



[2022] 2 F.C.R. D-17

PRACTICE

CLASS PROCEEDINGS

Related Subject: Family Law

Motion for order restoring Family Class to class definition of underlying proceeding — Family Class inadvertently left out of class definition when revised certification order issued — Original certified class definition including all individuals entitled to assert claim pursuant to *Family Law Act*, R.S.O. 1990, c. F.3 — Defendant opposing motion — Whether Family Class should be added to class definition — *Federal Courts Rules*, SOR/98-106, r. 334.19 providing Court with jurisdiction to amend order certifying proceeding as class proceeding — Defendant arguing that because Federal Court of Appeal, in [2021 FCA 186](#), considered appeal of amended certification order (i.e. order from which Family Class inadvertently left out), plaintiffs now estopped from re-litigating class definition — That argument rejected — Motions at class certification stage procedural motions, do not include decisions on merits — Therefore, no judicial findings yet made on merits of plaintiffs' claims in class proceeding — Also, Family Class not judicially determined in revised order — Court also not *functus officio* as no final finding made on merits of case — Further, SCC recognizing exceptions to doctrine of *functus officio* where slip-up or error occurring in expressing court's manifested intention or statutory power to revisit order — In alternative, defendant arguing there was, at time of certification of proceeding, there continues to be, lack of evidence supporting finding there was some basis in fact to certify Family Class — Certification decision already finding "identifiable class" requirement of certification criteria met by establishing "some basis in fact" — Federal Court of Appeal not overturning this finding — There being no change in circumstances since certification decision issued, no need to revisit matter — As to defendant's final argument, i.e. that Family Class definition unworkable, that argument inaccurate — Family Class is derivative class, meaning any claims therefrom arising through primary class member otherwise capable of making claim themselves — Family Class thus identifiable class — Motion granted.

GREENWOOD V. CANADA (T-1201-18, 2023 FC 397, McDonald J., reasons for order dated March 22, 2023, 11 pp.)