



CLASS ACTION CLINIC
Windsor Law

The Class Action Clinic's

2022 Annual Report



University
of Windsor

Service, Research & Advocacy

The Clinic is the only non-profit legal services provider in North America to focus on the needs and rights of class members. The Clinic began offering its services in October 2019. Founded by Professor Jasminka Kalajdzic, one of Canada's leading class action scholars, the Clinic has a unique mission: to provide legal assistance and information to class members free of charge and at all stages of a class action; to engage in policy analysis and empirical research on various class action issues; to participate in public legal education; and, when appropriate,

to represent class members who wish to object to proposed settlements. In all of these ways, the Clinic aims to improve upon class actions' access to justice promise.

Three years after the Class Action Clinic's launch, we are pleased to report that we have exceeded the goals we set at our founding, and remain eager to continue helping people navigate the complexities of class proceedings. Our main focus remains on individual class members, while also participating in research and appellate advocacy. Importantly, the Clinic provides client-centered experiential learning opportunities to students throughout the academic year and full-time employment in the summer.

Who We Are



Jasminka Kalajdzic
(B.A., LL.B., LL.M.)

Professor Kalajdzic is the Founder and Director of the Class Action Clinic. She is an Associate Professor at the University of Windsor's Faculty of Law where she teaches Evidence and Class Action Law. She has published two books and dozens of articles and book chapters on all aspects of class actions. She is a frequent speaker at academic, judicial and bar seminars and conferences, both in Canada and abroad. Her extensive class action experience includes twelve years as a litigator, six years as a member of the **Class Proceedings Committee**, and two years as co-lead researcher and author of the Law Commission of Ontario's **Class Action Report**. The challenges faced by class members at various stages of class actions, and her belief in the access to justice promise of class actions, were her inspiration for the Clinic.



Andrew Eckart
(B.A., LL.B.)

Andrew joined the Clinic as its Staff Lawyer in January 2020. In this role, he draws on his experience with class actions which began as an articling student clerking at the Superior Court of Justice in Toronto. Andrew then worked as a plaintiff-side class action litigator where he was involved in many different facets of class proceedings including: commencing claims, arguing certification and settlement approval motions, and the administration of claims.

At the Clinic, Andrew supervises the work of students throughout the year, providing guidance and mentorship to them. He has appeared as counsel for a variety of objectors and on intervention applications on behalf of the Clinic.

Andrew is also a mediator, facilitating disputes in a broad variety of civil subject matters including personal injury, employment, human rights, and contractual disputes.

He is proud of what the Clinic has accomplished so far and is excited for the future potential of the Clinic to continue to provide access to justice to class members.





Students

The work of the Clinic would not be possible without the hard work and exemplary commitment of our students. The Clinic has been honoured to train and mentor dozens of students since our opening. Each semester, the Clinic has been staffed by four University of Windsor law students who work for academic credit under the supervision of Mr. Eckart and Professor Kalajdzic. They meet weekly for a seminar discussion of leading cases and reports, to learn about trauma-informed lawyering, and to share reflections about their work with clients. In the summer months, the Clinic hires two to four law students to work full-time. In the summer of 2021, two students from

McGill University and the University of Ottawa worked at the Clinic as paid interns with funding from their respective law schools. This past summer, a student from the University of Toronto Law School worked at the Clinic as a Donner Civic Leadership fellow. The Clinic is pleased to offer employment opportunities to students from all Canadian law schools.

We thank all of our law students, past and present, for their dedication to their clients and to the work of the Clinic.

Unless otherwise noted, all students are from Windsor Law.

