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## ARMED FORCES

*Related subjects: Practice; Federal Court Jurisdiction; Crown; Veterans*

Motion for certification of claim against Canadian Armed Forces (CAF) as class proceeding pursuant to *Federal Courts Rules*, SOR/98-106, r. 334.16 — Plaintiff sought to represent class members: former and current members of CAF who experienced worsening symptoms of their mental health disorders during their service due to stigmatization inflicted by the CAF — Defendant opposed certification on basis: Court lacked jurisdiction because of available remedies within CAF and elsewhere; Plaintiff failed to demonstrate some basis in fact for four of the five elements of certification test under Rules, r. 334.16. — Defendant subsequently sought to amend Memorandum of Fact and Law to argue Plaintiff failed to meet all five elements of certification test — Issues — A. Whether Court should decline to exercise jurisdiction in this proposed class proceeding — B. Whether Defendant should be permitted to resile from an admission made in its Memorandum — C. Whether Plaintiff satisfied five conditions for certification under rule 334.16(1) — Analysis — A. Court could exercise jurisdiction to certify the class action proceeding — Plaintiff adduced sufficient evidence to provide some basis in fact that CAF's internal dispute resolution schemes ineffective in providing redress sought under class proceeding — Alleged lack of independence of internal process central to inadequacy of those schemes — Furthermore, CAF's internal processes limited to current CAF members, whereas class proceeding sought to provide relief for current and former members — As to whether *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50 (CLPA), s. 9 barred Plaintiff's and class member's claim because of availability of disability benefits from Veterans Affairs Canada (VAC), relief Plaintiff sought on behalf of class members went beyond what could be provided by VAC — While VAC may compensate class members for developing diagnosed mental health disorders during their service, it does not independently compensate for the separately pleaded harms like abuse, harassment, and discrimination — Therefore, CLPA, s. 9 did not apply to absolve Crown liability and prevent certification motion from moving forward — B. Defendant could not "simply resile" from formal position it expressed to Court and Plaintiff in its Memorandum — A formal admission cannot be withdrawn without leave of the Court or on consent — Here, there was no consent, and Defendant was not granted leave to resile from its admission — C. Plaintiff successfully pleaded the requisite elements under rule 334.16 — (1) He disclosed a reasonable cause of action in systemic negligence and under analogous provisions of *Civil Code of Québec*, CQLR, c. CCQ-1991 — He also successfully disclosed reasonable cause of action pursuant to *Canadian Charter of Rights and Freedoms*, s. 15(1), and analogous provisions under *Quebec Charter of Human Rights and Freedoms*, CQLR, c. C-12 — (2) He provided a sufficient basis in fact for the existence of an identifiable class — (3) The claims raised common questions of law or fact, i.e. question of Defendant's liability was common to each class member — (4) A class action proceeding was preferable procedure — In particular, Courts have held that class actions are preferred procedure for advancing claims brought against institutions focussing on systemic wrongs — (5) Plaintiff was an appropriate representative plaintiff — Motion to certify proceeding as class action granted.

THOMAS V. CANADA (ATTORNEY GENERAL) (T-791-21, 2024 FC 655, Zinn J., reasons for order dated May 9, 2024, 53 pp.)