

ONTARIO CLASS ACTION BENCH-BAR LIAISON COMMITTEE

REPORT FOR THE PERIOD ENDING DECEMBER 31, 2020

This is the second annual report of the Ontario Class Action Bench-Bar Liaison Committee.

This report contains a description of the Committee and its membership, a progress report on its work to date and current projects, and a review of next steps for the Committee in 2021 and beyond.

About the Committee

Purpose

- The Class Action Bench-Bar Liaison Committee is a bench-bar committee in Ontario established for the following purposes:
 - to develop practice initiatives to improve the conduct of class proceedings; and
 - to facilitate communication between class action bench and bar.
- Law reform is not the specific purpose of the Committee, but practice initiatives pursued by the Committee may contribute to the development of Practice Directions or inform future legal reform projects.

History

- The Committee was proposed by the OBA Class Actions Section Executive to Associate Chief Justice Frank Marrocco in 2017. The Committee was constituted in early 2018.

Terms of Reference

- The Terms of Reference of the Committee are available on the Ontario Bar Association (“OBA”) website at <https://www.oba.org/Class-Action-Liaison/Terms-of-Reference>

Membership

- The bench members of the Committee are appointed from time to time by the Associate Chief Justice of the Superior Court of Justice. The Associate Chief Justice may appoint other members of the Committee who are not judges.
- The initial bar members of the Committee were appointed by the Associate Chief Justice. Thereafter, the bar members of the Committee are selected by the Committee (subject to approval by the Associate Chief Justice), after consultation with the Class Actions Section Executive of the Ontario Bar Association, the Class Action Practice Group of The Advocates’ Society, and such other bar associations or other bodies as the Committee may decide or the Associate Chief Justice may direct, through a process that ensures, to the extent reasonably possible:
 - representation of both plaintiff and defence perspectives;
 - regional representation;
 - gender representation and representation of equity seeking groups; and
 - representation of public and private sector lawyers.

- There are up to 12 bar members of the Committee. Membership in a particular bar association or other body is not a requirement for membership on the Committee.
- The bar members are appointed for two-year terms, with terms beginning in January of each year, with half of the bar members appointed annually, following a public call for nominations.

Administrative Positions

- The Class Action Liaison Committee has the following administrative positions:
 - Two Co-Chairs, one appointed by the Associate Chief Justice from among the bench members of the Committee, and one selected by the Committee from among its bar members;
 - A Secretary, who need not be a member of the Committee; and
 - Working Group Chairs as selected from time to time by the Working Groups of the Committee.

Communication with the Bench and Bar

- The Committee engages in communication with the bench and bar in connection with its practice improvement initiatives, by, among other things:
 - soliciting input on priorities;
 - soliciting input on proposed or draft practice improvement initiatives;
 - raising awareness about the role of the Committee, and its initiatives;
 - conducting continuing legal education;
 - posting its work product, and information about its work on the OBA website; and
 - publication of annual reports

Members

- The members of the Committee in 2020 were:

Judicial Members:

- Associate Chief Justice Frank N. Marrocco (ex officio)
- Mr. Justice Gerald Taylor (Central South Region) (until September 2020)
- Mr. Justice David Broad (Central South Region) (from October 2020)
- Mr. Justice David Edwards (Central South Region) (from October 2020)
- Mr. Justice Mark L. Edwards (Central East Region) (Judicial Chair)
- Madam Justice Deena Baltman (Central West Region) (until November 2020)
- Madam Justice Ria Tzimas (Central West Region) (from November 2020)
- Mr. Justice Russell Raikes (Southwest Region)
- Mr. Justice Robert Smith (East Region) (until October 2020)
- Mr. Justice Paul Perell (Toronto Region) (until November 2020)
- Mr. Justice Edward Morgan (Toronto Region)
- Mr. Justice Calum MacLeod (East Region) (from November 2020)

- Mr. Justice Benjamin Glustein (Toronto Region) (from November 2020)

Superior Court of Justice Representatives:

- Laura Craig and Joshua Patlik, Counsel, Office of the Chief Justice

Bar Members:

- Sandra Barton, Gowling WLG
- Chantelle Cseh, Davies Ward Phillips Vineberg LLP
- Emrys Davis, Bennett Jones LLP
- Tony Di Domenico, Fasken Martineau DuMoulin LLP
- David Kent, McMillan LLP
- Jean-Marc Leclerc, Sotos LLP
- David Outerbridge, Torys LLP (Chair)
- Jonathan Ptak, Koskie Minsky LLP
- Mirilyn Sharp, Sharp Legal
- Linda Visser, Siskinds LLP
- Tina Yang, Waddell Phillips LLP
- Victoria Yankou, Ministry of the Attorney General of Ontario

OBA Representative:

- Adela Mall

Secretary:

- Lara Guest, Torys LLP

Working Group initiatives

- In 2020, the Committee operated five working groups, each of which spearheaded an initiative relating to the conduct of class proceedings.
- The Committee created a new model orders working group. This working group has prepared seven model orders pertaining to class proceedings which are being finalized by the Committee.
- The Committee prepared a *Best Practices Guide for the Case Management of Class Actions in Ontario*, which is available on the webpage for the Class Actions Section of the OBA website. Once translated into French it will be posted on the Superior Court of Justice website.
- The Committee prepared two Practice Direction recommendations, concerning cost outlines and a standardized book of authorities in class proceedings, and has obtained approval to have these Practice Directions amendments implemented as part of the Consolidated Provincial Practice Direction.
- The Committee prepared an educational note on litigation funding approval motions, which is available on the webpage for the Class Actions Section of the OBA website

- The Committee is planning educational programs for the first half of 2021 regarding multi-jurisdictional class actions, model orders and best practices for case management of class actions.
- The Committee will continue to engage in active communication with the Ontario bench and bar, providing updates about upcoming educational programs and to report on work product.
- For more information about the Committee and its work, please visit its website at <https://www.oba.org/Class-Action-Liaison>
- Details concerning initiatives of the five working groups are outlined below.

Model Orders Working Group

- The model orders working group was constituted in 2020 to develop model orders for commonly used orders in class action proceedings. The goal of this group is to create a set of model orders that can be used to streamline certain processes.
- The working group has developed the following seven model orders:
 - Contested certification
 - Notice approval and consent certification for settlement purposes
 - Settlement approval
 - Funding approval
 - Fee approval
 - Carriage
 - Discontinuance
- Five of the seven model orders have been finalized and approved by the Committee. The Committee anticipates that the other two model orders will be finalized and approved in early 2021. The model orders working group is planning an educational program for the first half of 2021, to address the model orders.

Case Management Working Group

- The case management working group developed a document titled *Best Practices for the Case Management of Class Actions in Ontario*, which was finalized and approved by the Committee in September 2020. The Committee decided not to propose addressing case management through a practice direction.
- The purpose of the Case Management Best Practices Guide is to assist counsel by providing guidance on the use of case management in class proceedings. It explains that early case management is essential to address initial steps in the proceeding, such as setting the timetable for the certification motion and any other anticipated motions dealing with carriage issues or other issues which affect the timely advancement of the matter. The detailed checklist appended to the Case Management Best Practices Guide contains a list of issues that counsel should consider in advance of case management conferences in class proceedings.
- The Case Management Best Practices Guide is available on the webpage for the Class Actions Section of the OBA website. Once translated into French it will be posted on the Superior Court of Justice website.
- The case management working group is planning an educational program for the first half of 2021, to deal with best practices for case management in class actions.

Standardized Filings Working Group

- The goal of the standardized filings working group is to provide direction to class action bench and bar members in Ontario regarding the standardization of filings in class proceedings, with a view to promoting judicial economy and efficiency.
- As described in the 2018-2019 Annual Report, this working group prepared a draft list of cases to form a standardized book of authorities for class proceedings. It is proposed that the cases will be available to judges through the Superior Court intranet, thus eliminating the need for counsel to include these cases in their books of authorities. The standardized book of authorities is to be updated periodically to reflect the latest key judicial developments.
- The Committee incorporated the standardized book of authorities into a draft amendment to the Consolidated Provincial Practice Direction, which was finalized by the Committee in September 2020, and was approved for inclusion in the Consolidated Provincial Practice Direction in December 2020.

Costs and Funding Working Group

- The costs and funding working group continued to refine a draft amendment to the Consolidated Provincial Practice Direction regarding the delivery of costs outlines prior to motions and other hearings in class proceedings. This draft practice direction amendment was finalized by the Committee in September 2020, and was approved for inclusion in the Consolidated Provincial Practice Direction in December 2020.

Multijurisdictional Class Actions Working Group

- The multijurisdictional class actions working group is organizing an educational conference to take place in 2021, that will provide in-depth discussion and analysis of the issues engaged in multijurisdictional class actions. It is anticipated that the work product of the conference, including any recommendations for practice improvements in multi-jurisdictional class actions, will be summarized in writing and published.

What's next: 2021 and beyond

- The Committee aims to finalize and publish the draft model orders in early 2021.
- The Committee aims to organize the educational initiatives noted above, dealing with model orders, best practices for case management, and multijurisdictional class actions, in 2021.
- The Committee is considering further practice improvement initiatives beyond the topics addressed by the five working groups in 2021.
- The Committee will continue to engage in active communication with the Ontario bench and bar, providing updates about upcoming educational programs and to report on work product.
- The Committee intends to expand its outreach to bar members, including enhancing the process for publicizing the opportunities for lawyers to join the Committee, and seeking to enhance the diversity of candidates applying to join, consistent with the Committee's Terms of Reference.
- For more information about the Committee and its work, please visit its website at <https://www.oba.org/Class-Action-Liaison>