Braden Adsett	Khawla Khalifa	Mariam Rajabali
Azra Alagic	Ally Lawrence	Oscar Ramirez
Jacklyn Barrios	Karly Lyons	Joudy Sarraj
Lovejot Bhullar	Daniel MacDonald	Lauren Tzogas
Michael Burns ⁱ	Iman Naqvi	Emma Walsh ⁱⁱⁱ
Micheline Chevrier	Lyann Ordenes-Gonzalez	Elizabeth Yan
Laura Clerk ⁱⁱ	Katie Pfaff	Catherine Yue
Bianca Demian	Olivia Pomajba	Flavia Zaka
Lindsay Dixon		

ⁱUniversity of Ottawa

ⁱⁱUniversity of Toronto

ⁱⁱⁱMcGill University

Advisory Committee

The Clinic receives helpful guidance from its newly formed Advisory Committee. The members of the Committee bring a wealth of expertise from a variety of contexts. The Advisory Committee will meet at least twice annually and will communicate regularly on matters of importance to the Clinic's governance.

Marilyn Dolmage

Marilyn Dolmage works alongside people labelled/with intellectual



disabilities, their families, schools and communities to access justice, challenge segregation and create new supports, relationships

and opportunities – especially through inclusive education and direct funding.

She and her husband Jim were Litigation Guardians for the class action concerning the Ontario government's operation of Huronia Regional Centre. She had been social worker for Lead Plaintiffs Marie Slark and Patricia Seth in that institution, where her brother died. Although they were upset that historic harm would not be aired at trial, and frustrated with the claims process and compensation provided by the 2013 settlement, it led to a public apology from the Premier of Ontario, and its unclaimed cy pres funds have been used to document survivors' experiences.

Marilyn is an Associate of Inclusive Education Canada and a founding member of Inclusion Action in Ontario and People for Personalized Funding.

Her forthcoming book challenges ableism and encourages advocacy for inclusion - through poetry, personal stories and professional reflection.

Katherine LeGrange

Katherine is a Sixties Scoop Adoptee, and the volunteer Director of the 60s



Scoop Legacy of Canada - a Non Profit Organization (NPO) aimed at healing and wellness for Survivors and their families.

The 60s Sixties Scoop Legacy of Canada was formed in 2017 and offers peer-support and advocacy for thousands of Survivors/Adoptees all over the world. In 2018, Katherine was a presenter at the Expert Mechanism for the Rights of Indigenous People Session 12 in Geneva, Switzerland.

Katherine was born and adopted from birth in Winnipeg, Manitoba from a non-Indigenous mother and an Indigenous father. Katherine has re-established her Anishinaabe roots and continues to fight for Survivors and their families of the Sixties Scoop to regain their rights and for long-term healing supports. Katherine is a mom of three and has three grandchildren.

An entrepreneur experienced in NPO startups, marketing and communications, and event planning,

Katherine has spent years building relationships and overseeing many major events including the record-setting 2022 South Island Powwow, 2021 Orange Shirt Day and Canada Day rallies in Manitoba, multi media campaigns, and facilitating gatherings and workshops.

Gemma Smyth

Gemma Smyth is Associate Professor and Externship Program Director at



the Faculty of Law, University of Windsor. Her expertise lies in clinical legal education, place-based learning, and dispute resolution. She

was previously Director of University of Windsor Mediation Services and Academic Clinic Director with Legal Assistance of Windsor and Community Legal Aid. She is passionate about access to justice and experiential approaches to legal education.

Valarie Waboose

Valarie G. Waboose is an Anishinabe Kwe from Bkejwanong Territory



(also known as Walpole Island First Nation). She is a great-grandmother of 2, grandmother of 7 and mother of two daughters. She is a second-

generation survivor of two parents that attended Shingwauk Indian Residential School and completed her Ph. D. dissertation (Trent) on the impacts

of the class action compensation processes upon residential school survivors.

Valarie is currently Assistant Professor at University of Windsor, Faculty of Law and has taught Aboriginal Law, Access to Justice, Indigenous Legal Traditions, Reconciliation and the Residential School Legacy, Indigenous Legal Orders and Anishinabe Law Camp. Her research interests include Indigenous Legal Traditions/Orders and methodologies, child welfare, reconciliation and the residential school legacy and indigenous justice systems.

