act, the court shall determine whether it would be preferable for some or all of the claims of some or all of the class members, or some or all of the common issues raised by those claims, to be resolved in the proceeding commenced in the other jurisdiction instead of in the proceeding under this Act.

Same, considerations

(7) In making a determination under subsection (6), the court shall,

- (a) be guided by the following objectives:
 - (i) ensuring that the interests of all parties in each of the applicable jurisdictions are given due consideration,
 - (ii) ensuring that the ends of justice are served,
 - (iii) avoiding irreconcilable judgments where possible,
 - (iv) promoting judicial economy; and
- (b) consider all relevant factors, including,
 - (i) the alleged basis of liability in each of the proceedings, and any differences in the laws of each applicable jurisdiction respecting such liability and any available relief,
 - (ii) the stage each proceeding has reached,
 - (iii) the plan required to be produced for the purposes of each proceeding, including the viability of the plan and the available capacity and resources for advancing the proceeding on behalf of the class,
 - (iv) the location of class members and representative plaintiffs in each proceeding, including the ability of a representative plaintiff to participate in a proceeding and to represent the interests of class members,
 - (v) the location of evidence and witnesses, and

(vi) the ease of enforceability in each applicable jurisdiction.

Motion for determination under subs. (6)

(8) The court, on the motion of a party or class member made before the hearing of the motion for certification, may make a determination under subsection (6) with respect to a proceeding under this Act, and, in doing so, may make any orders it considers appropriate respecting the proceeding, including,

- (a) staying the proceeding; and
- (b) imposing such terms on the parties as the court considers appropriate.

Motion to certify, multi-jurisdictional class proceeding

5.1 (1) The court may make any order it considers appropriate on a motion to certify a multi-jurisdictional class proceeding, including,

- (a) certifying the proceeding if,
 - (i) the conditions set out in subsection 5 (1) are met, and
 - (ii) the court determines, having regard to subsections 5 (6) and (7), that Ontario is the appropriate venue for the proceeding;
- (b) refusing to certify the proceeding if the court determines that it should proceed as a multi-jurisdictional class proceeding or proposed multi-jurisdictional class proceeding in another jurisdiction; or
- (c) refusing to certify the proceeding with respect to class members that the court determines may be included as class members in a class proceeding or proposed class proceeding in another Canadian jurisdiction.

Same

(2) In making an order under clause (1) (a), the court may,

- (a) divide the class into Ontario resident and non-resident subclasses;
- (b) appoint a separate representative plaintiff for each subclass; and
- (c) specify, for the purposes of section 9, the manner and time of opting out of the multi-jurisdictional class proceeding with respect to each subclass.

Certain matters not bar to certification

6 The court shall not refuse to certify a proceeding as a class proceeding solely on any of the following grounds:

1. The relief claimed includes a claim for damages that would require individual assessment after determination of the common issues.
2. The relief claimed relates to separate contracts involving different class members.
3. Different remedies are sought for different class members.
4. The number of class members or the identity of each class member is not known.
5. The class includes a subclass whose members have claims or defences that raise common issues not shared by all class members.

Refusal to certify: ~~proceeding~~

7. (1) If the court refuses to certify a proceeding as a class proceeding, the court shall consider whether notice of the refusal should be given under section 19, and whether such notice should include,

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding;
- (c) any other prescribed information; and
- (d) any other information the court considers appropriate.

Proceeding may continue in altered form

~~7~~ **Where (2)** If the court refuses to certify a proceeding as a class proceeding, the court may permit the proceeding to continue as one or more proceedings between different parties and, for the purpose, the court may,

- (a) order the addition, deletion or substitution of parties;
- (b) order the amendment of the pleadings or notice of application; and
- (c) make any further order that it considers appropriate.

Contents of certification order

8 (1) An order certifying a proceeding as a class proceeding shall,

- (a) describe the class;
- (b) state the names of the representative parties;
- (c) state the nature of the claims or defences asserted on behalf of the class;
- (d) state the relief sought by or from the class;
- (e) set out the common issues for the class; and
- (f) specify the manner in which class members may opt out of the class proceeding and a date after which class members may not opt out.

Subclass protection

(2) Where a class includes a subclass whose members have claims or defences that raise common issues not shared by all the class members, so that, in the opinion of the court, the protection of the interests of the subclass members requires that they be separately represented, subsection (1) applies with necessary modifications in respect of the subclass.

Amendment of certification order

(3) The court, on the motion of a party or class member, may amend an order certifying a proceeding as a class proceeding.

Opting out

9 Any member of a class involved in a class proceeding may opt out of the proceeding in the manner and within the time specified in the certification order.

Where it appears conditions for certification not satisfied

10 (1) On the motion of a party or class member, where it appears to the court that the conditions mentioned in subsections 5 (1) and (2) are not satisfied with respect to a class proceeding, the court may amend the certification order, may decertify the proceeding or may make any other order it considers appropriate.

Proceeding may continue in altered form

(2) Where the court makes a decertification order under subsection (1), the court may permit the proceeding to continue as one or more proceedings between different parties.

Powers of court

(3) For the purposes of subsections (1) and (2), the court has the powers set out in clauses 7 (a) to (c).

Stages of class proceedings

11 (1) Subject to section 12, in a class proceeding,

- (a) common issues for a class shall be determined together;
- (b) common issues for a subclass shall be determined together; and
- (c) individual issues that require the participation of individual class members shall be determined individually in accordance with sections 24 and 25.

Separate judgments

(2) The court may give judgment in respect of the common issues and separate judgments in respect of any other issue.

Court may determine conduct of proceeding

~~12-12.~~ The court, on its own initiative or on the motion of a party or class member, may make any order it considers appropriate respecting the conduct of a ~~class~~-proceeding under this Act to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate.

Court may stay any other proceeding

13 The court, on its own initiative or on the motion of a party or class member, may stay any proceeding related to the ~~class~~-proceeding under this Act before it, on such terms as it considers appropriate.

Carriage motions

13.1 (1) In this section, “carriage motion” means a motion for an order under this section.

Stay of other proceedings

(2) Where two or more proceedings under this Act involve the same or similar subject matter and some or all of the same class members, the court may, on the motion of a representative plaintiff in one of the proceedings, order that one or more of the proceedings be stayed.

Timing

(3) A carriage motion shall be made no later than 60 days after the day on which the first of the proceedings was commenced, and shall be heard as soon as is practicable.

