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## PRACTICE

### STAY OF PROCEEDINGS

Motion by defendant seeking order under *Federal Courts Act*, R.S.C., 1985, c. F-7 (Act), s. 50.1 or s. 50(1) to stay proposed class proceeding on basis defendant intending to bring claim for contribution, indemnity against third party over which Federal Court would not have jurisdiction — Plaintiff, Canadian taxpayer, filing proposed class action against defendant seeking damages, other relief arising from alleged data breaches and resulting unauthorized disclosure to third party of personal and financial information of online accounts with Government of Canada, Canada Revenue Agency — Plaintiff's law firm subsequently experiencing cybersecurity incident, ransomware attack — Defendant intending to pursue third party claim against plaintiff's law firm, wanting to stay class action pursuant to Act, s. 50.1 on basis Federal Court lacking jurisdiction to hear that claim — In alternative, defendant invoking Act, s. 50(1), seeking discretionary stay on basis that interests of justice warranting litigation proceed in provincial superior court, which would have jurisdiction over both claims (i.e. claims against defendant and law firm) — Whether action should be stayed pursuant to Act, ss. 50.1, 50(1) — S. 50.1 providing for mandatory stay of proceedings in Federal Court where Crown intends to institute third party proceedings that Federal Court lacks jurisdiction to adjudicate — Pursuant to test in *Dobbie v. Canada (Attorney General)*, 2006 FC 552, defendant having to demonstrate that (a) it genuinely desires to institute third party claim that has possible likelihood of success; (b) third party claim outside jurisdiction of Federal Court — Plaintiff accepting that defendant's proposed third party claim against law firm outside jurisdiction of Federal Court — Only first requirement, specifically whether third party claim having any possible likelihood of success, at issue between parties — Where damages caused or contributed to by both defendant, potential third party, if plaintiff claiming against defendant only proportion of those damages attributable to defendant, defendant can have no claim for contribution, indemnity against third party — Therefore, defendant's proposed third party claim herein having no possibility of success, motion for stay under s. 50.1 failing — As to defendant's alternative argument, staying a proceeding under s. 50(1) is a discretionary determination to be granted only in clearest of cases, with Court being guided by whether interests of justice supporting such result — Parties disagreeing on whether s. 50(1)(a) applying only in situation where claim presently being proceeded with in other court or jurisdiction — Plaintiff arguing that s. 50(1)(a) addressing duplicative proceedings, s. 50(1)(b) applying only to circumstances other than duplicative proceedings — That argument rejected — It cannot be the case that Court should be deprived of jurisdiction to grant stay in circumstances where there is possibility of future proceedings with some degree of duplication or overlap, if interests of justice warranting stay — In any event, applying principles set out in *Canada (Attorney General) v. Cold Lake First Nations*, 2015 FC 1197, no support here for conclusion that continuation of Federal Court action causing prejudice or injustice to defendant — Also far from clear that considerations of judicial economy favouring stay — Court exercising discretion against granting stay under s. 50(1) — Motion dismissed.

CAMPEAU V. CANADA (T-982-20, 2021 FC 1449, Southcott J., reasons for order dated December 20, 2021, 28 pp.)

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