

THE LAW FOUNDATION **OF ONTARIO**

2012 **ANNUAL REPORT**



The Law Foundation of Ontario
Building a better foundation for justice in Ontario

Our Vision

The Law Foundation of Ontario is a catalyst for advancing the ideal of a truly accessible justice system. The LFO is recognized as a leader, working through creative partnerships to sustain and strengthen the development of a just society.

Our Mission

The Law Foundation of Ontario is committed to the advancement of legal knowledge, excellence within the legal profession and community participation in the legal system. The LFO funds programs and initiatives that promote and enhance access to justice for all Ontarians.

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Appreciation

The Law Foundation of Ontario (LFO) has a unique mandate to improve access to justice for the people of Ontario.

We provide funding that enables a wide range of organizations to:

- Help people to understand the law and the justice system.
- Help people to use the law to improve their lives.
- Foster excellence in the work of lawyers, paralegals and other legal professionals.

A priority for the LFO is improving access to justice for disadvantaged groups. The LFO achieves its objectives through a variety of grants, fellowships, scholarships, and awards in addition to annual payments to Legal Aid Ontario.

The LFO also administers the Class Proceedings Fund to support the independent Class Proceedings Committee. That Fund provides financial assistance to parties involved in class action lawsuits in the public interest. The Law Foundation of Ontario (LFO) is a non-profit corporation established by provincial statute in 1974.

MESSAGE FROM THE CHAIR

Access to justice is out of reach for a great many people in Ontario.

On a daily basis, individuals across the province and around the country experience barriers as a result of their language, race, culture, disability, faith, and sexual orientation. These are merely examples. Often barriers are invisible to people who are not affected by one. Many of the grants made by the Law Foundation of Ontario (LFO) in 2012 endeavored to break down those barriers by improving the direct services available to marginalized groups and by supporting diversity in the legal profession.

Just a few examples include funding to support:

- The annual conference organized by the Black Law Students Association of Canada (BLSAC), which includes mentoring sessions, career counselling, and professional development workshops. The conference creates a forum for critical discussion, education and mentorship in order to create a larger body of Black professionals to break down systemic barriers that still persist in legal education and in the profession.
- A joint project of the Centre for Information and Community Services and the Metro Toronto Chinese and South-East Asian Legal Clinic to hire two mentors to train front-line agencies serving Chinese-speaking clients. Agency staff are being trained in poverty law issues, including employment and immigration law.
- Justice for Children and Youth, a specialty legal clinic, to train youth workers in the Thunder Bay area on the legal aspects of issues affecting Aboriginal youth. One of the unique characteristics of this project is its youth engagement model: a lawyer, law student, and a high school student develop and deliver the training.

- The People's Law School to expand its award-winning Justice Theatre program to remote schools with a primarily Aboriginal student population in northern British Columbia, northern Saskatchewan, the Yukon and the Northwest Territories. This program was presented to over 10,000 high school students over two years. Teachers and students were very appreciative of having the program in their schools for two reasons: first, remote schools in those areas rarely have access to such high quality programs; and second, the plays presented, for the first time, a positive view of the Canadian justice system and how it could protect students' rights.

These and many other important activities are made possible by the revenue the LFO receives from basically two sources. Our primary source of revenue is the interest on mixed trust accounts held by lawyers and paralegals in Ontario. The LFO negotiates the terms with each financial institution that holds mixed trust accounts. We appreciate the support we receive from lawyers and paralegals that enables us to improve the returns that we receive. Particularly in times of low interest rates, it is vital to our access-to-justice mission that we aggressively pursue the best possible returns.

The second source of the LFO's revenue has been cy-près awards from class actions. In 2012, the Access to Justice Fund (ATJF) of the LFO was honoured to receive one additional award. As is set out in more detail later in this annual report, the ATJF was created in 2009 to receive such awards. They are used to support projects across Canada. The ATJF has now received five awards totalling \$16.7 million. We appreciate the support of the legal profession, which makes these opportunities possible.

In 2012, two Trustees left the LFO board. I wish to thank Mark Leach for a decade of service that made him one of the longest-serving Trustees in the LFO's history. Mark was a wise and forceful influence as the Foundation embarked on changes that transformed our approach to grantmaking. Thanks as well go to Ari Kaplan, who brought a fresh perspective to some long-standing issues. We welcomed Stephen Rhodes, who was appointed to the board in March.

I also extend my heartfelt thanks to my fellow Trustees and the LFO staff, who are dedicated to overcoming all barriers to justice. The recent years of low revenues have strengthened our resolve to ensure that our grants have the greatest impact on those with the greatest need, and we are already preparing for the time when revenues begin to grow again.

Finally, I note that this annual report acknowledges the tremendous work of only a few of our grantees – to learn even more about the LFO's work, and about many more of our grantees, please visit our new website at www.lawfoundation.on.ca.



Mark J. Sandler
Chair

"The [Justice Theatre] performance dealt with the issue of online bullying and connected it to the justice system by showing that certain types of online bullying behavior can have legal consequences. It is particularly important for [First] Nations students to have the opportunity to participate in this kind of program dealing with the justice system."

Connie Tenaski, the principal of
St. Michael Community School in Saskatoon

People's Law School is a non-profit organization that provides public legal education and information to people living in British Columbia. The Justice Theatre is a troupe of professional actors who perform dramatizations of criminal trials at elementary and secondary schools. Through its "Justice Theatre Aboriginal Tours", 93 presentations were given before students in northern B.C., the Yukon, the Northwest Territories and Saskatchewan.

Family members caring for their loved ones with disabilities, including siblings, children, parents, and other extended family members, number in the millions in Ontario. These Ontarians and their families will be the primary beneficiaries of the new Ontario Future Planning Online Resource Centre.

PLAN Toronto provides accessible legal resources, information and tools to Ontarians caring for a relative with a disability or mental illness in order to help build their capacity for future planning.

"In our community, one of the key issues is the shame that being in an abusive relationship brings to the woman and potentially her children. She may be shunned by her place of worship and her community. This may be the only place in the community to which she can turn, be believed and respected and educated about her rights and obligations."