Alison Warner

Alison is the registrar of the Ontario Judicial Council and the Justices of the



Peace Review Council. Alison previously worked at the Court of Appeal for over 20 years as legal research counsel and as the

Court's Senior Legal Officer. Alison also worked at the Centre for Judicial Research and Education in the Office of the Chief Justice, Ontario Court of Justice, where she designed and delivered judicial education to members of the Ontario Court of Justice bench. In addition, she was an Adjunct Professor at the University of Toronto Faculty of Law where she taught the course Appeals: Principles and Practice. Alison is a co-author of the text, *The Law of Class Actions in Canada* (Toronto: Thomson Reuters Canada, 2015), together with the

Hon. Warren K. Winker, Justice Paul M. Perell and Professor Jasminka Kalajdzic.

Alison is grateful to have a role as a member of the advisory committee of the Class Action Clinic.

As a firm believer in the benefits of experiential learning for law students,



Assisting Class Members

Since we opened our doors in October 2019, the Clinic is pleased to have assisted over 200 individuals navigate the complicated world of class actions. Our work on behalf of clients ranged from simple informational updates about the current status of a class action and explanations of court-approved notices to complex settlement claims assistance and representation of objections at settlement approval hearings. Were it not for the Clinic providing these services, many class members would have to retain independent counsel at their own expense or act essentially as self-represented litigants.

The work of the Clinic is mainly comprised of the following categories of service:

a. Claims Assistance – The Clinic has assisted 83 individuals by filing claims, appealing initial denial decisions, and providing summary information as to how best to file claims in settled class actions. To date, the Clinic has recovered over \$1,250,000 for our clients, and many other claims have been approved but not yet paid out.

b. General Information about Class Actions – While the Clinic does not initiate class actions, we do provide summary information and referral information to individuals who wish to begin a class action because of an injustice they have observed or experienced.

c. Information about the Status of a Class Action – Current information about the ongoing status of particular class actions is not always easy to find, but the Clinic has expertise and a network within the class action bar which has enabled us to assist dozens of people better understand the current status of particular cases.

d. Independent Legal Advice – Financial incentives and duties to the class as a whole mean that class counsel may not be in a position to provide individual advice to class members about their rights and how best to exercise them. As a non-partisan entity, we have provided independent legal advice to 27 individuals, including advice about whether to opt out of a class action and about their participation rights.

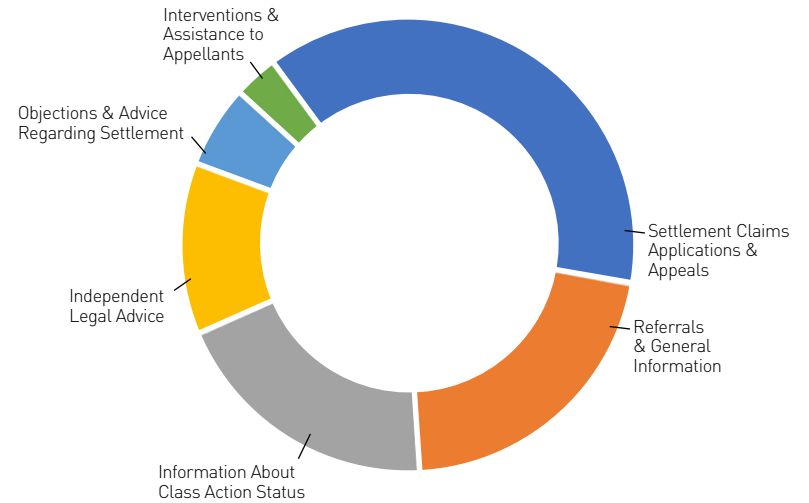
e. Fairness of Proposed Settlements– The Clinic has advised and/or represented over a dozen individuals at the settlement approval stage of several class actions. We have been retained in six different class actions to present formal objections in writing and orally at settlement approval motions. Our participation in these fairness hearings led one judge to comment that “this is exactly the kind of work that the Class Action Clinic should be doing. I support and encourage the Clinic’s involvement in any class action matter where, like here, they believe they can make a valuable contribution”.

f. Interventions – The Clinic is proud to have successfully argued at the Ontario Court of Appeal as an intervener regarding the establishment of clear

principles to be applied when a class member seeks an extension of the opt-out deadline in *Johnson v. Ontario*, [2022 ONCA 725](#). The Clinic continues to monitor other decisions across the country which affect class member

rights in order to provide a class member-focused perspective. We have also assisted other intervenors and appellants by providing research and strategic advice.