Considerations

(4) On a carriage motion, the court shall determine which proceeding would best advance the claims of the class members in an efficient and cost-effective manner, and shall, for the purpose, consider,

- (a) each representative plaintiff’s theory of its case, including the amount of work performed to date to develop and support the theory;

- (b) the relative likelihood of success in each proceeding, both on the motion for certification and as a class proceeding;
- (c) the expertise and experience of, and results previously achieved by, each solicitor in class proceedings litigation or in the substantive areas of law at issue; and
- (d) the funding of each proceeding, including the resources of the solicitor and any applicable third-party funding agreements as defined in section 33.1, and the sufficiency of such funding in the circumstances.

Decision final

- (5) The decision of the court on a carriage motion is final and not subject to appeal.

Bar on proceedings without leave

(6) In making an order under this section, the court shall also bar the commencement, without leave of the court, of any proceeding under this Act involving the same or similar subject matter and some or all of the same class members.

Costs

(7) Solicitors for the representative plaintiffs who are parties to the carriage motion shall bear the costs of the motion, and shall not attempt to recoup any portion of the costs from the class or any class member, or from the defendant.

Bar on proceedings without leave following motion period

(8) Despite section 2, a proceeding may not be commenced under that section without leave of the court if,

- (a) the proceeding would involve the same or similar subject matter and some or all of the same class members as an existing proceeding under this Act; and
- (b) more than 60 days have passed since the existing proceeding was commenced.

Participation of class members

14 (1) In order to ensure the fair and adequate representation of the interests of the class or any subclass or for any other appropriate reason, the court may, at any time in a ~~class~~-proceeding under this Act, permit one or more class members to participate in the proceeding.

Idem

(2) Participation under subsection (1) shall be in whatever manner and on whatever terms, including terms as to costs, the court considers appropriate.

Discovery

Discovery of parties

15 (1) Parties to a class proceeding have the same rights of discovery under the rules of court against one another as they would have in any other proceeding.

Discovery of class members with leave

(2) After discovery of the representative party, a party may move for discovery under the rules of court against other class members.

Idem

- (3) In deciding whether to grant leave to discover other class members, the court shall consider,
- (a) the stage of the class proceeding and the issues to be determined at that stage;
 - (b) the presence of subclasses;
 - (c) whether the discovery is necessary in view of the claims or defences of the party seeking leave;
 - (d) the approximate monetary value of individual claims, if any;
 - (e) whether discovery would result in oppression or in undue annoyance, burden or expense for the class members sought to be discovered; and
 - (f) any other matter the court considers relevant.

Idem

- (4) A class member is subject to the same sanctions under the rules of court as a party for failure to submit to discovery.

Examination of class members before a motion or application

- 16** (1) A party shall not require a class member other than a representative party to be examined as a witness before the hearing of a motion or application, except with leave of the court.

Idem

- (2) Subsection 15 (3) applies with necessary modifications to a decision whether to grant leave under subsection (1).

Notice of certification

- 17** (1) Notice of certification of a class proceeding shall be given by the representative party to the class members in accordance with this section.

Court may dispense with notice

- (2) The court may dispense with notice if, having regard to the factors set out in subsection (3), the court considers it appropriate to do so.

Order respecting notice

- (3) The court shall make an order setting out when and by what means notice shall be given under this section and in so doing shall have regard to,
- (a) the cost of giving notice;
 - (b) the nature of the relief sought;
 - (c) the size of the individual claims of the class members;
 - (d) the number of class members;
 - (e) the places of residence of class members; and
 - (f) any other relevant matter.

Idem**Means of giving notice**

- (4) The court may, for the purposes of subsection (3), order that notice be given by any of the following means or combination of the following means, and may order that notice be given to different class members by different means:

- ~~(a) personally~~ 1. Personally or by mail;
- ~~(b) by~~ 2. By posting, advertising, publishing or leafleting;
- ~~(c) by~~ 3. By individual notice to a sample group within the class; ~~or~~
- ~~(d) by~~ 4. By any electronic means ~~or combination of means that~~ the court considers appropriate.
5. By any means that may be prescribed.
6. By any other means the court considers appropriate.

Idem

~~(5) The court may order that notice be given to different class members by different means.~~

Contents of notice

~~(6) Notice under this section shall, unless~~ Unless the court orders otherwise, notice under this section shall,

- (a) describe the proceeding, including the names and addresses of the representative parties and the relief sought;
- (b) state the manner by which and time within which class members may opt out of the proceeding;
- (c) describe the possible financial consequences of the proceeding to class members;
- (d) summarize any agreements between representative parties and their solicitors respecting fees and disbursements;
- (e) indicate whether there is a third-party funding agreement as defined in section 33.1 between the representative plaintiff and a funder and, if so, provide a description of the payment to which the funder is entitled under the agreement;
- ~~(e)(f)~~ describe any counterclaim being asserted by or against the class, including the relief sought in the counterclaim;
- ~~(f)(g)~~ state that the judgment, whether favourable or not, will bind all class members who do not opt out of the proceeding;
- ~~(g)(h)~~ describe the right of any class member to participate in the proceeding;
- ~~(h) give an address to which~~ provide contact information for a person or entity to whom class members may direct inquiries about the proceeding; ~~and~~
- (j) include the prescribed information; and
- ~~(i) give~~ (k) include any other information the court considers appropriate.

Court to consider circumstances

(6) The court shall make such orders under subsections (3), (4) and (5) as are necessary to ensure that the notice given is the best notice that is practicable in the circumstances.

Solicitations of contributions

(7) With leave of the court, notice under this section may include a solicitation of contributions from class members to assist in paying solicitor's fees and disbursements.

Public Guardian and Trustee

(8) Notice ordered to be given under this section shall be served on the Public Guardian and Trustee if there is a reasonable possibility that the Public Guardian and Trustee is authorized to act on behalf of one or more class members.

Notice where individual participation is required

18 (1) When the court determines common issues in favour of a class and considers that the participation of individual class members is required to determine individual issues, the representative party shall give notice to those members in accordance with this section.

Idem

Order respecting notice

(2) ~~Subsections 17 (3) to (5) apply with necessary modifications to notice~~ The court shall make an order setting out when and by what means notice shall be given under this section and in so doing shall have regard to the factors set out in subsection 17 (3).

Means of giving notice

(3) The court may, for the purposes of subsection (2), order that notice be given by any of the following means or combination of the following means, and may order that notice be given to different class members by different means:

1. By any means referred to in paragraphs 1 to 4 of subsection 17 (4).
2. By any means that may be prescribed.
3. By any other means the court considers appropriate.