Penny Krowitz, Executive Director of
Act to End Violence Against Women

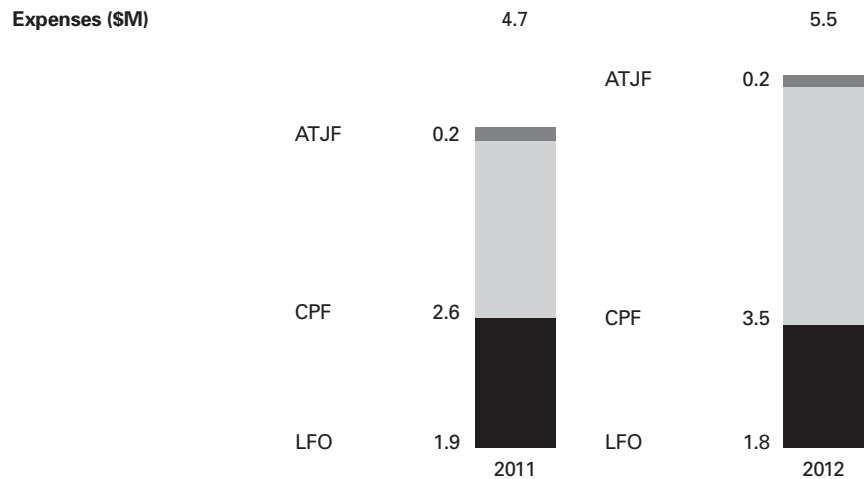
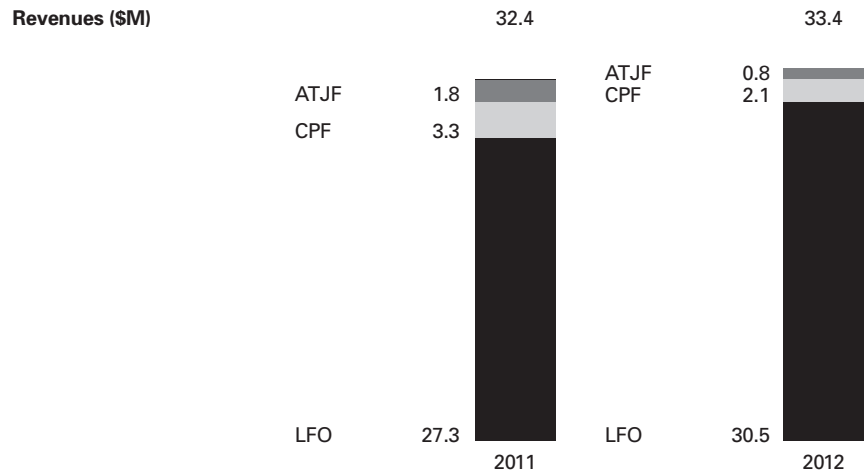
Act to End Violence Against Women is a Toronto based organization whose mission is to help end violence against women by educating and advocating for youth, teens and adults across all religious and ethnic boundaries. The new free Legal Information Service helps Jewish women who have experienced abuse navigate the legal system in Ontario by providing legal support workers, community education, pro bono summary advice, referrals to lawyers and community resources.

"As a legal support volunteer,... I work with families helping them overcome the barrier of English as a second language to complete a refugee claimant process... To be able to get close to families and follow their stories as we complete the application is both challenging and gratifying. A volunteer learns so much every day by overcoming barriers and applying their knowledge to each case. By the end of the process, as volunteers, we have the power to say we made a difference and brought change into an individual's world."

Legal Support Program volunteer

Mennonite Coalition for Refugee Support, a non-profit organization in Kitchener, ON, supports refugees through the claim process by providing assistance in completing forms, finding legal counsel, aid in applying for work permits, and help in navigating through other complex immigration-related processes.

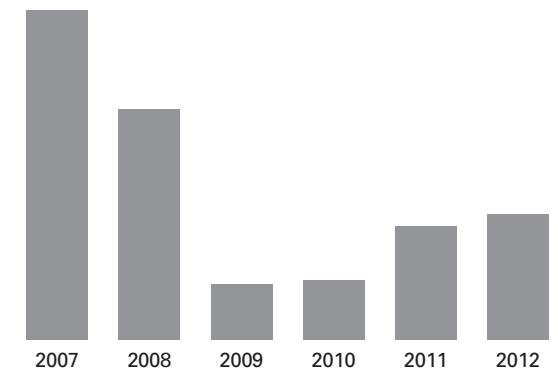
FINANCIAL OVERVIEW



REVENUES

The LFO's main source of revenue is interest earned on Ontario lawyers' and paralegals' mixed trust accounts. These mixed trust accounts hold funds in trust for more than one client. By law, all such interest is paid to the LFO. Revenues were slightly higher in 2012 due to higher mixed trust account balances and improvements in agreements negotiated by the LFO with financial institutions. However, because prime rate continues to be at historic lows, mixed trust account revenue remains lower than the average for the last 10 years.

Mixed Trust Account Interest (\$M)	76.9	53.8	13.0	13.8	26.5	29.6
Average Prime Interest Rate (%)	6.1	4.7	2.4	2.6	3.0	3.0



* Average annual mixed trust account interest; \$M not inflation adjusted

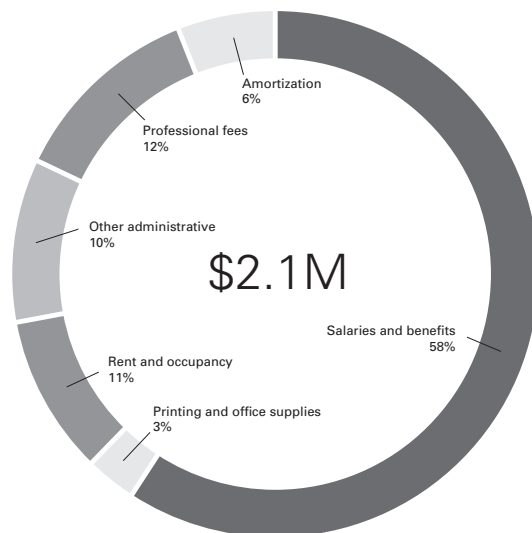
The LFO periodically negotiates rates of return with all financial institutions that are authorized to hold mixed trust accounts for lawyers and paralegals. Some of these agreements are more favourable than others and the LFO continues to seek improvements in all of them. To illustrate the importance of these negotiations, if the bank with the worst terms matched the bank with the best terms, the additional interest generated could fund 8 more Connecting Articling Fellowships that would provide legal services in their own language to people who do not speak English or French.

EXPENDITURES

LFO continued to manage its expenses prudently in these difficult economic conditions. Operating expenses (excluding CPF operating costs) decreased by 5.6% to \$2.0 million. This follows decreases in operating expenses of 15% in 2011 and 4.5% in 2010.



