

PRACTICE

CLASS PROCEEDINGS

Motion by plaintiffs to discontinue class action in favour of prosecuting corresponding action in Court of Queens' Bench in Manitoba pursuant to *Federal Courts Rules*, SOR/98-106, r. 334.4 — Defendant Canadian Wheat Board opposing discontinuance, seeking order dismissing action — R. 334.3 should be read in light of r. 165, whereunder plaintiff entitled to discontinuance without consent of opposite party or Court, subject only to bearing any resulting costs — R. 334.3 modifying general approach in proposed or certified class proceeding by requiring approval of Court for any discontinuance — However, consent of opposite party not required — Class proceeding rule protecting interests of putative or actual members of class, not enhancing interests of defendants or respondents — This is consistent with *Campbell v. Canada (Attorney General)*, 2009 FC 30, [2009] 4 F.C.R. 211, where the sole focus of the Court was on protecting the interests of the class from substantial prejudice arising from a discontinuance — No asserted prejudice herein to proposed class arising from discontinuance — No compelling justification to deviate from usual approach to allow plaintiffs to discontinue proceeding without concurrence of defendant — Nothing in Rules, in absence of bad faith or misconduct, authorizing Court to impose dismissal in substitution for requested discontinuance — Plaintiffs' decision to pursue claim in Manitoba courts representing strategic step intended to avoid complication of lately made jurisdictional challenge in Federal Court — Proceeding therefore discontinued without costs — Motion allowed.

DENNIS V. CANADA (T-356-12, 2017 FC 1011, Barnes J., order dated November 9, 2017, 6 pp.)