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PRACTICE

CLASS PROCEEDINGS

Related subjects: Crown, RCMP

Extension of time — Motion by defendant under *Federal Courts Rules*, SOR/98-106, r. 8 for extension of time to serve, file statement of defence until after final disposition of motion for certification of underlying proposed class proceeding — Representative plaintiffs members of Royal Canadian Mounted Police (RCMP) who allege that their right to privacy was violated by RCMP — Consequently claiming damages, other relief against Canada — Proposed class proceeding in its early stages — In course of scheduling case management conference, parties' counsel conferred with view to providing Court with update on status of matter — Defendant's counsel advised that it intended to seek to defer filing of defence until after certification — Whether Court should grant defendant extension of time to file statement of defence until after final disposition of motion for certification of proposed class proceeding — In support of its motion, defendant identified contested motions before Court, in which defendant had sought to defer statement of defence in context of proposed class action, including *Poundmaker Cree Nation v. Canada*, 2017 FC 447, [2018] 1 F.C.R. D-4 (*Poundmaker*) — In contrast, plaintiffs referred to recent British Columbia Superior Court (B.C.S.C.) case law, including *Shaver v. Mallinckrodt Canada ULCC*, 2021 BCSC 404 (CanLII) (*Shaver*), identifying that practice of permitting late filing of responses in B.C.S.C. class actions has fallen out of favour in British Columbia, absent good reason for granting such permission — Rules not contemplating filing of statement of defence subsequent to determination of motion for certification of proposed class proceeding — However, rule 8 providing that Court may extend period provided by Rules, rule 3 stating that Rules shall be interpreted, applied so as to secure just, most expeditious, least expensive determination of every proceeding on its merits — Ultimately, matter of judicial discretion as to whether, in any given circumstance, time for filing of statement of defence should be extended until after determination of certification motion — Authorities of Federal Court (F.C.), B.C.S.C. identified by parties demonstrating significant commonality — Factors in *Poundmaker* to be considered including whether statement of defence would serve any useful purpose at this stage in proceeding — That is, is statement of defence essential to determination of issues to be addressed at certification motion or likely to be of assistance to Court — Commonality in F.C., B.C.S.C. case law evident in *Shaver* characterization of *Poundmaker* factors as applicable to overall assessment of whether there is good reason not to require response before certification materials delivered and whether that good reason outweighing benefits of having complete set of pleadings to inform certification, identification of certification issues, analysis of certification issues — Applying *Poundmaker* factors herein, statement of defence would serve useful purpose prior to certification, and in absence thereof, uncertainty as to issues in dispute could operate to prejudice of plaintiffs — However, as result of breadth of allegations pleaded, defendant raised legitimate concerns surrounding complexity of matter, whether statement of defence may have to be reformulated depending on outcome of certification hearing, in particular amount of time, effort involved to prepare statement of defence — Absence of defence not eliminating need for a plaintiff to contemplate defence issues in its certification materials, particularly if those issues identified in other pre-certification materials — Nevertheless, possible that proceeding to certification before such

issues crystallized in a statement of defence could result in effort having been wasted — However, risk of such wasted effort by plaintiffs outweighed by risk of wasted effort by defendant, in conducting investigations across entire RCMP for nearly 40-year period to file defence to allegations in class proceeding not yet certified — Discretion exercised herein to grant defendant's motion, extend deadline to serve, file statement of defence until 30 days after final disposition of motion for certification of proposed class proceeding — Requiring defendant to serve, file statement of defence prior to adjudication of certification motion in this proposed class proceeding would not achieve the just, most expeditious and least expensive determination of this proceeding — However, possible to revisit in event it becomes apparent that different result warranted — Motion granted.

DUGAS V. CANADA (ATTORNEY GENERAL) (T-529-23, 2023 FC 1331, Southcott J., reasons for order dated October 5, 2023, 14 pp.)