**LFO 2011
Operating Expenses
(including ATJF
and excluding CPF)**

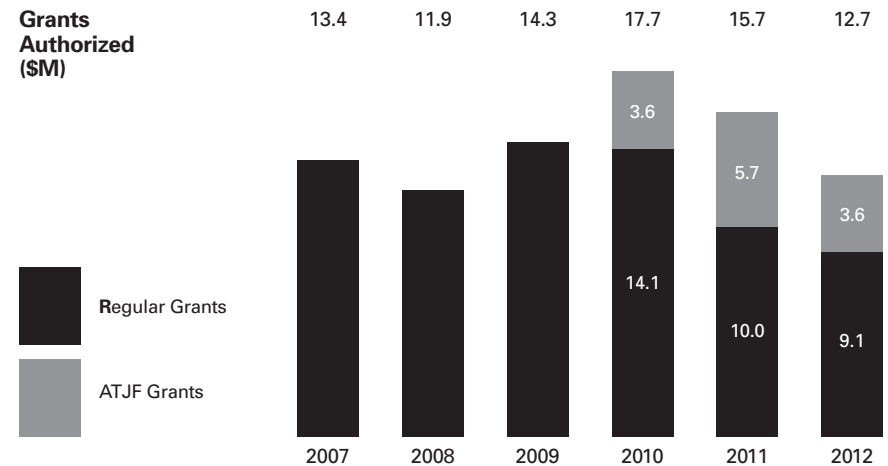


LFO Funding to LAO

Under the terms of the *Law Society Act*, seventy-five per cent of mixed trust account revenue net of operating expenses is paid to Legal Aid Ontario (LAO). The LFO's contribution improved in 2012 but it still represents a small component of LAO's revenues.

Discretionary Grants

With its remaining funds, the LFO awards grants that support improved access to justice and excellence in the legal profession. Total grants authorized in 2012 were slightly lower than in 2011 as grant levels were adjusted to reflect continuing low interest revenues and the reduced amount available in the Access to Justice Fund.



THE ACCESS TO JUSTICE FUND

IMPROVING ACCESS ON A NATIONAL SCALE

Cy Près Revenues (date of order and amounts directed to ATJF)

Cassano v. Toronto Dominion Bank, 2009 ONSC 35732 (CanLII)

\$14,530,395

Skopit v. BMO Nesbitt Burns Inc., 2010 ONSC 6039

\$1,469,930

Smith Estate v. National Money Mart, 2010 ONSC 1334 (CanLII)

\$95,509

Wein v. Rogers Cable Communications Inc., 2011 ONSC 7290 (CanLII)

\$100,000

Markson v. MNBA Canada Bank, 2012 ONSC 5891 (CanLII)

\$500,000

The Law Foundation of Ontario (LFO) created the Access to Justice Fund (ATJF) as a result of the \$14.6 million (including interest) cy-près award in *Cassano v. Toronto Dominion Bank*, 2009 ONSC 35732 (Can LII). Cy-près awards are made when it is not practical to distribute all proceeds of a class action directly to individual plaintiffs.

The LFO has worked hard to demonstrate that the monies received have been used in a timely way to support high quality projects that increase access to justice. Working with other Law Foundations and a national Consultation Group, it moved quickly to launch the ATJF, receive applications, and make grants. It did so while maintaining rigorous assessment and administration standards, including oversight of grantee activities and expenditures.

Between the launch of the ATJF in May, 2010 and December, 2012, the LFO approved 84 applications to the ATJF for a total value of approximately \$12.9 million in grants across Canada. 15 of these grants are for national projects that encompass more than one province or territory. In addition, the ATJF has supported many grants in individual provinces from the west coast to the east coast.

Although subject to change, there are currently five themes for the ATJF: linguistic and rural access to justice, Aboriginal access to justice, self-help, domestic violence and consumer rights.

The 2012 grants increased Aboriginal access to justice through projects addressing fetal alcohol syndrome in the sentencing of Aboriginal offenders, legal tools to improve water quality on reserves, supporting Mik'maq law students in Nova Scotia, provide basic legal information to remote Aboriginal communities in British Columbia, and educating front-line workers at community organizations in northern Ontario who work with Aboriginal youth on education and criminal legal issues.

The Connecting Project is an LFO funded group of initiatives aimed at improving legal information and services for linguistic minorities and those living in rural and remote locations. Implementation of the Connecting Project's aim of increasing access to justice to linguistic minorities continued with a major initiative to improve interpretation services in the legal sector and a regional planning model in Ottawa which seeks to deliver seamless legal information, referrals and services to linguistic minorities (who are often newcomers and immigrants).

The ATJF is a permanent fund, available to receive future cy-près awards and the LFO will manage the distribution of future awards according to particular terms or conditions that may apply. We are pleased to report that the Cassano award has been the catalyst for four further cy-près awards to the ATJF for a total value of \$2.1 million. In the 2012 decision, *Markson v. MBNA*, 2012 ONSC 5891, the court stated:

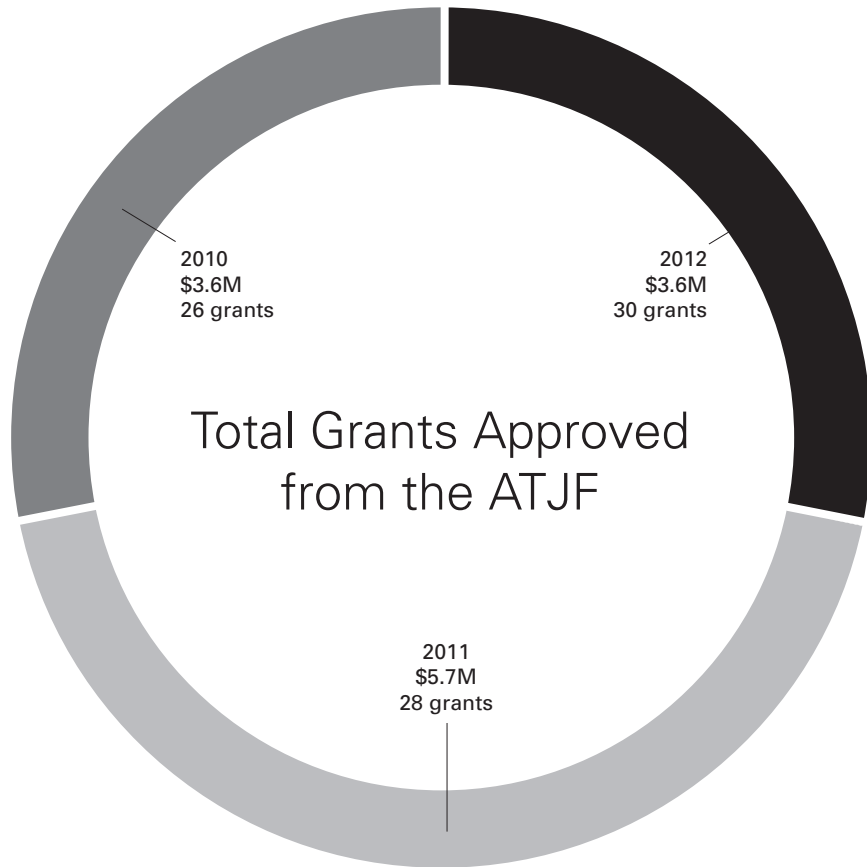
"The Ontario Law Foundation's Access to Justice Fund is a suitable recipient of the cy prè distribution. Counsel propose the Justice Fund as the cy prè recipient because it directly achieves one of the overarching goals of the Class Proceedings Act. Specifically, it aids in providing public access to justice throughout Canada. The Justice Fund is the only national source of grants with an access to justice mandate, and it provides funding to projects that are national, regional or local in scope... The recipient of the cy prè distribution should either be directly connected to the issues in the class action... or like the Law Foundation, able to use the money to further the goals of the Class Proceedings Act."

