

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20071113
Docket: 04-3706
Registry: Victoria

Between:

Frederick Bennett

Plaintiff

And:

Her Majesty the Queen in Right of the Province of British Columbia

Defendant

Before: The Honourable Madam Justice Dorgan

Oral Reasons

In Chambers
November 13, 2007

Counsel for the Plaintiff:

A. C. Peeling, M. Zigler,
C. Boies Parker

Counsel for Defendant:

J. Gareth Morley, T. Callan

Place of Trial/Hearing:

Victoria, B.C.

[1] **THE COURT:** What I have before me is the draft order agreed to among counsel regarding the appropriate Notice of Certification of Class Proceeding to be given to the approximately 27,000 people who form the class in the action as presently certified.

[2] The argument between counsel is only this: Should this notice be given to the class now? The plaintiff submits that it should be sent now; the defendant submits that it should not.

[3] The defendants submit that Mr. Bennett may or may not be in a position to represent members of the class, as it has been referred to in submissions, and to represent members of the subclass, as it has been referred to in submissions, because the action comprises potential plaintiffs some of whom were provincial government employees and some who were non-provincial government employees. It is accepted that all members of the class were to be paid from consolidated revenue under the authority of the ***Public Service Benefit Plans Act***. It is important to note that Mr. Bennett is a member of each of the class and the subclass, as those have been defined in submissions before me today.

[4] The defendant submits therefore, that it may apply to call into question whether Mr. Bennett is the appropriate representative of each of the class and subclasses as he is presently named in the action as certified. And further that when that application or if that application is brought, the court may direct that a second plaintiff representative of the class or subclass be added. It is submitted that if a second representative plaintiff is then named, it will be an expensive and time-

consuming proposition to then send a second notice. The fair, practical and expeditious way of handling this issue, in the submission of the defendant, is for the litigation to wait until such an application is brought and, it follows, that the next steps then be taken in the litigation.

[5] The plaintiff argues that Mr. Bennett is the named representative plaintiff of each of the class and subclass as this class action has been certified by order of Melvin J., an order that was upheld by the Court of Appeal; leave to the Supreme Court of Canada denied. The plaintiffs say proceed now -- give notice of the proceeding to the approximately 27,000 people who are affected and thereafter deal with whatever arises. The plaintiff submits that delaying the delivery of notice to the class until the litigation has moved even further down the road is not necessary and that to do so would be unfair.

[6] Counsel agree they need a direction from the Court. I am satisfied that the Notice as drafted should go out. The certification orders have been made. The action has been certified with Mr. Bennett named as the plaintiff. He is, after all, a member of both the class and the subclass. Those who are affected ought to be given notice of this three-year-old litigation. Whatever arises from giving notice or whatever steps in the litigation, such as the defendant's application for an order that an additional plaintiff be named, will be dealt with in due course. But it is time to get on with it, and getting on with it, in my view, is defined at this stage by giving notice to those affected. We will see what happens after that. That is my direction.

[7] MR. MORLEY: Thank you my lady.

[8] MS. BOIES PARKER: Thank you, my lady.



The Honourable Madam Justice Dorgan