Contents of notice

~~(34) Notice~~ Unless the court orders otherwise, notice under this section shall,
(a) state that common issues have been determined in favour of the class;
(b) state that class members may be entitled to individual relief;
(c) describe the steps to be taken to establish an individual claim;
(d) state that failure on the part of a class member to take those steps will result in the member not being entitled to assert an individual claim except with leave of the court;
(e) ~~give an address to which~~ provide contact information for a person or entity to whom class members may direct inquiries about the proceeding; ~~and~~
(f) include the prescribed information; and
~~(f) give~~ (g) include any other information ~~that~~ the court considers appropriate.

Court to consider circumstances

(5) The court shall make such orders under subsections (2), (3) and (4) as are necessary to ensure that the notice given is the best notice that is practicable in the circumstances.

Notice to protect interests of affected persons

~~19-19.~~ (1) At any time in a ~~class~~ proceeding under this Act, the court may order any party to give such notice as it considers necessary to protect the interests of any class member or party, or to ensure the fair conduct of the proceeding.

Idem

Order respecting notice

(2) ~~Subsections 17 (3) to (5) apply with necessary modifications to notice~~ The court shall make an order setting out when and by what means notice shall be given under this section and in so doing shall have regard to the factors set out in subsection 17 (3).

Means of giving notice

(3) The court may, for the purposes of subsection (2), order that notice be given by any of the following means or combination of the following means, and may order that notice be given to different class members by different means:

1. By any means referred to in paragraphs 1 to 4 of subsection 17 (4).
2. By any means that may be prescribed.
3. By any other means the court considers appropriate.

Court to consider circumstances

(4) The court shall make such orders under subsections (2) and (3) as are necessary to ensure that the notice given is the best notice that is practicable in the circumstances.

Notices, general requirements

Plain language

20. (1) A notice under section 17, 18 or 19 shall be written in a plain language manner.

Bilingual

(2) A notice under section 17, 18 or 19 shall be written in English and in French, unless the court orders otherwise.

Court approval

Approval of notice by the court

~~20~~(3) A notice under section 17, 18 or 19 shall be approved by the court before it is given

Delivery of notice

21 The court may order a party to deliver, by whatever means are available to the party, the notice required to be given by another party under section 17, 18 or 19, where that is more practical.

Costs of notice

22 (1) The court may make any order it considers appropriate as to the costs of any notice under section 17, 18 or 19, including an order apportioning costs among parties.

Exception, costs of notice of certification

(1.1) Despite subsection (1), the costs of any notice under section 17 may be awarded to the representative plaintiff only in the event of success in the class proceeding, except to the extent the defendant consents to their payment in whole or in part at an earlier time, and, for greater certainty, shall not be ordered to be paid by the defendant at any earlier time in the proceeding absent the defendant's consent.

Idem

(2) In making an order under subsection (1), the court may have regard to the different interests of a subclass.

Statistical evidence

23 (1) For the purposes of determining issues relating to the amount or distribution of a monetary award under this Act, the court may admit as evidence statistical information that would not otherwise be admissible as evidence, including information derived from sampling, if the information was compiled in accordance with principles that are generally accepted by experts in the field of statistics.

Idem

(2) A record of statistical information purporting to be prepared or published under the authority of the Parliament of Canada or the legislature of any province or territory of Canada may be admitted as evidence without proof of its authenticity.

Notice

(3) Statistical information shall not be admitted as evidence under this section unless the party seeking to introduce the information has,

- (a) given reasonable notice of it to the party against whom it is to be used, together with a copy of the information;
- (b) complied with subsections (4) and (5); and
- (c) complied with any requirement to produce documents under subsection (7).

Contents of notice

(4) Notice under this section shall specify the source of any statistical information sought to be introduced that,

- (a) was prepared or published under the authority of the Parliament of Canada or the legislature of any province or territory of Canada;
- (b) was derived from market quotations, tabulations, lists, directories or other compilations generally used and relied on by members of the public; or
- (c) was derived from reference material generally used and relied on by members of an occupational group.

Idem

(5) Except with respect to information referred to in subsection (4), notice under this section shall,

- (a) specify the name and qualifications of each person who supervised the preparation of statistical information sought to be introduced; and
- (b) describe any documents prepared or used in the course of preparing the statistical information sought to be introduced.

Cross-examination

(6) A party against whom statistical information is sought to be introduced under this section may require, for the purposes of cross-examination, the attendance of any person who supervised the preparation of the information.

Production of documents

(7) Except with respect to information referred to in subsection (4), a party against whom statistical information is sought to be introduced under this section may require the party seeking to introduce it to produce for inspection any document that was prepared or used in the course of

preparing the information, unless the document discloses the identity of persons responding to a survey who have not consented in writing to the disclosure.

Aggregate assessment of monetary relief

24 (1) The court may determine the aggregate or a part of a defendant's liability to class members and give judgment accordingly where,

- (a) monetary relief is claimed on behalf of some or all class members;
- (b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and
- (c) the aggregate or a part of the defendant's liability to some or all class members can reasonably be determined without proof by individual class members.

Average or proportional application

(2) The court may order that all or a part of an award under subsection (1) be applied so that some or all individual class members share in the award on an average or proportional basis.

Idem

(3) In deciding whether to make an order under subsection (2), the court shall consider whether it would be impractical or inefficient to identify the class members entitled to share in the award or to determine the exact shares that should be allocated to individual class members.

Court to determine whether individual claims need to be made

(4) When the court orders that all or a part of an award under subsection (1) be divided among individual class members, the court shall determine whether individual claims need to be made to give effect to the order.

Procedures for determining claims

(5) Where the court determines under subsection (4) that individual claims need to be made, the court shall specify procedures for determining the claims.

Idem

(6) In specifying procedures under subsection (5), the court shall minimize the burden on class members and, for the purpose, the court may authorize,

- (a) the use of standardized proof of claim forms;
- (b) the receipt of affidavit or other documentary evidence; and
- (c) the auditing of claims on a sampling or other basis.

Time limits for making claims

(7) When specifying procedures under subsection (5), the court shall set a reasonable time within which individual class members may make claims under this section.

Idem

(8) A class member who fails to make a claim within the time set under subsection (7) may not later make a claim under this section except with leave of the court.

Extension of time

- (9) The court may give leave under subsection (8) if it is satisfied that,
- (a) there are apparent grounds for relief;
 - (b) the delay was not caused by any fault of the person seeking the relief; and
 - (c) the defendant would not suffer substantial prejudice if leave were given.

Court may amend subs. (1) judgment

- (10) The court may amend a judgment given under subsection (1) to give effect to a claim made with leave under subsection (8) if the court considers it appropriate to do so.