Directing a cy-près award to the LFO's ATJF:

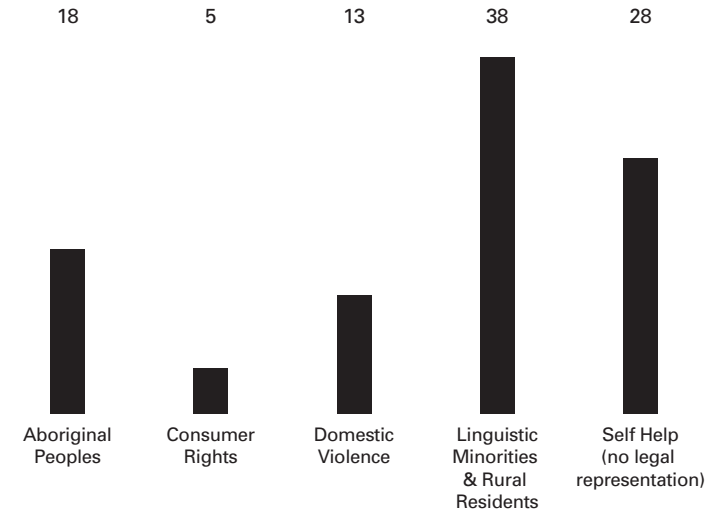
- Fulfills the underlying objectives of class actions, which are a vehicle to improve access to justice.
- Contributes to a recognized fund that provides access to justice grants across the country
- Entrusts funds to a well-respected and mature grant-making organization with a long history of transparency, accountability, and sound financial management
- Uses cy-près awards in a manner that has been approved by the courts.

Cy-près awards are made to meritorious organizations when class actions are settled or decided, and when there are funds that can't practically be distributed to class members. Cassano was the first time such funds were directed to a Canadian law foundation.

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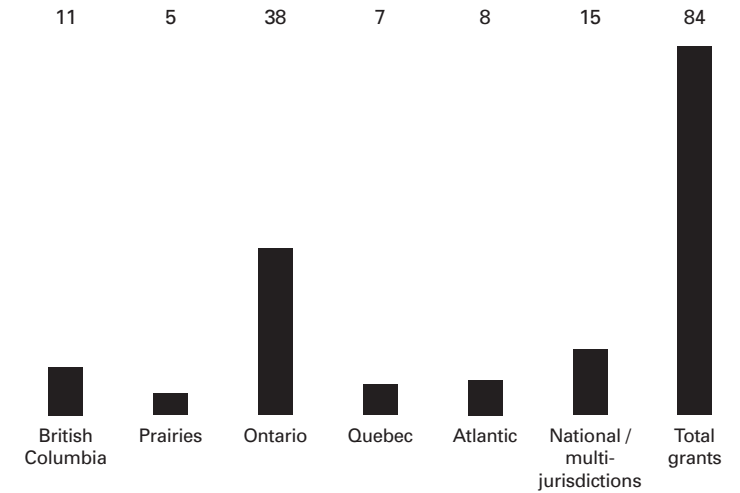


Addressing all ATJF Themes (number of grants)



Total exceeds 84 because grants commonly address multiple themes.

Distributed Across Canada (number of grants)



GRANTS AUTHORIZED IN 2012

Regular Grants

Act To End Violence Against Women

Legal Information Service for Jewish Women Who Have Experienced Abuse	\$10,000
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Animal Justice Canada

Animal Law Online Resource Library	\$8,000
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Association des juristes d'expression française de l'Ontario

Journée du droit 2013	\$15,000
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Concentration en justice! (Yr 5)	\$30,677
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Concentration en justice! (Yr 5)	\$ 8,948
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Association in Defence of the Wrongly Convicted

Program Activities 2013	\$230,000
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Association of Community Legal Clinics of Ontario

Expert Assistance for Phase 3 of the Ontario Community Legal Clinics Provincial Strategic Planning Project	\$25,141
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Assumption University

The Holocaust and Holocaust Denials	\$15,000
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Black Law Students Association of Canada

BLSAC Annual Conference February 2013 (Ottawa)	\$20,000
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Canadian Centre for International Justice

Access to Justice for Survivors of Torture - A Legal Education Project Part III	\$100,000
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Canadian Civil Liberties Education Trust

Program Activities 2013	\$221,100
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Canadian HIV/AIDS Legal Network

"Key HIV and human rights issues: Educating the public, equipping lawyers"	\$57,390
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Canadian Legal Information Institute

Wrongful Dismissal and Employment Law e-Text	\$15,000
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Centre for the Legal Profession

Professionalism Shared Resources Initiative (joint project with the Chief Justice of Ontario's Advisory Committee on Professionalism)	\$14,213
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Child Welfare League of Canada

Youth Justice Film Project	\$70,000
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Community & Legal Aid Services Programme

Sabbaticals for Directors, Instructors, and Supervisors at Ontario's Teaching Legal Clinics: Christine Sinclair	\$40,000
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Community Legal Education Ontario

Path to Justice: Project Development (Phase 1)	\$38,000
Shared Back Office Initiative (Phase 1)	\$38,000

Your Legal Rights (CLEONet) 2010-2013, YIII	\$140,000
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Criminal Lawyers' Association

Search Warrants - Dos, Don'ts and everything in between.	\$14,000
A hands-on workshop for recent calls.	\$14,000

