

PRACTICE

VARIATION OF TIME

Motion seeking order pursuant to *Federal Courts Rules*, SOR/98-106 (Rules), r. 8 to extend time for service, filing of statement of defence in proposed class proceeding until after decision on motion for certification rendered — Underlying claim alleging, *inter alia*, Crown breaching fiduciary obligations to plaintiffs, negligent in failing to fully, properly exploit class members' oil, gas rights on designated reserve lands — Matter of judicial discretion as to whether time for filing statement of defence should be extended until after determination of motion for certification of proposed class action — Motion to defer such filing addressed in only two Court decisions — However, usual practice in various provinces appearing to be that statement of defence not filed until after determination of certification motion — Mere fact of existence of convention as usual practice at Federal Court, other jurisdictions not determinative of whether filing of statement of defence to be deferred until after hearing of certification motion — Case management judge having to consider motion with view to just, most expeditious, least expensive determination of proceeding — Burden on defendant to persuade Court that delay should be permitted — Absence of evidentiary basis not helpful to defendant — Test for certification under Rules, r. 334.16 not concerning merits of action but rather its form — Here, neither party providing particularly compelling argument as to why filing of statement of defence should or should not be deferred until after certification motion — Court exercising discretion, extending time within which statement of defence to be filed — Motion granted.

POUNDMAKER CREE NATION V. CANADA (T-237-16, 2017 FC 447, Strickland J., order dated May 5, 2017, 22 pp.)