Individual issues

- 25** (1) When the court determines common issues in favour of a class and considers that the participation of individual class members is required to determine individual issues, other than those that may be determined under section 24, the court may,
- (a) determine the issues in further hearings presided over by the judge who determined the common issues or by another judge of the court;
 - (b) appoint one or more persons to conduct a reference under the rules of court and report back to the court; and
 - (c) with the consent of the parties, direct that the issues be determined in any other manner.

Directions as to procedure

- (2) The court shall give any necessary directions relating to the procedures to be followed in conducting hearings, inquiries and determinations under subsection (1), including directions for the purpose of achieving procedural conformity.

Idem

- (3) In giving directions under subsection (2), the court shall choose the least expensive and most expeditious method of determining the issues that is consistent with justice to class members and the parties and, in so doing, the court may,
- (a) dispense with any procedural step that it considers unnecessary; and
 - (b) authorize any special procedural steps, including steps relating to discovery, and any special rules, including rules relating to admission of evidence and means of proof, that it considers appropriate.

Time limits for making claims

- (4) The court shall set a reasonable time within which individual class members may make claims under this section.

Idem

- (5) A class member who fails to make a claim within the time set under subsection (4) may not later make a claim under this section except with leave of the court.

Extension of time

- (6) Subsection 24 (9) applies with necessary modifications to a decision whether to give leave under subsection (5).

Determination under cl. (1) (c) deemed court order

(7) A determination under clause (1) (c) is deemed to be an order of the court.

Judgment distribution

26 (1) The court may direct any means of distribution of amounts awarded under section 24 or 25 that it considers appropriate.

Idem

- (2) In giving directions under subsection (1), the court may order that,
- (a) the defendant distribute directly to class members the amount of monetary relief to which each class member is entitled by any means authorized by the court, including abatement and credit;
 - (b) the defendant pay into court or some other appropriate depository the total amount of the defendant's liability to the class until further order of the court; and
 - (c) any person other than the defendant distribute directly to class members the amount of monetary relief to which each member is entitled by any means authorized by the court.

Idem

(3) In deciding whether to make an order under clause (2) (a), the court shall consider whether distribution by the defendant is the most practical way of distributing the award for any reason, including the fact that the amount of monetary relief to which each class member is entitled can be determined from the records of the defendant.

Idem

~~(4) The court may order that all or a part of an award under section 24 that has not been distributed within a time set by the court be applied in any manner that may reasonably be expected to benefit class members, even though the order does not provide for monetary relief to individual class members, if the court is satisfied that a reasonable number of class members who would not otherwise receive monetary relief would benefit from the order.~~

Idem

~~(5) The court may make an order under subsection (4) whether or not all class members can be identified or all of their shares can be exactly determined.~~

Idem

~~(6) The court may make an order under subsection (4) even if the order would benefit,~~

- ~~(a) persons who are not class members; or~~
- ~~(b) persons who may otherwise receive monetary relief as a result of the class proceeding.~~

[\(4\): repealed.](#)

[\(5\): repealed.](#)

[\(6\): repealed.](#)

Supervisory role of the court

(7) The court shall supervise the execution of judgments and the distribution of awards under section 24 or 25 and may stay the whole or any part of an execution or distribution for a reasonable period on such terms as it considers appropriate.

Payment of awards

- (8) The court may order that an award made under section 24 or 25 be paid,
- (a) in a lump sum, forthwith or within a time set by the court; or
 - (b) in instalments, on such terms as the court considers appropriate.

Costs of distribution

(9) The court may order that the costs of distribution of an award under section 24 or 25, including the costs of notice associated with the distribution and the fees payable to a person administering the distribution, be paid out of the proceeds of the judgment or may make such other order as it considers appropriate.

Return of unclaimed amounts

(10) Any part of an award for division among individual class members that remains unclaimed or otherwise undistributed after a time set by the court shall be returned to the party against whom the award was made, without further order of the court.

Duty of person, entity administering distribution

(11) A person or entity administering the distribution of an award under section 24 or 25 shall do so in a competent and diligent manner.

Report

(12) No later than 60 days after the date on which an award made under section 24 is fully distributed, including any distribution under subsection (10) or section 27.2, the person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

1. The amount of the award.
2. The total number of class members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class members who made a claim for monetary relief and, of them, the numbers of class members who did and who did not receive the relief.
6. The amount of the award distributed to class members and a description of how the award was distributed.
7. The amount and recipients of any distribution under subsection (10) or section 27.2.
8. The number of class members who opted out of the class proceeding.
9. The smallest and largest amounts distributed to class members, the average and the median of the amounts distributed to class members, and any other aggregate data respecting the distribution that the person or entity who administered the distribution considers to be relevant.
10. The administrative costs associated with the distribution of the award.

11. The solicitor fees and disbursements.
12. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
13. Any other information the court requires to be included in the report.

Same

(13) Once the court is satisfied that the requirements of subsection (12) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order.

Same

(14) If the regulations so provide, the person or entity who administered the distribution, or such other person or entity as may be prescribed, shall provide, in accordance with the regulations, a copy of the approved report to the person or entity specified by the regulations.

Judgment on common issues

- 27** (1) A judgment on common issues of a class or subclass shall,
- (a) set out the common issues;
 - (b) name or describe the class or subclass members;
 - (c) state the nature of the claims or defences asserted on behalf of the class or subclass; and
 - (d) specify the relief granted.

Effect of judgment on common issues

- (2) A judgment on common issues of a class or subclass does not bind,
- (a) a person who has opted out of the class proceeding; or
 - (b) a party to the class proceeding in any subsequent proceeding between the party and a person mentioned in clause (a).

Idem

- (3) A judgment on common issues of a class or subclass binds every class member who has not opted out of the class proceeding, but only to the extent that the judgment determines common issues that,
- (a) are set out in the certification order;
 - (b) relate to claims or defences described in the certification order; and
 - (c) relate to relief sought by or from the class or subclass as stated in the certification order.

Settlement

27.1 (1) A proceeding under this Act may be settled only with the approval of the court.

Subclass

(2) A settlement may be concluded in relation to the common issues affecting a subclass only with the approval of the court.

Not binding without court approval

(3) A settlement under this section is not binding unless approved by the court.

Effect of settlement

(4) If a proceeding is certified as a class proceeding, a settlement under this section that is approved by the court binds every member of the class or subclass, as the case may be, who has not opted out of the class proceeding, unless the court orders otherwise.

Settlement must be fair and reasonable

(5) The court shall not approve a settlement unless it determines that the settlement is fair, reasonable and in the best interests of the class or subclass members, as the case may be.

Differences not a bar

(6) The court may approve a settlement even if individual class or subclass members, including a representative party, are subject to different settlement terms.