Defence Counsel Association of Ottawa

Enhanced Continuing Legal Education for Junior Members of the Criminal Defence Bar in Eastern and Northern Ontario - February 2013	\$35,000
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Downtown Legal Services

Sabbaticals for Directors, Instructors, and Supervisors at Ontario's Teaching Legal Clinics -Recipient: Hilary Evans Cameron	\$40,000
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Humber College Institute of Technology and Advancing Learning, Library

Ontario College Libraries: Proposal to acquire Quicklaw for thirteen college libraries which have accredited paralegal programs	\$71,805
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Inmate Appeal Duty Counsel Program

Ontario Court of Appeal Inmate Duty Counsel Program	\$70,000
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John Howard Society of Ontario

Indeterminate Punishment: The Disclosure of Non-Conviction Information
on Criminal Record Checks in Ontario - November 2012 \$6,900

Lake Ontario Waterkeeper

A Student's Environmental Law Handbook \$11,990

Law Commission of Ontario

Program Activities 2012-13 (Yr 1) \$550,000

Law in Action Within Schools

Summer Job Program - Public Interest Positions \$14,952

Program Activities 2013-2014 \$100,000

Law School Comprehensive Grants

University of Ottawa, Faculty of Law, Civil Law Section \$180,000

Queen's University, Faculty of Law \$298,800

University of Toronto, Faculty of Law \$298,800

University of Western Ontario, Faculty of Law \$298,800

University of Windsor, Faculty of Law \$298,800

Osgoode Hall Law School \$360,000

University of Ottawa, Faculty of Law, Common Law Section \$360,000

LibraryCo Inc.

Electronic Legal Resources Initiative \$722,500

Mennonite Coalition for Refugee Support

Refugee Claim Process Organization Update \$15,000

Metropolitan Action Committee on Violence Against Women and Children

Program Activities 2012-13 \$293,575

Native Law Centre

Support of Native Law Centre's Mandate \$20,000

Niagara Region Sexual Assault Centre (CARSA Inc)

Legal Issues Program \$14,560

Northwatch

Knowing Nuclear Waste - Understanding the Legal Framework
for Waste Siting Decisions \$15,000

Ontario Justice Education Network

OJEN/LFO Mock Trial Fund \$15,000

Law Day 2013 \$15,710

Program Activities 2012-2013 \$820,000

PLAN Toronto

Ontario Future Planning Online Resource Centre \$80,000

Planned Lifetime Networks (Waterloo-Wellington-Oxford)

Future Planning Workshop Series and Educational Project 2013 \$8,880

Pro Bono Law Ontario

Program Activities 2013 \$75,000

Program Activities 2013 \$800,000

Pro Bono Students Canada

Administration of Public Interest Articling Program
November 1, 2011 to April 30, 2012 \$18,998

Program Activities 2012-13 \$586,455

Roma Community Centre

Access to Justice for Roma Refugee Claimants Pilot Program \$14,970

Scadding Court Community Centre

The Ontario Police Complaints System Forum	\$14,812
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SPINLAW (Student Public Interest Network Legal Action Workshop)

SPINLAW 2013	\$5,000
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St. Leonard's Society of Canada

Towards An Integrated Network 2nd Edition	\$12,920
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The Foundation for Legal Research

Grants for Legal Research and Writing	\$10,000
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The Law Society of Upper Canada

Paralegal Education and Educational Access to the 2013 Licensing Process	\$50,750
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Legal Education Development and Educational Access to the 2013 Lawyer Licensing Process	\$520,800
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The Osgoode Society for Canadian Legal History

Program Activities 2013	\$191,130
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Toronto Cyclists Union

Street Smarts Program	\$11,920
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Toronto Truth and Reconciliation Event

The Meeting Place: Truth and Reconciliation Toronto 2012	\$15,000
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University of Ottawa, Faculty of Law, Common Law Section

First CAELS Canadian Environmental Law Conference February 22-23, 2013	\$15,000
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IUCN Academy of Environmental Law (Yr III)	\$80,000
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Professionalism Speakers series	\$3,908
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University of Windsor, Faculty of Law

Commercial Litigation Funding Conference: Ethical, Regulatory and Comparative Perspectives	\$15,000
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Windigo First Nations Council

Windigo Community Law Renewal Pilot Project	\$15,000
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Community Leadership in Justice Fellowship 2012-13:

Aligning Community and Academic Agendas: Housing and Homelessness (Fellow Tracy Heffernan)	
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Osgoode Hall Law School	\$15,000
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Advocacy Centre for Tenants Ontario	\$50,000
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Public Interest Articling Fellowship 2013-14

Association in Defence of the Wrongly Convicted	\$69,500
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Barbra Schlifer Commemorative Clinic	\$69,500
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Canadian Centre for International Justice	\$69,500
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Canadian Civil Liberties Association	\$69,500
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Centre for Equality Rights in Accommodation	\$69,500
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Lake Ontario Waterkeeper	\$69,500
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Public Interest Advocacy Centre	\$69,500
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Public Interest Articling Fellowship 2011-12

Amnesty International	\$14,000
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Roy & Ria McMurtry Endowment 2012-13

Second Chance Scholarship Foundation Inc.	\$5,000
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University of Toronto, Faculty of Law	\$5,000
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Total

\$9,120,704

Access To Justice Fund Grants

Aboriginal Legal Services of Toronto

FASD Assessment of Aboriginal Inmates in the Remand Population	\$180,400
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Barbra Schlifer Commemorative Clinic

Domestic Violence Victims' Access to Justice in Times of Change	\$80,498
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Calgary Immigrant Women's Association

Legal Clinic Coordinator Position	\$29,900
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Canadian Council of Muslim Women

Muslim Marriage Contract Orientation in West	\$40,880
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Canadian Environmental Law Association

First Nations Source Protection Toolkit	\$133,600
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Canadian Identity Theft Support Centre

Canadian Identity Theft Support Centre Pilot Project	\$90,000
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Centre de justice de proximite de Quebec

Centre de justice de proximite de Quebec	\$78,000
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Centre de justice de proximite de Rimouski

Centre de justice de proximite de Rimouski	\$55,000
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Centre de justice de proximite du Grand Montreal

Centre de justice de proximite du Grand Montreal	\$221,500
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Centre for Information & Community Services

Enhancing Community Capacity to Address Legal Needs of Low Income Chinese-Speaking Clients	\$50,000
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Child Protection Parent Education Program Committee

Child Protection Parent Education Project	\$50,285
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Coalition des associations de consommateurs du Quebec

L'ABC du recours collectif: guide a l'intention des associations de consommateurs	\$23,976
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Community Legal Education Ontario

