



THE COURT OF APPEAL FOR SASKATCHEWAN

BEFORE: TALLIS J.A. IN CHAMBERS

MONSANTO CANADA INC.

APPLICANT/APPELLANT

- and -

LARRY HOFFMAN, L.B. HOFFMAN FARMS INC. and DALE BEAUDOIN

RESPONDENTS

- and -

AVENTIS CROPSCIENCE CANADA HOLDING INC.

RESPONDENT

Docket: 530

AVENTIS CROPSCIENCE CANADA HOLDING INC.

APPLICANT/APPELLANT

- and -

LARRY HOFFMAN, L.B. HOFFMAN FARMS INC. and DALE BEAUDOIN

RESPONDENTS

- and -

MONSANTO CANADA INC.

RESPONDENT

COUNSEL:

Mr. Gordon J. Kuski, Q.C. for Monsanto Canada Inc.
Mr. Terry J. Zakreski for Larry Hoffman, L.B. Hoffman Farms Inc. and
Dale Beaudoin
Mr. Jason W. Mohrbutter for Aventis Cropscience Canada Holding Inc.

DISPOSITION:

On Appeal From:	Q.B. 67, 2002, Judicial Centre of Saskatoon
Application Heard:	June 26, 2002
Application Allowed:	June 26, 2002 (orally)
Written Reasons:	June 26, 2002
Reasons By:	The Honourable Mr. Justice Tallis

TALLIS J.A. (Orally)

[1] The applicants Monsanto and Aventis seek leave to appeal an order requiring them to file their statements of defence prior to a determination of the “certification” application in this “class” action.

[2] The principles governing these conjoined applications for leave to appeal under s. 8 of *The Court of Appeal Act, 2000*, S.S. 2000, c. C-42.1 and Rule 49 are not in dispute. The only issue is whether the applicants have met the criteria for leave articulated in the controlling authorities in this Court. I find that they have and accordingly grant each proposed appellant leave to appeal from the decision rendered in Queen’s Bench chambers.

[3] *The Class Actions Act*, S.S. 2001, c. C-12.01 is a relatively recent piece of legislation having come into force on January 1, 2002. The point raised on this proposed appeal is one of significance to the practice in this field. Since the issue has not been before this Court, I find that it is desirable to have this issue of practice settled in Saskatchewan particularly in light of the divergent views in other Canadian jurisdictions.

[4] On the face of it, this order of the chambers judge involves directions by a case management judge concerning pleadings. In ordinary circumstances the standard of review governing discretionary orders would militate against the grant of leave. However, a class action is not the usual type of civil litigation that confronts the Courts of this province and in my opinion it is desirable to have a division of this Court pass upon the issue raised by the appellants.

[5] The point raised is of significance to the action itself. This is obvious when one examines and considers the potential scope of this action.

[6] The point of procedure raised is not frivolous and I stress this point because of Mr. Zakreski's expressed concern that every order or direction given by the case management judge might be subject to a leave application. In this case the applicants have advanced an argument with sufficient merit to warrant consideration by this Court.

[7] This appeal will not unduly hinder the progress of this action. It can be expedited and with that in mind I give the following directions:

(1) In this case the appellants only need to file a joint appeal book. This joint appeal book and their factums are to be filed on or before July 19, 2002.

(2) The respondents' factum shall be filed within 15 days from service and filing of the appellants' appeal book and factums.

(3) The registrar is directed to fix a date for the hearing of this appeal at the Saskatoon sittings of the Court of Appeal to be held in September of this year.

[8] Furthermore, this appeal does not operate to stay any application for certification by the respondents (plaintiffs) if they are so advised to proceed. In the event that they do decide to proceed with the certification application before the date scheduled for hearing of the appeal, this appeal may become moot. In the circumstances I would expect counsel to so advise the Registrar of the Court.

[9] The costs of these applications are reserved for determination by the division of the Court hearing the appeals.