Evidentiary requirements

(7) On a motion for approval of a settlement, the moving party shall make full and frank disclosure of all material facts, including, in one or more affidavits filed for use on the motion, the party's best information respecting the following matters, which the court shall consider in determining whether to approve the settlement:

1. Evidence as to how the settlement meets the requirements of subsection (5).
2. Any risks associated with continued litigation.
3. The range of possible recoveries in the litigation.
4. The method used for valuation of the settlement.
5. The total number of class or subclass members, as the case may be.
6. A plan for allocating and distributing the settlement funds, including any proposal respecting the appointment of an administrator under subsection (14), and the anticipated costs associated with the distribution.
7. The number of class or subclass members expected to make a claim under the settlement and, of them, the numbers of class or subclass members who are and who are not expected to receive settlement funds.
8. The number of class or subclass members who have objected or are expected to object to the settlement, and the nature or anticipated nature of the objections.
9. A plan for giving notice of the settlement to class or subclass members in the event of an order under section 19, and the number of class or subclass members who are expected to obtain the notice.
10. Any other prescribed information.

Notice of settlement hearing

(8) The court shall consider whether notice of a hearing of a motion for approval of a settlement should be given under section 19, and whether such notice should include,

- (a) a statement of the purpose of the hearing;
- (b) the process for objecting to the approval of the settlement;
- (c) any other prescribed information; and
- (d) any other information the court considers appropriate.

Public Guardian and Trustee

(9) Notice of a motion for approval of a settlement and other materials filed on the motion, as well as any notice given under subsection (8), shall be served on the Public Guardian and Trustee, if there is a reasonable possibility that the Public Guardian and Trustee is authorized to act on behalf of one or more class or subclass members.

Same

(10) An entitlement to receive materials under subsection (9) includes an entitlement to make submissions at the hearing of the motion, unless the court orders otherwise.

Children's Lawyer

(11) If there is a reasonable possibility that the class or subclass includes minors, the court may direct that,

- _____ (a) the notice of motion and other materials filed on the motion be served on the Children's Lawyer; and
- _____ (b) the Children's Lawyer make any recommendations it may have in connection with the proposed settlement in writing to the court.

Notice of settlement approval

(12) In approving a settlement, the court shall consider whether notice of the settlement should be given under section 19, and whether such notice should include,

- _____ (a) an account of the conduct of the proceeding;
- _____ (b) a statement of the result of the proceeding;
- _____ (c) a description of any plan for distributing settlement funds;
- _____ (d) any other prescribed information; and
- _____ (e) any other information the court considers appropriate.

Supervisory role of the court

(13) The court shall supervise the administration and implementation of the settlement.

Court-appointed administrator

(14) The court may appoint a person or entity to act as an administrator to administer the distribution of settlement funds.

Duty of administrator, other person or entity

(15) An administrator appointed by the court or, if no administrator is appointed, the person or entity who administers the distribution of the settlement funds, shall administer the distribution in a competent and diligent manner.

Report

(16) No later than 60 days after the date on which the settlement funds are fully distributed, including any distribution under section 27.2, the administrator or other person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

- _____ 1. The amount of the settlement funds before distribution.
- _____ 2. The total number of class or subclass members.

3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class or subclass members who made a claim under the settlement and, of them, the numbers of class or subclass members who did and who did not receive settlement funds.
6. The amount of the settlement funds distributed to class or subclass members and a description of how the settlement funds were distributed.
7. The amount and recipients of any distribution under section 27.2, and the amount, if any, that was subject to reversion or otherwise returned to the defendant.
8. The number of class or subclass members who objected to the settlement and the nature of their objections.
9. The number of class or subclass members who opted out of the class proceeding.
10. The smallest and largest amounts distributed to class or subclass members, the average and the median of the amounts distributed to class or subclass members, and any other aggregate data respecting the distribution that the administrator or other person or entity who administered the distribution considers to be relevant.
11. The administrative costs associated with the distribution of the settlement funds.
12. The solicitor fees and disbursements.
13. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
14. Any other information the court requires to be included in the report.

Same

(17) Once the court is satisfied that the requirements of subsection (16) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order.

Same

(18) If the regulations so provide, the administrator or other person or entity who administered the distribution, or such other person or entity as may be prescribed, shall provide, in accordance with the regulations, a copy of the approved report to the person or entity specified by the regulations.

Distribution on cy-près basis

Award amounts

27.2 (1) The court may order that all or part of an award under section 24 that has not been distributed to class or subclass members within a time set by the court be paid to the person or entity determined under subsection (3) on a cy-près basis, if the court is satisfied that, using best reasonable efforts, it is not practical or possible to compensate class or subclass members directly.

Settlement funds

(2) In approving a settlement under section 27.1, the court may approve settlement terms that provide for the payment of all or part of the settlement funds to the person or entity determined

under subsection (3) on a *cy-près* basis, if the court is satisfied that, using best reasonable efforts, it is not practical or possible to compensate class or subclass members directly.

Recipient

(3) For the purposes of subsections (1) and (2), payment may be made on a *cy-près* basis to,

- (a) a registered charity within the meaning of the *Income Tax Act* (Canada) or non-profit organization that is agreed on by the parties, if the court determines that payment of the amount to the registered charity or non-profit organization would reasonably be expected to directly or indirectly benefit the class or subclass members; or
- (b) Legal Aid Ontario, in any other case.

Subrogated claims

27.3 (1) In this section,

“subrogated claim” means a claim that is prescribed as a subrogated claim.

Notice of subrogated claim

(2) No later than 21 days after a proceeding that includes or may include a subrogated claim is commenced under section 2, the person who commenced the proceeding shall serve the originating process on the person or entity specified by the regulations in respect of the subrogated claim for the purposes of this subsection.

Requirement for settlement approval

(3) The court shall not approve the settlement of a proceeding under this Act that includes the settlement or release of a subrogated claim unless the person or entity specified by the regulations in respect of the subrogated claim for the purposes of this subsection has, before the hearing of the motion to approve the settlement of the proceeding,

- (a) had a reasonable opportunity to consider the proposed settlement or release of the subrogated claim; and
- (b) given approval in writing of the proposed settlement or release of the subrogated claim.