Evolving Legal Services in Canada and Access to Justice	\$41,500
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Dalhousie Legal Aid Service

Taking it to the Streets	\$140,000
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Dalhousie University Schulich School of Law

Indigenous Blacks and Mi'kmaq Initiative	\$160,000
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John Howard Society of Grande Prairie

Court Support Pilot Project	\$242,930
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People's Law School

A Co-ordinated Strategy for PLEI for Non Profits	\$135,500
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Pivot Legal Society

Jane Doe Legal Network	\$104,000
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Pro Bono Quebec

Online Directory of Free and Low-Cost Legal Services	\$46,642
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Public Legal Information Association of Newfoundland and Labrador

Safety and Legal Information for Victims of Abuse	\$25,000
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Victims of Family Violence Information Sessions	\$25,000
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Social Health and Economic Development Society of Bella Coola

Building Bridges: Legal Advocacy Outreach and Service Delivery in the Central Coast of BC	\$44,648
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St. Paul's Anglican Church

Self-Help Computer - Legal Information	\$44,000
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Tenant Resource and Advisory Centre

Residential Tenancy Education and Information - BC	\$100,000
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University of Windsor, Faculty of Law

Identifying and Meeting the Needs of Self-Represented Litigants: An Empirical Study	\$48,280
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Connecting Project Grants

Barbra Schlifer Commemorative Clinic

Connecting Language Interpretation in the Legal Sector \$442,999

Federation of Metro Tenants' Association

Connecting Communities Tenant's School \$100,200

Justice for Children & Youth

You're Right! It's the Law! \$45,152

Ryerson University

Tamil-English Legal Glossary \$14,842

South Ottawa Community Legal Services

Connecting Region Initiative - Phase 2 \$807,104

Total **\$3,601,836**

THE CLASS PROCEEDINGS FUND

Two Decades Of Achievement

In 1990, "The [Attorney-General's Advisory Committee on Class Action Reform] recognized that private litigants could face significant problems financing class actions, that many would not be prepared to underwrite the cost of bringing a class proceeding even if they had significant assets, and many would not be prepared to accept the cost consequences of an unsuccessful action...."

– Cullity J. in Martin v. Barrett

In response to these concerns, in 1992 legislation creating the Class Proceedings Fund (the "CPF") was enacted, and in 1993 it received a \$500,000 endowment from the Law Foundation of Ontario. Approved cases receive funding that covers some disbursements and all adverse cost awards. The Class Proceedings Committee approves cases based on several factors including the strength of both the claim and the public interest involved.

During 2012:

7 new funding applications were approved

4 funded cases were certified as class actions

\$1.5 million was provided to cover disbursements

\$2.9 million was provided in plaintiff indemnification

\$1.9 million in levies on settlements and awards was received

REPORT FROM THE CHAIR OF THE CLASS PROCEEDINGS COMMITTEE

Over the last twenty years, the CPF has received a growing number of applications and has funded more than 82 cases. While this represents approximately 10 per cent of all class actions commenced in Ontario to date, 30 per cent of those that have gone to trial in the province have been CPF-supported – underscoring its importance in enabling plaintiffs to fully pursue their claims.

At present, the Fund balance is very healthy at \$7,820,241. This is largely because of the Committee's past success in choosing cases with an overall win/loss ratio of 3:1. In addition, over the past twenty years, levies earned have been considerably higher than costs awards payable. However, in recent years, the gap between levies earned and costs payable has been narrowing. Last year, for the first time, the CPF paid more in costs than it earned in levies. This is indeed a worrying trend if it continues.

As directed by Justice Winkler in *McCracken v. Canadian National Railway*, 2012 ONCA 797, the Committee has and will continue to factor into its funding decisions the possibility of adverse cost awards. However, this remains challenging in view of unpredictable and escalating costs awards over the past several years. Forecasting and risk management is also challenging because of the following factors:

- i) the often lengthy gap in time between when a funding decision is made and when a costs award is ultimately made;
- ii) the Committee's inability to control or influence litigation decisions in funded cases;
- iii) the statutory scheme which essentially directs that funding decisions are made without any submission from the defence unless the plaintiff consents; and
- iv) the Committee's limited ability to do any statistical forecasting because of the small size and lack of homogeneity of the CPC data pool.

Notwithstanding the above, we remain committed to assessing applications in an efficient, rigorous and timely way, while exercising the sound stewardship that will assure the continued sustainability of the CPF. The committee also continues to explore whether and how the current system can be improved given its important mandate.

We believe the CPF is a critical component of the class action landscape in Ontario and that its importance is increasing. Set out below is a chart summarizing the CPF funded cases which have resulted in awards or settlements over the past twenty years. Many of these cases served as test cases, often establishing novel legal principles and contributing to the evolution of class-proceedings jurisprudence. They have consistently raised issues of broad public importance, and many would not have proceeded without the CPF.

We look forward to continuing to work with the bar and the judiciary to ensure that the CPF realizes its full potential.



Valerie A. Edwards

Chair, Class Proceedings Committee

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**CASES RESULTING IN
AWARDS OR SETTLEMENTS**

	Class Members (approximate)	Recovery	Years To Recovery
		(\$)	
Environmental			
1 Mangan v. Inco (alleged damages caused by sulphur dioxide spill)	10,000	2,552,071	5
2 Wrigley v. Parker Canada (alleged environmental contamination)	12	275,000	5
Copyright			
3 Robertson v. Thomson (alleged copyright infringement when work published in print media was disseminated electronically)	837	11,000,000	14
4 Robertson v. Canwest (alleged copyright infringement when work published in print media was disseminated electronically)	837	7,871,894	9
Pension			
5 Markle & Horsely v. City of Toronto (alleged unilateral denial of pension benefits to retirees)	600	\$200,000 cash plus health care spending accounts	4
6 Martin v. Barrett (alleged negligence related to pension investments)	2,400	13,926,195	5
7 Sutherland v. Scott (alleged breach of trust related to pension plan windup)	2,000	8,500,000	7
8 Givogue v. Burke (alleged negligence and breach of duty related to pension plan)	200	2,900,000	11

