

Carol Anderson, Allen Webber and Joyce Webber (plaintiffs) v. Attorney General of Canada  
(defendant) and Government of Newfoundland and Labrador (third party)  
(200701T4955 CCP)

Brought under the Class Actions Act, S.N.L. 2001 c. C-18.1  
Toby Obed, William Adams and Martha Blake (plaintiffs) v. Attorney General of Canada  
(defendant) (2007 01T 5423)

Selma Boasa and Rita Chido (plaintiffs) v. Attorney General of Canada (defendant) (2008 01T  
0844)

Sarah Asivak and Delano Flowers (plaintiffs) v. Attorney General of Canada (defendant)  
(2008 01T 0845)

Emily Dickman and Dominic Dickman (plaintiffs) v. Attorney General of Canada (defendant)  
(2008 01T 0846; 2012 NLTD(G) 190)

**Indexed As: Anderson et al. v. Canada (Attorney General)**

Newfoundland and Labrador Supreme Court  
Trial Division (General)  
Butler, J.  
December 19, 2012.

**Summary:**

The Attorney General of Canada applied under rules 30.08 and 30.11 for an order compelling two representative plaintiffs to answer questions on discovery regarding their experiences at identified residential schools. The plaintiffs' counsel relied on ss. 12 and 18(3) of the Class Actions Act, in support of the position that discoveries prior to the common issues trial had to be confined to the common issues certified.

The Newfoundland and Labrador Supreme Court, Trial Division (General), held that there was no firm rule restricting discoveries to the matters relevant only to the stage of the class action proceeding. However, the court held that in this case the current discoveries should be confined to matters relevant to the common issues. Canada was entitled to pose on discovery to the representative plaintiffs all questions regarding their experiences at the schools but related to the broad common issues of whether a duty was owed by Canada to the students of the residential schools, and any alleged breach of that duty.

**Practice - Topic 5**

General principles and definitions - Nature and interpretation of practice rules - [See first **Practice - Topic 210.1**].

**Practice - Topic 210.1**

Persons who can sue and be sued - Individuals and corporations - Status or standing - Class or representative actions - Procedure - General (incl. venue, discovery, etc.) - The Attorney

General of Canada applied under rules 30.08 and 30.11 for an order compelling two representative plaintiffs to answer questions on discovery - The Newfoundland and Labrador Supreme Court, Trial Division (General), stated that "While Newfoundland and Labrador has not incorporated the proportionality principle in its Rules, I conclude that the principle nevertheless applies to procedural matters in this jurisdiction. ... I agree that proportionality is a relevant issue to the breadth and scope of the discovery process, to be applied with the objective of promoting and not frustrating the underlying purposes and objectives of the Rules and the class actions legislation. The time and types of processes involved must be proportionate to the expense and convenience of the parties, nature of the issues, nature of the proceedings, amount of money involved, time reasonably necessary to resolve the issue, complexity of the claims, and overall costs of the litigation" - See paragraphs 19 to 20.

### **Practice - Topic 210.1**

Persons who can sue and be sued - Individuals and corporations - Status or standing - Class or representative actions - Procedure - General (incl. venue, discovery, etc.) - The Attorney General of Canada applied under rules 30.08 and 30.11 for an order compelling two representative plaintiffs to answer questions on discovery regarding their experiences at identified residential schools - The plaintiffs' counsel relied on ss. 12 and 18(3) of the Class Actions Act, in support of the position that discoveries prior to the common issues trial had to be confined to the common issues certified - The Newfoundland and Labrador Supreme Court, Trial Division (General), held that neither s. 12 nor s. 18 restricted discovery in the fashion suggested by plaintiffs' counsel - There was no firm rule restricting discoveries to the matters relevant only to the stage of the class action proceeding - However, the court noted that the plaintiffs' counsel had filed an application for a preliminary determination of whether a fiduciary duty existed between the parties - That was a relevant consideration on the question of whether the court should limit the scope of discoveries at this stage of the proceeding to matters relevant to the common issues - The court concluded that the current discoveries should be confined to matters relevant to the common issues - Canada was entitled to pose to the representative plaintiffs all questions regarding their experiences at the schools but related to the broad common issues of whether a duty was owed by Canada to the students of the residential schools, and any alleged breach of that duty.

### **Practice - Topic 4153**

Discovery - General principles - Interpretation of discovery rules - [See first **Practice - Topic 210.1**].

### **Cases Noticed:**

Canadian Imperial Bank of Commerce et al. v. Deloitte & Touche et al., [2008] O.T.C. Uned. H44; 47 C.B.R.(5th) 39 (Sup. Ct.), reld to. [para. 4].

Ramdath et al. v. Brown (George) College of Applied Arts and Technology, [2012] O.T.C. Uned. 2747; 2012 ONSC 2747, reld to. [para. 17].

Szeto v. Dwyer et al. (2010), 297 Nfld. & P.E.I.R. 311; 918 A.P.R. 311; 2010 NLCA 36, reld to. [para. 19].

Kent v. Kent (2010), 301 Nfld. & P.E.I.R. 152; 932 A.P.R. 152; 2010 NLCA 53, reld to. [para. 19].

Seascope 2000 Inc. v. Canada (Attorney General), [2012] Nfld. & P.E.I.R. TBEEd. DE.021;  
2012 NLTD(G) 185, refd to. [para. 19].

**Statutes Noticed:**

Class Actions Act, S.N.L. 2001, c. C-18.1, sect. 12, sect. 18(3) [para. 2].

Rules of Court (Nfld. & Lab.), Supreme Court Rules, rule 30.08, rule 30.11 [para. 1].

Supreme Court Rules (Nfld. & Lab.) - see Rules of Court (Nfld. & Lab.), Supreme Court Rules.

**Counsel:**

Chesley F. Crosbie, Q.C., Kirk M. Baert and Celeste Poltak, for the plaintiffs;

Jonathan D.N. Tarlton, Mark S. Freeman and Melissa A. Grant, for the Attorney General of  
Canada;

Rolf Pritchard, Q.C., for government of Newfoundland and Labrador.

This application was heard on December 5, 2012, at St. John's, N.L., before Butler, J., of the Newfoundland and Labrador Supreme Court, Trial Division (General), who delivered the following decision on December 19, 2012.

Order accordingly.

Editor: Angela E. McKay