Limitations

Suspension in favour of class member

~~28 (1) Subject to subsection (2), any~~ **28. (1)** Any limitation period applicable to a cause of action asserted in a ~~class~~-proceeding under this Act is suspended in favour of a class member on the commencement of the ~~class~~-proceeding and ~~, subject to subsection (2),~~ resumes running against the class member when,

- (a) the court refuses to certify the proceeding as a class proceeding;
- (b) the court makes an order that the cause of action shall not be asserted in the proceeding;
- (c) the court makes an order that has the effect of excluding the member from the proceeding;
- ~~(d)~~ (d) the member opts out of the class proceeding;
- ~~(e)~~ (e) an amendment that has the effect of excluding the member from the class is made to the certification order;
- ~~(f)~~ (f) a decertification order is made under section 10;

- (~~eg~~) the ~~class~~-proceeding is dismissed without an adjudication on the merits, including for delay under section 29.1 or otherwise;
- (~~eh~~) the ~~class~~-proceeding is abandoned or discontinued with the approval of the court; or
- (~~fi~~) the ~~class~~-proceeding is settled with the approval of the court, unless the settlement provides otherwise.

Idem

Effect of appeal

(2) ~~Where~~ If there is a right of appeal in respect of an event described in ~~clauses (1)(a) to (f) subsection (1)~~, the limitation period resumes running as soon as the time for appeal has expired without an appeal being commenced or as soon as any such appeal has been finally disposed of.

Suspension in favour of defendant

(3) Any limitation period applicable to a claim by a defendant for contribution and indemnity in a proceeding commenced under section 2 is suspended in favour of the defendant on the commencement of the proceeding, and resumes running against the defendant as soon as the time for appeal of the court's decision to certify or refuse to certify the proceeding has expired without an appeal being commenced or as soon as any such appeal has been finally disposed of.

Discontinuance, abandonment and ~~settlement~~dismissal for delay

Court approval required

~~29 (1) A proceeding commenced under this Act and a proceeding certified as a class~~ 29. (1) A proceeding under this Act may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate.

~~Settlement without court approval not binding~~

~~(2) A settlement of a class proceeding is not binding unless approved by the court.~~

~~Effect of settlement~~

~~(3) A settlement of a class proceeding that is approved by the court binds all class members.~~

~~Notice: dismissal, discontinuance, abandonment or settlement~~

Notice

~~(4) In (2) In approving a discontinuance or abandonment, or in~~ dismissing a proceeding for delay ~~or in approving a discontinuance, abandonment or settlement~~ other than under section 29.1, the court shall consider whether notice should be given under section 19, and whether ~~any such~~ any such notice should include,

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding; ~~and~~
- ~~(c) a description of any plan for distributing settlement funds.~~
- (c) any other prescribed information; and

(d) any other information the court considers appropriate.

Mandatory dismissal for delay

29.1 (1) The court shall, on motion, dismiss for delay a proceeding commenced under section 2 unless, by the first anniversary of the day on which the proceeding was commenced,

- (a) the representative plaintiff has filed a final and complete motion record in the motion for certification;
- (b) the parties have agreed in writing to a timetable for service of the representative plaintiff's motion record in the motion for certification or for completion of one or more other steps required to advance the proceeding, and have filed the timetable with the court;
- (c) the court has ordered that the proceeding not be dismissed and has established a timetable for service of the representative plaintiff's motion record in the motion for certification or for the completion of one or more other steps required to advance the proceeding; or
- (d) any other steps, occurrences or circumstances specified by the regulations have taken place.

Notice

(2) If a proceeding is dismissed for delay under subsection (1), the court shall order that the solicitor for the representative plaintiff give notice of the dismissal by,

- (a) publishing the notice and a copy of the order on the website of the solicitor or of the law firm or other entity through which the solicitor practices law;
- (b) sending the notice and a copy of the order to every class member who has contacted the solicitor to express an interest in the proceeding; and
- (c) taking any other steps to give notice that the court may specify.

Same

(3) Section 20 applies, with necessary modifications, with respect to a notice required to be given under subsection (2).

Costs

(4) The solicitor for the representative plaintiff shall bear the costs of giving notice under subsection (2), and shall not attempt to recoup any portion of the costs from the class or any class member, or from the defendant.

Appeals

Appeals: ~~refusals to certify and decertification orders~~ certification

30 (1) A party may appeal to the ~~Divisional~~ Court of Appeal from an order-₁

- (a) certifying or refusing to certify a proceeding as a class proceeding-~~and from an order~~;₂
or
- (b) decertifying a proceeding.

Appeals: certification orders

(2) A party may appeal to the Divisional Court from an order certifying a proceeding as a class proceeding, with leave of the Superior Court of Justice as provided in the rules of court.-

No amendments of materials on appeal

(2) The appellant may not materially amend the notice of certification motion, pleadings or notice of application on an appeal of an order refusing to certify a proceeding as a class proceeding, except with leave of the court in exceptional or unforeseen circumstances.

Appeals: judgments on common issues and aggregate awards

(3) A party may appeal to the Court of Appeal from a judgment on common issues and from an order under section 24, other than an order that determines individual claims made by class members.

Appeals by class members on behalf of the class

(4) If a representative party does not appeal ~~or seek leave to appeal~~ as permitted by subsection (1) ~~or (2)~~, or if a representative party abandons an appeal ~~under subsection (1) or (2)~~, any class member may make a motion to the court for leave to act as the representative party for the purposes of ~~the relevant~~ an appeal under that subsection..

Idem

(5) If a representative party does not appeal as permitted by subsection (3), or if a representative party abandons an appeal under subsection (3), any class member may make a motion to the Court of Appeal for leave to act as the representative party for the purposes of subsection (3).

Appeals: individual awards

(6) A class member may appeal to the Divisional Court from an order under section 24 or 25 determining an individual claim made by the member and awarding ~~more than \$3,000 to~~ the member an amount that is equal to or greater than the monetary jurisdiction of the Small Claims Court.

Idem

(7) A representative plaintiff may appeal to the Divisional Court from an order under section 24 determining an individual claim made by a class member and awarding ~~more than \$3,000 to~~ the member an amount that is equal to or greater than the monetary jurisdiction of the Small Claims Court.

Idem

(8) A defendant may appeal to the Divisional Court from an order under section 25 determining an individual claim made by a class member and awarding ~~more than \$3,000 to the member. the~~ member an amount that is equal to or greater than the monetary jurisdiction of the Small Claims Court.

Idem

(9) With leave of the Superior Court of Justice as provided in the rules of court, a class member may appeal to the Divisional Court from an order under section 24 or 25,

(a) determining an individual claim made by the member and awarding ~~\$3,000 or less to~~ the member an amount that is less than the monetary jurisdiction of the Small Claims Court;

or

(b) dismissing an individual claim made by the member for monetary relief.

Idem

(10) With leave of the Superior Court of Justice as provided in the rules of court, a representative plaintiff may appeal to the Divisional Court from an order under section 24,

- (a) determining an individual claim made by a class member and awarding ~~\$3,000 or less to~~ the member an amount that is less than the monetary jurisdiction of the Small Claims Court; or
- (b) dismissing an individual claim made by a class member for monetary relief.