Client Services by Category (2019 - 2022)



Research

The Clinic students engage in research projects on issues of broad interest to class members. The research is shared in a number of ways. In 2020, the Clinic produced a 7-minute video about the Basics of a Class Action, freely accessible on our website and on YouTube. We later produced a [video](#) on the [Basics of a Class Action Settlement](#) and a short guide on the [Rights of Class Members](#).

Two in-depth research projects are nearing completion. The first, on Notice to Class Members, is an analysis of dozens of class action notices for clarity and comprehensiveness. In the Research Report, to be released in 2023, the Clinic will suggest best practices for notices to the class. The second major research project is on Objections to Settlements. It is the first review of all cases in which objecting class members challenge proposed settlements to determine the frequency and impact of objections.

We release monthly class action related blog posts on our [website](#) and have had posts on several topics including: "[Releases Under Scrutiny: Protecting the Best Interests of the Class](#)", "[Accessibility in Class Action Settlement Agreements](#)", and "[Efficiency Over Fairness: Interpreting the Day School Settlement](#)".

In addition to the blogs, the Clinic tweets class action news daily ([@ClassActClinic](#)).

Advocacy

The Clinic is engaged in advocacy at the systemic level. We filed written submissions with the provincial Standing Committee on Justice Policy expressing concern about some of the proposed changes to Ontario's Class Proceedings Act introduced in Bill 161. The Clinic Director also testified before the Committee on June 12, 2020. The clinic's written submissions can be found [here](#).

More recently, the Clinic was granted formal intervener status at

the Ontario Court of Appeal, on the issue of notice and extended opt-out rights. In a [decision](#) released in October 2022, the Court largely adopted the Clinic's arguments, holding that opt-out rights are integral to the legitimacy of the class action device, and that a judge should extend the opt-out deadline when the class member did not receive the notice and acted reasonably to protect their rights as soon as they learned of the class action. The Clinic also recently sought, but was denied, leave to intervene in a case at the Federal Court of Appeal on an issue related

to settlement administration. The Clinic regularly assists appellants and other intervenors by providing research and strategic advice.

With the assistance of students, the Clinic Director and Staff Lawyer regularly give presentations to the legal profession and the judiciary at public seminars and conferences. The Clinic has presented information about various class actions and offered individual consultations at events organized by various community organizations.

Feedback from Clients and Lawyers

"I write to send you a note of congratulations for the Clinic's successful opposition to the proposed class action settlement in Grann v. Ontario and to mark your rare achievement. [...] I believe that it is healthy for the practice area if parties understand that there is a real possibility that a proposed class settlement can be rejected, and that organizations like the Clinic are available to forcefully represent objectors."

- **Class Action Litigator, May 2021**

"I just wanted to say thank you, because of you and your team, it will literally change my life and [my daughter's] life."

- **Sixties Scoop Survivor, November 2021**

"The people at the Class Action Clinic have been an amazing source of aid [...] While I'm not out of the woods yet, I feel like someone is finally listening to me and representing MY best interests!"

- **Matthew, April 2021**

"Please accept my appreciation to the Class Action Clinic at the University of Windsor and in particular for the support and excellent work provided by Professor Andrew Eckart. He was assisted by Khawla Khalifa who provided data analysis to support the claim. The clinic is unique and deserves more attention but in particular, is well-served with the counsel provided by Andrew and his students."

- **Jo-Anne, August 2022**

Ontario Class Actions Database

In the fall of 2022, the Law Commission of Ontario transferred the Ontario Class Actions Database to the Clinic for updating and maintenance. The Database was created as part of the Law Commission of Ontario's 2019 Class Action Project. As Justice Andrew Pinto, then chair of Law Commission of Ontario Board of Governors, stated when the Clinic launched: "We believe the clinic is the natural 'home' for the first and only comprehensive database of class actions in Ontario. This makes the clinic an invaluable, ongoing resource to class members, counsel, academics and justice system policy makers for many years to come."

