



[2022] 1 F.C.R. D-14

PRACTICE

CLASS PROCEEDINGS

Motion to certify underlying action as class action on behalf of estimated 10,000 veterans eligible for Supplementary Retirement Benefit in 2019, who may not have received this benefit or who may have received this benefit in lower amount than plaintiff claims they should have received due to alleged conduct of defendant — Plaintiff proposed representative plaintiff, class member — Medically released from Canadian Armed Forces in 1996 — Alleging systemic negligence (alternatively, negligent misrepresentation), breach of fiduciary duty, unjust enrichment by Canada, more particularly Veterans Affairs Canada (VAC) — Plaintiff, other veterans provided affidavits attesting that, due to their service-related injuries, they struggled to re-establish themselves in civilian life — Affiants described their experience seeking, receiving information from VAC about Earning Loss Benefit (ELB), Supplementary Retirement Benefit (SRB) — Plaintiff alleging, *inter alia*, that veterans have not been sufficiently supported — Claiming VAC consistently wrongly advised proposed class members about their eligibility for benefits, failed to inform proposed class members how SRB calculated or that SRB depended upon ELB eligibility, approval — Arguing that claim of systemic negligence reasonable cause of action — Defendant submitting plaintiff's claim not meeting criteria for certification as class action, that his claims for breach of fiduciary duty, unjust enrichment are untenable — Whether plaintiff has established criteria for certification of action as class action, i.e. (1) whether pleadings disclosing reasonable cause of action; (2) whether some basis in fact established for all other requirements for certification — To determine whether pleadings disclose reasonable cause of action, issue whether plain, obvious that pleadings disclose no reasonable cause of action, i.e. that there is no reasonable prospect of success — Plaintiff's claim for systemic negligence having no reasonable prospect of success, should be struck — Plaintiff not pointing to facts in support of assertion that VAC lacked adequate management or operations procedures — Whether plain, obvious that cause of action in negligent misrepresentation having no reasonable prospect of success — Duty of care found in *Canada (Attorney General) v. Jost*, 2020 FCA 212 not analogous, should not be extended to administrators of other social benefit schemes — Pensioners who have paid into pension plan over many years, but experience delays in its receipt, differ from proposed class members who may or may not be eligible for various benefits depending on specific eligibility criteria — However, not plain, obvious that no duty of care owed by VAC to veterans falling within proposed class — Facts support finding relationship of proximity between proposed class members, all of whom were on ELB, had VAC case manager or other regular contact with VAC representatives — Therefore, claim for negligent misrepresentation is a reasonable cause of action and can proceed — Whether claim for breach of fiduciary duty is reasonable cause of action — Delivery of pension benefits not at issue, claims against VAC not with respect to any role it may have as pension plan administrator, but rather as administrator of various social benefits with specific eligibility criteria — In present case, no undertaking in statute to put interests of proposed class members above those of other veterans — Alleged vulnerability to VAC's control not sufficient to establish fiduciary duty — Plaintiff's cause of action for breach of fiduciary duty therefore having no reasonable prospect of success — Plaintiff's cause of action for unjust enrichment also having no reasonable prospect of success — Plaintiff not pointing to any statutory provision leading to Canada's alleged unjust enrichment — Whether plaintiff establishing "some basis in fact" for remaining certification requirements — Plaintiff meeting burden of defining proposed class in manner reflecting criteria established in case law — Common questions relating only to cause of action in

negligent misrepresentation — Defendant not providing any viable or preferable alternatives to class proceeding — In context of action as whole, in comparison with other suggested alternatives, and in consideration of cost-benefits and practicalities, class action preferable procedure — Plaintiff appropriate representative plaintiff — Meeting criteria set out in *Federal Courts Rules*, SOR/98-106, r. 334.16(1)(e) — Motion granted, action certified as class proceeding.

BRUYEA V. CANADA (T-1106-20, 2022 FC 1409, Kane J., reasons for order dated October 17, 2022, 83 pp.)