Idem

(11) With leave of the Superior Court of Justice as provided in the rules of court, a defendant may appeal to the Divisional Court from an order under section 25,

- (a) determining an individual claim made by a class member and awarding ~~\$3,000 or less to~~ the member an amount that is less than the monetary jurisdiction of the Small Claims Court; or
- (b) dismissing an individual claim made by a class member for monetary relief.

Costs

31 (1) In exercising its discretion with respect to costs under subsection 131 (1) of the *Courts of Justice Act*, the court may consider whether the ~~class~~ proceeding was a test case, raised a novel point of law or involved a matter of public interest.

~~Liability of class members for costs~~

~~(2) Class members, other than the representative party, are not liable for costs except with respect to the determination of their own individual claims.~~

~~Small claims~~

~~(3) Where an individual claim under section 24 or 25 is within the monetary jurisdiction of the Small Claims Court where the class proceeding was commenced, costs related to the claim shall be assessed as if the claim had been determined by the Small Claims Court.~~

Fees and disbursements

32 (1) An agreement respecting fees and disbursements between a solicitor and a representative party shall be in writing and shall,

- (a) state the terms under which fees and disbursements shall be paid;
- (b) give an estimate of the expected fee, whether contingent on success in the class proceeding or not; and
- (c) state the method by which payment is to be made, whether by lump sum, salary or otherwise.

Court to approve agreements

(2) An agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the court, on the motion of the solicitor.

Fees must be fair and reasonable

(2.1) The court shall not approve an agreement unless it determines that the fees and disbursements required to be paid under the agreement are fair and reasonable, taking into account,

- (a) the results achieved for the class members, including the number of class or subclass members expected to make a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who are and who are not expected to receive monetary relief or settlement funds;
- (b) the degree of risk assumed by the solicitor in providing representation;
- (c) the proportionality of the fees and disbursements in relation to the amount of any monetary award or settlement funds;
- (d) any prescribed matter; and
- (e) any other matter the court considers relevant.

Same

(2.2) In considering the degree of risk assumed by the solicitor, the court shall consider,

- (a) the likelihood that the court would refuse to certify the proceeding as a class proceeding;
- (b) the likelihood that the class proceeding would not be successful;
- (c) the existence of any other factor, including any report, investigation, litigation, initiative or funding arrangement, that affected the degree of risk assumed by the solicitor in providing representation; and
- (d) any other prescribed matter.

Same

(2.3) In determining whether the fees and disbursements are fair and reasonable, the court may, by way of comparison, consider different methods by which the fees and disbursements could have been structured or determined.

Priority of amounts owed under approved agreement

(3) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

Determination of fees where agreement not approved

- (4) If an agreement is not approved by the court, the court may,
- (a) determine the amount owing to the solicitor in respect of fees and disbursements;
 - (b) direct a reference under the rules of court to determine the amount owing; or
 - (c) direct that the amount owing be determined in any other manner.

Considerations

(5) In making an order under clause (4) (a), the court shall take into account the factors set out in subsection (2.1), in accordance with subsections (2.2) and (2.3).

Holdback

(6) The court may determine and specify an amount or portion of the fees and disbursements owing to the solicitor under this section that shall be held back from payment until,

- (a) the report required under subsection 26 (12) or 27.1 (16), as the case may be, has been filed with the court and the court is satisfied that it meets the requirements of that subsection; and
- (b) the court is satisfied with the distribution of the monetary award or settlement funds in the circumstances, including the number of class or subclass members who made a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who did and who did not receive monetary relief or settlement funds.

Agreements for payment only in the event of success

33 (1) ~~Despite the *Solicitors Act* and *An Act Respecting Champerty*, being chapter 327 of Revised Statutes of Ontario, 1897, a~~ A solicitor and a representative party may enter into a written agreement providing for payment of fees and disbursements only in the event of success in a class proceeding.

Interpretation: success in a proceeding

- ~~(2) For the purpose of subsection (1), success in a class proceeding includes,~~
- ~~(a) a judgment on common issues in favour of some or all class members; and~~
 - ~~(b) a settlement that benefits one or more class members.~~
- (2): repealed.

Definitions

- (3) For the purposes of subsections (4) to (7),
- “base fee” means the result of multiplying the total number of hours worked by an hourly rate;
 - “multiplier” means a multiple to be applied to a base fee.

Agreements to increase fees by a multiplier

(4) An agreement under subsection (1) may permit the solicitor to make a motion to the court to have his or her fees increased by a multiplier.

Motion to increase fee by a multiplier

- (5) A motion under subsection (4) shall be heard by a judge who has,
- (a) given judgment on common issues in favour of some or all class members; or
 - (b) approved a settlement that benefits any class member.

Idem

(6) Where the judge referred to in subsection (5) is unavailable for any reason, the regional senior judge shall assign another judge of the court for the purpose.

Idem

- (7) On the motion of a solicitor who has entered into an agreement under subsection (4), the court,
- (a) shall determine the amount of the solicitor’s base fee;
 - (b) may apply a multiplier to the base fee that results in fair and reasonable compensation to the solicitor for the risk incurred in undertaking and continuing the proceeding under an agreement for payment only in the event of success; and

(c) shall determine the amount of disbursements to which the solicitor is entitled, including interest calculated on the disbursements incurred, as totalled at the end of each six-month period following the date of the agreement.

Idem

(8) In making a determination under clause (7) (a), the court shall allow only a reasonable fee.

Idem

Same

(9) In making a determination under clause (7) (b), the court ~~may consider the manner in which the solicitor conducted the proceeding.~~ shall take into account the factors set out in subsection 32 (2.1), in accordance with subsections (2.2) and (2.3) of that section.

Third-party funding agreements

33.1 (1) In this section,

“third-party funding agreement” means an agreement in which a funder who is not a party to a proceeding under this Act agrees to indemnify the representative plaintiff or provide money to pursue the proceeding under this Act, in return for a share of any monetary award or settlement funds or for any other consideration.

Contingent on court approval

(2) A third-party funding agreement is subject to the approval of the court, obtained on a motion of the representative plaintiff made as soon as practicable after the agreement is entered into, with notice to the defendant.

No force or effect unless approved

(3) A third-party funding agreement that is not approved by the court is of no force or effect.

Agreement to be provided to defendant and filed

(4) For the purposes of the motion, the representative plaintiff shall serve on the defendant, or provide in any other way the court orders, a copy of the third-party funding agreement, and shall file the copy with the court.