Current content is limited by what was publicly available before 2019, but the Database is designed to include detailed information about class actions. Information about both prior and current class actions will be added to the Database in the coming years. This work is made possible by the financial support of Lenczner Slaght and its [Data-Driven Decisions project](#).

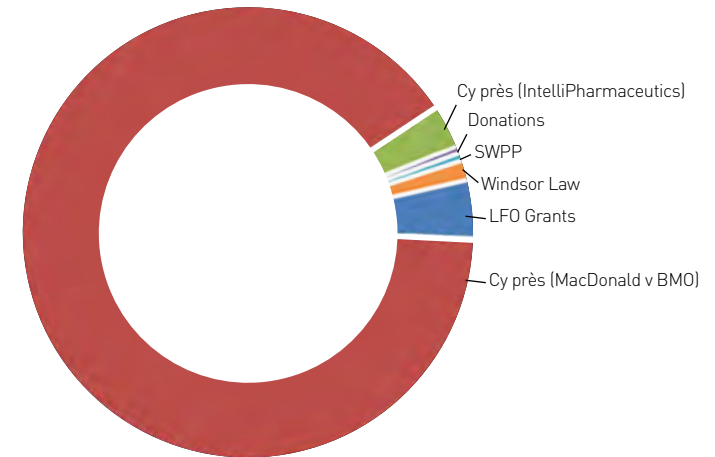
Funding of Client Services

The Clinic obtained a start-up grant from the [Law Foundation of Ontario](#) and in-kind support from the [University of Windsor's Faculty of Law](#). In 2021, the Clinic received two cy près awards: \$110,000 from the [IntelliPharmaceutics class action settlement](#), and \$250,000 from the [MacDonald v. BMO Trust Company](#) class action settlement. Most recently, in October 2022, the Clinic was awarded a further \$2.8 million from the final cy près distribution in the BMO Trust case. These court-approved awards will support the Clinic's operations for several years. The Clinic also received donations from Lenczner Slaght to support the Class Action Database, and from Leners LLP to hire a student in the summer of 2021. The University of Windsor's Student Work Placement Program has contributed almost \$20,000 for wages paid to Windsor Law summer students, while the three summer students from other law schools received financial support from their respective universities.

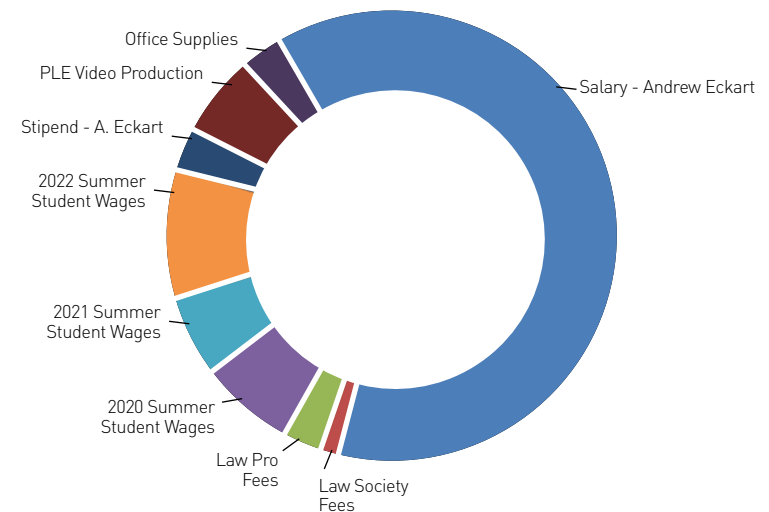
Our annual budget of approximately \$180,000 is mainly comprised of the Staff Lawyer's salary, summer law student wages and modest disbursements related to our court work and maintenance of the Database.

For more information about the Clinic's work, visit the [website](#) or contact Clinic Director, Professor Jasminka Kalajdzic, at kalajj@uwindsor.ca.

Sources of Funding
(2019 - 2022)



Expenses
(2019 - 2022)





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