	Class Members (approximate)	Recovery	Years To Recovery
		(\$)	
Medical Devices/Products/Negligence			
9 Anderson v. Wilson (alleged infection of hepatitis B at medical clinic after medical tests)	18,000	27,500,000	6
10 Heward v. Eli Lilly (alleged deficiencies in drug used to treat various mental illnesses)	575,000	17,750,000	6
11 Serhan v. Johnson & Johnson (alleged defective glucose monitors)	Thousands	4,000,000	10
Competition			
12 Knowles v. Arctic Glacier (alleged price fixing in ice industry)	Hundreds	2,000,000	Ongoing
Securities			
13 Lawrence v. Atlas Cold Storage (alleged misrepresentation in securities prospectus in violation of s.130(1) of Securities Act)	Thousands	40,000,000	6
Corporations			
14 Jeffery & Rudd v. London Life (alleged misappropriation of participating policyholder surplus and various breaches of statute)	1,800,000	\$284,675,000 ordered to be repaid to defendants' participating accounts	Ongoing (under appeal)

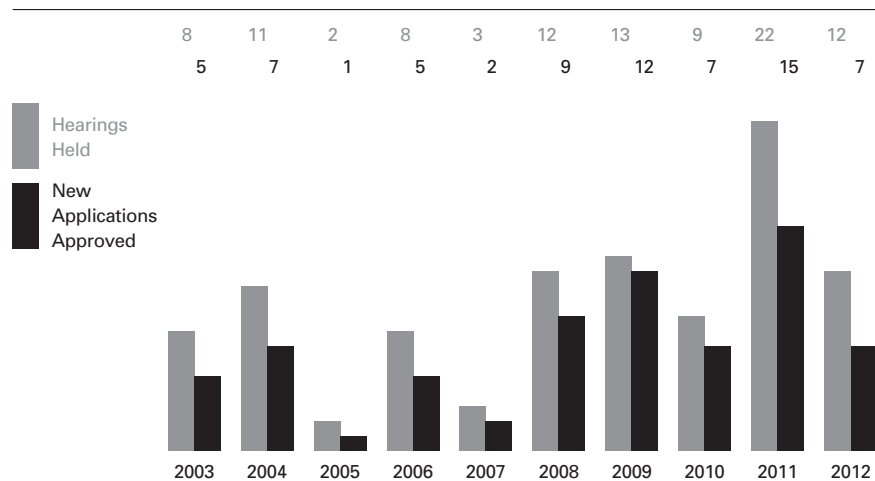
	Class Members (approximate)	Recovery (\$)	Years To Recovery
Consumer Protection			
15 Garland v. Consumers Gas (alleged criminal rates of interest)	Millions	22,000,000	14
16 Walker v. Union Gas (alleged criminal rates of interest as a result of late payment penalties)	650,000	9,227,500	6
17 Nehme v. Civil Service Co-op (alleged breach of contract re mortgage prepayment provision)	Unknown	147,329	3
18 Gilbert v. CIBC (alleged non-disclosure of foreign transaction currency fees on credit cards)	Millions	19,500,000	8
19 Meretsky v. BNS (alleged non-disclosure of foreign transaction currency fees on credit cards)	1,500,000	24,200,000	12
20 Cassano v. TD Bank (alleged non-disclosure of foreign transaction currency fees on credit cards)	Millions	55,000,000	12
21 Smith v. Money Mart (alleged criminal rates of interest charged on payday loans)	306,714	\$57.5 million in credits and cash plus \$56,000,000 debt forgiveness	8
22 Mortillaro v. Cash Money (alleged criminal rates of interest charged on payday loans)	315	432,711	7
23 Mortillaro v. Unicash alleged criminal rates of interest charged on payday loans)	Thousands	155,000	8
24 Markson v. MBNA (alleged criminal rates of interest related to credit card advances)	625,000	8,000,000	9

	Class Members (approximate)	Recovery (\$)	Years To Recovery
25 Speevak v. CIBC (alleged disclosure of personal information)	20	118,250	6
26 Krajewski v. Ticketmaster (alleged breaches related to fees charged on tickets)	49,000	5,000,000	4
27 Monkton v. Canada Business College (alleged misrepresentation related to dental hygienist program)	18	115,000	6
28 Hickey-Button v. Loyalist (alleged misrepresentations relating to nursing program)	66	Individual damage assessments pending	Ongoing (13 years to date)
29 Potter v. Loyalist		Consolidated with Hickey-Button	
30 Williamson v. Sheila Morrison School (alleged abuse at privately run facility for children with disabilities)	Hundreds	4,000,000	Ongoing

New Applications Heard and Approved – 2003-2012

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Hearings Held	8	11	2	8	3	12	13	9	22	12
New Applications Approved	5	7	1	5	2	9	12	7	15	7

While the CPF has existed since 1992, half of all applications and approvals have taken place since 2006.



2012 RESULTS

Statement of Financial Position

	For period from Jan. 1, 2012 to Dec. 31, 2012	For period from 1993 to Dec. 31, 2012
	\$	\$
Opening balance	9,769,291	500,000
Total funding awarded	(1,466,868)	(11,543,558)
Funding repaid/cancelled	903,731	2,651,529
Administration costs/expenses	(567,587)	(2,384,819)
Interest received	186,852	1,856,014
10% levies received	1,911,337	24,240,918
Costs awards in favour of defendants	(2,916,515)	(7,499,843)
Balance as at Dec. 31, 2012	7,820,241	7,820,241

As required by O.Reg.771/92, s.13, we report as follows:

1 Number of New Applications, by stage in proceeding at the time of application.

Stage in the Proceeding	Number of New Applications 2012	Number of New Applications 2011
Pre Certification	11	21
Appeal re: Certification	-	-
Discovery	1	-
Determination of Common Issues	-	1
Appeal re: Common Issues	-	-
Post Common Issue Stage	-	-
Total	12	22

2 New Applications Granted and Refused or Pending/Withdrawn, by Stage in the proceeding, at the Time of Application.

Stage in the Proceeding	Granted	Refused	Deferred/ Pending*/ Stayed, etc	Total
2012				
Pre Certification	6	3	2	11
Discovery	1	-	-	1
Determination of Common Issues	-	-	-	-
Appeal re: Common Issues	-	-	-	-
Other	-	-	-	-
Total	7	3	2	12
2011				
Pre Certification	14	6	1	21
Discovery	-	-	-	-
Determination of Common Issues	1	-	-	1
Appeal re: Common Issues	-	-	-	-
Other	-	-	-	-
Total	15	6	1	22

*Carried forward to the next year.

3 In 2012 financial support was awarded for seven (7) new cases under section 59.3(1) of the Act and further financial support was awarded for seven (7) cases which had previously been approved, as a result of supplementary funding applications under section 59.3(5) of the Act. In 2011 financial support was awarded for fifteen new cases under section 59.3(1) of the Act and further financial support was awarded for fourteen cases which had previously been approved, as a result of supplementary funding applications under section 59.3(5) of the Act.