Permissible redaction

(5) The representative plaintiff may, subject to the regulations, redact from the copy of the third-party funding agreement provided and filed under subsection (4) information that may reasonably be considered to confer a tactical advantage on the defendant, but no other information shall be redacted from the copy.

Agreement to be provided to judge

(6) The representative plaintiff shall provide to the judge who will be presiding at the hearing of the motion a copy of the complete and unredacted third-party funding agreement, which shall not form part of the court file.

Requirement to disclose

(7) The court may order the representative plaintiff to disclose to a defendant any information in the third-party funding agreement that has been redacted in accordance with subsection (5).

Submissions

(8) The defendant is entitled to make submissions at the hearing of the motion.

Factors

(9) The court shall not approve a third-party funding agreement unless,

- (a) the court is satisfied that,
 - (i) the agreement, including indemnity for costs and amounts payable to the funder under the agreement, is fair and reasonable,
 - (ii) the agreement will not diminish the rights of the representative plaintiff to instruct the solicitor or control the litigation or otherwise impair the solicitor-client relationship,
 - (iii) the funder is financially able to satisfy an adverse costs award in the proceeding, to the extent of the indemnity provided under the agreement, and
 - (iv) any prescribed requirements and other relevant requirements are met; and
- (b) it is a term of the agreement that the funder shall be subject to,
 - (i) the same confidentiality requirements in respect of confidential or privileged information in the proceeding to which the representative plaintiff would be subject, and
 - (ii) the deemed undertaking rules set out under the rules of court, as if the funder were a party to the proceeding.

Same, independent legal advice

(10) In determining whether a third-party funding agreement meets the requirements of clause (9) (a), the court shall consider whether the representative plaintiff received independent legal advice with respect to the agreement.

Indemnity for costs

(11) If costs are ordered to be paid by the representative plaintiff, the defendant has the right to recover the costs directly from the funder, to the extent of the indemnity provided under an approved third-party funding agreement.

Security for costs

(12) The defendant is entitled, on motion, to obtain from the funder security for costs to the extent of the indemnity provided under an approved third-party funding agreement, if,

- (a) the funder is ordinarily resident outside Ontario;
- (b) the defendant has an order against the funder for costs in the same or another proceeding that remain unpaid in whole or in part; or
- (c) there is good reason to believe that the funder has insufficient assets in Ontario to pay the costs.

Directions

(13) The court may give any necessary directions respecting a dispute or question that arises in relation to a third-party funding agreement.

Changes to agreements

(14) This section applies, with necessary modifications, with respect to any changes to an approved third-party funding agreement that are agreed to by the parties to it.

Notice of termination

(15) The representative plaintiff shall give notice to the court and to the defendant if,

_____ (a) an approved third-party funding agreement is terminated; or

_____ (b) the funder becomes insolvent.

Non-application

(16) This section does not apply with respect to funding provided out of the Class Proceedings Fund established under the *Law Society Act*.

Motions

34 (1) The same judge shall hear all motions before the trial of the common issues.

Exception

(1.1) Subsection (1) does not apply with respect to a carriage motion under section 13.1, which shall be heard by a different judge unless the parties to the carriage motion agree otherwise.

Idem

(2) Where a judge who has heard motions under subsection (1) becomes unavailable for any reason, the regional senior judge shall assign another judge of the court for the purpose.

Idem

(3) Unless the parties agree otherwise, a judge who hears motions under subsection (1), (1.1) or (2) shall not preside at the trial of the common issues.

Rules of court

35 The rules of court apply to ~~class~~-proceedings under this Act.

Crown bound

36 This Act binds the Crown. .

Application of Act

37 This Act does not apply to,

(a) a proceeding that may be brought in a representative capacity under another Act; and

(b) a proceeding required by law to be brought in a representative capacity; ~~and~~.

Regulations

Minister

38. (1) The Minister may make regulations.

- (a) respecting any matter that, under this Act, may or must be prescribed or done by regulation, other than by the Lieutenant Governor in Council under subsection (2);
- (b) governing the registration of proceedings commenced under this Act, including,
 - (i) requiring that documents relating to registered proceedings be provided to a registry specified by the regulations, and governing the provision of those documents,
 - (ii) requiring and governing proof of the provision of a document as required by regulation under subclause (i);
- (c) providing for the establishment of registries of class proceedings or classes of class proceedings commenced in Canada, or of proposed class proceedings, and governing the registries, including requiring and governing their use;
- (d) for the purposes of subsection 26 (14), requiring the person or entity who administered the distribution, or such other person or entity as the regulations may specify, to provide a copy of the approved report to the person or entity specified by the regulations, and governing the time and manner in which the copy is required to be provided;
- (e) for the purposes of subsection 27.1 (18), requiring the administrator or other person or entity who administered the distribution, or such other person or entity as the regulations may specify, to provide a copy of the approved report to the person or entity specified by the regulations, and governing the time and manner in which the copy is required to be provided;
- (f) specifying, for the purposes of any provision of this Act or of the regulations made by the Minister, when a proceeding or class of proceeding shall be considered to have been commenced under section 2.

Lieutenant Governor in Council

(2) The Lieutenant Governor in Council may make regulations,

- (a) respecting any matter that, under section 27.3, may or must be prescribed or done by regulation;
- (b) for the purposes of subsection 33.1 (5), setting out information that shall not be redacted from a copy of a third-party funding agreement.

Transition

39. (1) Except as otherwise provided by this section, this Act, as it read immediately before section 35 of Schedule 4 to the *Smarter and Stronger Justice Act, 2019* came into force, continues to apply with respect to,

- (a) a proceeding commenced ~~before this Act comes into force,~~ under section 2 before that day;
- (b) a proceeding under section 3 or 4, if the motion for certification was made before that day; and
- (c) any other proceeding under this Act that may be prescribed, in the prescribed circumstances, including a proceeding commenced under this Act on or after that day.

~~38 Omitted (provides for coming into force of provisions of this Act).~~

~~39 Omitted (enacts short title of this Act).~~

Same

(2) Section 29.1 applies, with necessary modifications, to a proceeding referred to in clause (1) (a), except that the reference in subsection 29.1 (1) to the day on which the proceeding was commenced shall be read as a reference to the day on which section 35 of Schedule 4 to the *Smarter and Stronger Justice Act, 2019* came into force.

Same

(3) If the regulations so provide, section 29.1 applies, with necessary modifications, to any proceedings prescribed under clause (1) (c) that the regulations specify, with such additional modifications as the regulations may specify.

Same

(4) A regulation made under clause 38 (1) (b) or (c) may apply with respect to proceedings referred to in clauses (1) (a) and (c) and, for greater certainty, may require the registration of any such proceedings in accordance with the regulations and require proof of the registration.