CITATION: Templin v. HMQ Ontario, 2016 ONSC 7853
COURT FILE NO.: CV-16-547155-CP
DATE: 20161222

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: James Templin, Plaintiff

AND:

Her Majesty the Queen in Right of the Province of Ontario, Defendant

BEFORE: Justice Edward P. Belobaba

COUNSEL: *David Rosenfeld* and *Jody Brown* for the Plaintiff

Lisa Brost, Sonal Ghandi and *Connie Vernon* for the Defendant

HEARD: December 22, 2016

CONSENT CERTIFICATION

[1] I have long believed that certification motions are over-litigated and that, in many cases, defendants should simply consent to the certification. I therefore applaud the defendant for doing so in this case. The matter can now proceed directly to a determination on the merits, whether by way of summary judgment or trial.

[2] The point of this brief endorsement is simply to confirm that the requirements for certification as set out in s. 5(1) of the *Class Proceedings Act*[1] have been satisfied.

Brief background

[3] This proposed class action is another in a line of cases relating to the treatment of children in the care of the provincial government. The allegations and commonality of the issues in this case are similar to the institutional abuse actions that have been certified as class proceedings in *Slark v. Ontario*,[2] *Seed v. Ontario*,[3] *Cloud v. Canada*,[4] *Rumley v. British Columbia*[5] and *Cavanaugh v. Grenville Christian College*.[6]

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[1] S.O. 1992, c. 6.

[2] *Slark v. Ontario*, 2010 ONSC 1726.

[4] The focus of this proposed class action is the Children's Psychiatric Research Institute (CPRI) in London, Ontario, which began operation in 1961. Over the course of the proposed class period, 1963 to 2011, CPRI operated a residential program that housed children for time periods ranging from one month to five years. The proposed class in this case consists of the 6200 children who resided at CPRI, and who were thus under the direct care and control of the defendant, between 1963 and 2011.

Certification requirements satisfied

[5] Each of the requirements for certification set out in s. 5(1) of the CPA is satisfied.

[6] The action alleges negligence and breach of fiduciary duty in the operation and management of an institution operated directly by the provincial Crown. These are the same causes of action that were approved by the Court of Appeal for Ontario in *Cloud*,[7] and by this court in *Slark*.[8]

[7] The proposed class consists of:

> All persons, who were alive as of February 22, 2014, who were inpatients of and resided at CPRI during the time period from September 1, 1963, until July 1, 2011.

[8] The start date of the class definition is the date the *Proceedings Against the Crown Act* came into force (September 1, 1963), and the end date is the date on which CPRI was delisted as a Schedule 1 Institution (July 1, 2011). A similar class definition was certified in *Rumley*, *Cloud*, *Seed,* and *Cavanaugh* and formed the basis of consent certifications in other Schedule 1 facility cases.[9]

[9] I am satisfied that there is some basis in fact for both the existence of the proposed common issues and their commonality. Here, as in most institutional settings, especially those housing thousands of children, the operation of the institution is based on common policies and procedures. The plaintiff has provided ample evidence of such

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[3] *Seed v. Ontario*, 2012 ONSC 2681.

[4] *Cloud v. Canada (Attorney General),* (2004), 73 O.R. (3d) 401 (C.A.).

[5] *Rumley v. British Columbia,* [2001] 3 S.C.R. 184.

[6] *Cavanagh v. Grenville Christian College*, 2012 ONSC 2995 and 2014 ONSC 290 (Div. Ct.).

[7] *Cloud, supra,* note 4, at paras. 42-43.

[8] *Slark, supra,* note 2, at paras. 136 and 150.

[9] Consent certification orders were achieved in three similar actions: *McKillop v. Ontario*, Certification Order dated August 19, 2011, *Bechard v. Ontario* , Certification Order dated August 19, 2011, and *Clegg v. Ontario*, Certification Order dated August 20, 2015.

policies and procedures. I also note that the proposed common issues (set out below) are the same or similar to those that were certified in contested class actions concerning residential facilities in *Rumley*, *Cloud, Slark*, *Seed* and *Cavanaugh*:

> (1) By its operation or management of CPRI did the defendant breach a duty of care it owed to the Class to protect them from actionable sexual, physical or mental harm?
>
> (2) By its operation or management of CPRI, did the defendant breach a fiduciary duty owed to the Class to protect them from actionable sexual, physical or mental harm?
>
> (3) If the answer to either of common issues (1) or (2) is "yes", can the Court make an aggregate assessment of the damages suffered by all class members as part of the common issues trial?
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> (4) If the answer to either of common issues (1) or (2) is "yes", was the defendant guilty of conduct that justifies an award of punitive damages?; and
>
> (5) If the answer to common issue (4) is "yes", what amount of punitive damages ought to be awarded?

[10] I am also satisfied that a class action is the preferable procedure. The courts in *Rumley*, *Cloud* and *Slark*, and *Cavanaugh* held, in essence, that a class action was preferable because the class consisted of a vulnerable group that in all likelihood would not have the resources themselves to pursue civil litigation and would have no other avenue to obtain access to the courts. The same reasoning applies here.

[11] Finally, there is ample evidence that the proposed representative plaintiff is adequate and appropriate. James Templin resided at CPRI in 1982-83, when he was 15 years old. He has been involved with this case since its inception and is prepared to represent the interests of the class. There is no suggestion that Mr. Templin would not be a suitable representative plaintiff.

[12] In sum, the certification requirements are satisfied.

Disposition

[13] The proposed class action is certified on consent as a class proceeding.

[14] Counsel shall prepare an Order in the form contemplated by s. 8 of the CPA.

[15] If the parties are unable to agree on the costs, I would be pleased to receive brief written submissions from the plaintiffs within 14 days and from the defendants within 10 days thereafter. I refer counsel to my discussion of the costs consequences of a consent certification in *Locking v. McCowan,* 2016 ONSC 7854 at paras. 7 to 10.

[16] Again, kudos to the defendant for recognizing that not every certification motion needs to be contested.

Belobaba J.

DATE: December 22, 2016