

Hoffman et al. v. Monsanto Canada Inc. et al.
Q.B. 67 of 2002

FIAT

Mr. Kuski, for the defendant Monsanto, raises objections to those portions of the third Supplementary Affidavit of Larry Hoffman that relate to the proposed evidence of Dr. Mae Wan Ho. I have received written submissions from Mr. Kuski and from Mr. Zakreski, for the plaintiffs, in relation to this issue, and the parties have indicated that they are content that I resolve the issue on the basis of those submissions.

Mr. Kuski takes the position that, in reiterating the substance of the affidavit of Dr. Ho which was struck out in its entirety by my earlier fiat, and by appending Dr. Ho's report, the impugned affidavit violates the letter or the spirit of my earlier ruling. He submits that these portions of the Hoffman affidavit should be struck.

It is my view that the affidavit in question comports with my suggestion that, in place of the Ho affidavit, the plaintiffs file an affidavit indicating that the plaintiffs would propose to call Dr. Ho as a witness, the nature of her qualifications, and a summary of her opinion evidence. The purpose of this evidence, for the certification hearing, is not to put in issue the contents of the Ho opinion or report, but to give the court a full picture of the nature of the common issues sought to be certified and the kind of evidence that will be required. The latter point is relevant to the question of whether a class action is the preferable procedure for resolution of the issues.

Accordingly, the application to strike these portions of the third Supplementary Affidavit of Larry Hoffman is dismissed.



G. A. Smith, J.
August 7, 2003