4 Total awards, by disbursement type is \$1,466,868.

Type of Disbursement	Total Amount Awarded 2012
Administrative Expenses	\$188,342
Travel	\$227,921
Examiners' Charges	\$35,055
Experts' Fees	\$994,228
Notice to Class	\$11,570
Other (to be specified when request)	\$9,752
Harmonized Sales Tax	-
Total	\$1,466,868

Under regulation 771/92, this section includes only amounts awarded during 2012.

Total amounts paid out by the CPF during 2012 may vary as amounts awarded are reimbursed to applicants on an ongoing basis after funded disbursements have been duly incurred and paid by the applicant.

5 The total amount of money paid from the CPF to applicants under section 59.3 of the Act: 2012, \$404,596; 2011 \$1,914,374; 2010, \$1,164,421. At December 31, 2012, the balance of all awards outstanding which had not yet been paid to applicants was \$2,205,199.

6 In 2012, four funded proceedings were certified. In 2011, nine funded proceedings were certified.

7 In 2012, eight applicants who had received financial support settled their proceedings such that the classes involved in these proceedings would receive or will receive a monetary payment. In 2011, four applicants who had received financial support settled their proceedings such that the classes involved in these proceedings received or will receive a monetary payment.

8 In 2012, five defendants made applications to the CPF for payment of costs awards made in their favour pursuant to section 59.4 of the Act; 12 applications were received in 2011. This results from the indemnification of plaintiffs against cost awards.

9 In 2012, \$2,916,515 was paid from the Fund to defendants under section 59.4 of the Act. In 2011, \$2,202,060 was paid to defendants under section 59.4 of the Act. This results from the indemnification of plaintiffs against cost awards.

- 10 Proceedings for which plaintiff was awarded financial support under section 59.3 of the Act (these included both newly approved cases and previously approved cases for which supplementary funding was awarded during 2012).

	Administration Expenses	Travel Expenses	Examiners' Charges	Experts' Fees	Notice to Class	Other	Total
2012	\$	\$	\$	\$	\$	\$	\$
Case A	18,459	5,924	3,955	105,322	11,300	5,252	150,212
Case B	230	19,000	1,500	64,000	270	-	85,000
Case C	33,000	10,000	-	-	-	-	43,000
Case D	16,100	11,300	22,600	-	-	-	50,000
Case E	-	-	-	143,510	-	-	143,510
Case F	37,569	147,713	-	355,258	-	-	540,540
Case G	100	-	-	-	-	-	100
Case H	-	-	-	75,000	-	-	75,000
Case I	5,250	500	4,000	70,000	-	-	79,750
Case J	12,979	5,884	-	-	-	-	18,863
Case K	42,955	22,000	3,000	40,938	-	-	108,893
Case L	21,700	600	-	5,200	-	4,500	32,000
Case M	-	5,000	-	135,000	-	-	140,000
All Cases	188,342	227,921	35,055	994,228	11,570	9,752	1,466,868
2011							
All Cases	617,511	43,394	68,405	1,095,790	214,796	82,598	2,122,494

Case A	Negligence and breach of duty relating to medical implant
Case B	Breach of contract – nursing college
Case C	Shareholder class action – statutory and common law misrepresentation
Case D	Civil Rights – unlawful arrest and detention
Case E	Environmental damage and nuisance relating to water contamination
Case F	Breach of duty to participating insurance policy holders due to demutualization
Case G	Franchise: breach of contract and duty
Case H	Franchise: breach of contract and duty
Case I	Various breaches of duty relating to shortfall on pension plan windup
Case J	Breach of fiduciary duty, negligence, assault, battery and intentional infliction of mental suffering at a Christian school
Case K	Negligence and breach of duty relating to medical implant
Case L	Illegal investment scheme - RRSPs
Case M	Various breaches of duty related to privately run facility for disabled minors

APPLYING TO THE CLASS PROCEEDINGS FUND

Among other requirements, initial applications must include legal opinions on the likelihood of certification and merits of the case and a statement of the financial support requested. Details, including guidelines and standard forms, are available online.

After a completed application is received, a private hearing is scheduled in Toronto at which both counsel and the representative plaintiff are asked to speak.

If funding is awarded, proof of disbursements incurred and ongoing reporting is required, as well as written applications for supplemental support at subsequent stages of an approved proceeding.

For more information visit www.lawfoundation.on.ca/class-proceedings-fund/ and to discuss a potential application please contact:

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Class Proceedings Committee
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The LFO is independent, governed by a five-person board of trustees whose members serve voluntarily. Three trustees are appointed by the Law Society of Upper Canada (the governing body for lawyers and paralegals), and two by the Attorney General of Ontario. The LFO submits its annual report to the Attorney General for tabling in the Legislative Assembly.



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 & Bergman LLP



Carol L. Hartman
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 (until November 2012)
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 (until March 2012)
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 Policy and Family Justice
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Stephen Rhodes
 (from March 2012)
 Deputy Minister,
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 Ministry of Community Safety
 and Correctional Services



Paul B. Schabas
 Partner
 Blake, Cassels & Graydon LLP

Class Proceedings Committee

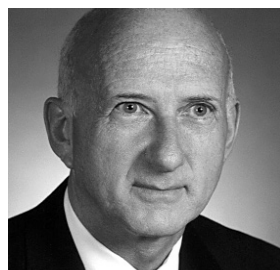
The Class Proceedings Committee has five members, one appointed by each of the LFO and the Attorney General of Ontario and three appointed jointly. All have extensive expertise with respect to class action law.



Valerie A. Edwards (chair)
Partner
Torkin Manes Cohen Arbus LLP



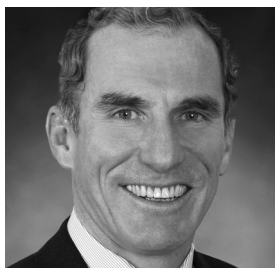
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Jennifer Torrens

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In Appreciation

The following individuals gave generously of their time, energy and expertise in support of various LFO initiatives during 2012, as volunteer committee members, advisors and in other capacities. Both the trustees and staff of the LFO extend their sincere appreciation to everyone named here, whose perspectives and insights were invaluable in helping the LFO to deliver the best results possible during the year.

David Aucoin

Marco Campana

Dr. Paul Cassano

Karen Cohl

Jacqueline Leslie Cole

Adam Dodek

Nikki Gersh bain

Justice Eileen Gillese

Justice Stephen Goudge

Navneet Johal

Maria Kaikov

Rachel Kwan

Albert Lin

Rebecca Lockwood

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Danielle McLaughlin

Katy O'Rourke

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