



[2021] 4 F.C.R. D-22

PRACTICE

CLASS PROCEEDINGS

Motion for certification of class proceeding pursuant to *Federal Courts Rules*, SOR/98-106, r. 334.16(1) — Litigation seeking to hold Canada liable to off-reserve Indigenous children, families for Canada's failure to take reasonable steps to prevent injury, loss to those off-reserve Indigenous children of their identity, culture, heritage, language — Proposed class action challenging Canada's role in allowing Indigenous children in state care to be placed in non-Indigenous homes, in care of individuals not part of their Indigenous group, community or people (Primary Class Members) — This resulted in loss of identity, culture, family, federal benefits — Plaintiffs asserting that defendant Canada unreasonably denied Indigenous peoples their inherent right to jurisdiction over child, family services; failed to take reasonable steps to preserve, protect Aboriginal identity of Primary Class Members; failed to provide information about Primary Class Members' identity, Aboriginal, treaty rights, federal benefits to which Primary Class Members entitled — Claim seeking declaratory relief, general, punitive damages as well as *Canadian Charter of Rights and Freedoms* damages, other relief — Canada emphasizing that proposed representative plaintiffs had their lives, cultures, identities harmed by officials of British Columbia, not of Canada — Plaintiffs pointing to federal entitlements, benefits available to off-reserve Indigenous people, failure to inform Indigenous children, removed from their families, of these entitlements lost or to which access not given — Plaintiffs' position that Canada having constitutional obligation to off-reserve Indigenous people, Canada's policy of leaving funding of social services for off-reserve Indigenous people to provinces, territories amounting to violation — Overarching issue whether present action should be certified as class proceeding pursuant to r. 334.16 — R. 334.16(1) setting out mandatory obligation on Court to certify proceeding as class action if action meeting certain conditions — Plaintiffs arguing they have satisfied "low threshold" for certification as r. 334.16 procedural in nature, meant to be interpreted broadly, liberally, purposively to achieve foundational policy objectives of class action proceedings — Defendant positing, *inter alia*, that at least with respect to judicial economy, proposed certified action false economy because there are no proper common questions or at least insufficient commonality across class — Plaintiffs meeting condition for certification under r. 334.16(1)(a) that reasonable cause of action present — Classes objective, not overly broad — In limiting their claim to federal government, plaintiffs having judicial support from this Court in *Campeau v. Canada*, 2021 FC 1449 — If judgment against Canada for its own liability, matter of potential third party proceeding irrelevant — Single proceeding particularly important to matters of judicial economy, access to justice — Defendant not establishing that class action in this matter not manageable, nor establishing that it cannot defend its position or that class proceeding in this single court with national coverage not preferred proceeding — Given nature of class, likelihood of them individually or in groups being able to carry an action, class proceeding evidently more effective, efficient — Single national jurisdiction proceeding more efficient with regard to judicial economy — Action to be certified as class proceeding on terms of certification order — Motion allowed.

STONECHILD V. CANADA (T-620-20-21, 2022 FC 914, Phelan J., reasons for judgment dated June 17, 2022, 32 pp.)