COURT FILE NO.: 02-CV-234964 CP
DATE: 20050516

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	
MATTHEW VEZINA, EILEEN MORRISON, KEN WILSON, LINDA SILMER AND ATTILA NAGY	*Linda Rothstein*, *Odette Soriano*, *Kirk Baert* and *Jonathan Ptak*, for the Plaintiffs
Plaintiffs	
- and -	
LOBLAW COMPANIES LIMITED AND LOBLAWS SUPERMARKETS LIMITED	*Steven Stieber* and *Michelle Brodey*, for the Defendants
Defendants	
	HEARD: April 27, 2005

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992

REASONS FOR DECISION

CULLITY J.:

[1] There were two motions - that of the plaintiffs for certification of the action under the *Class Proceedings Act, 1992* ("CPA") and a motion by the defendants ("Loblaws") for partial summary judgment. Loblaws has consented to certification on the basis that, as "a matter of process", the provisions of the CPA are appropriate. If the proceedings are certified and summary judgment is granted, it seems likely that the claims of the great majority of the members of the putative class would be dismissed.

The facts

[2] The proceedings were commenced on August 26, 2002 after the Public Health Department of the City of Toronto ("TPH") released information that an employee of a Loblaws supermarket at 3671 Dundas Street West had contracted Hepatitis A. The employee, whose

identity has not been disclosed, had worked in the section of the store in which fresh fruit and vegetables ("Produce") were prepared, displayed and sold. The infection was diagnosed on August 15, 2002 during a period in which the employee was on vacation. This period commenced on August 3, symptoms of the disease appeared on August 5 and, on August 15, after he had tested positive, the laboratory that conducted the test notified TPH.

[3] On August 16, 2002, TPH conducted a media briefing and issued a press release informing the public that the case of Hepatitis A had been identified and that members of the public who had consumed Produce from the store may have been exposed to the Hepatitis A virus. Anyone who had consumed such Produce purchased since July 19, 2002 was encouraged to attend one of a series of public vaccination clinics to be held in the area in which the store was located. It is estimated that, commencing on August 18, 2002, approximately 19,200 individuals were vaccinated at these clinics, or elsewhere in response to the information and recommendations released by TPH.

[4] By August 16, 2002 it was determined that the infected employee was no longer infectious and he was cleared to return to work. He did so on August 23.

The Action

[5] The plaintiffs claim against Loblaws for damages in negligence and breach of contract on behalf of themselves and a class consisting of five groups ("Groups") that, in general terms, comprise:

> (a) persons, whether shoppers at the store or otherwise, who handled Produce and contracted Hepatitis A;
>
> (b) persons who contracted Hepatitis A from a person in Group (a);
>
> (c) persons who contracted Hepatitis A from a person in Group (b);
>
> (d) persons who handled or consumed Produce, or who came in contact with a person who did so, or with some other person described above and who were vaccinated or received other specified treatment or advice from a physician with respect to the risk of contracting Hepatitis A from the Produce; and
>
> (e) family members with derivative claims under the *Family Law Act* (Ontario) because of their relationship with other class members.

[6] Of the proposed representative plaintiffs, Eileen Morrison and Ken Wilson are alleged to fall within Group (a) despite being vaccinated at a TPH clinic. Each of them was subsequently

diagnosed as having contracted Hepatitis A. The record contains no evidence of any other persons who have contracted the virus and who would fall within either that Group or Groups (b) or (c).

[7] Matthew Vezina, Linda Silmer and Attila Nagy are said to fall within Group (d).

[8] Loblaws is alleged to have been negligent in exposing class members to the Hepatitis A virus when it knew or ought to have known that harm could result. The same allegation is made against presently unascertained employees of Loblaws for whom it is alleged Loblaws is vicariously liable. Particulars of Loblaws' alleged breaches of the duty of care owed to putative class members include a failure to exercise the skill, knowledge and judgment of an ordinary and prudent fresh food retailer, a failure to meet minimum standards of practice for preventing transmission of infectious diseases in a retail food setting, a failure to ensure that employees who handled Produce were free from infectious diseases, a failure to comply with the standards imposed by various governmental authorities, a failure to employ, properly train and supervise competent staff on proper, safe and adequate food-handling techniques and a failure to warn its customers, in a timely fashion, of a potential exposure to Hepatitis A.

[9] The claim for breach of contract is premised on the existence of contracts between Loblaws and class members that included terms that Produce sold to them would be fit and safe for human consumption and that Loblaws and its employees would exercise reasonable skill and care in providing food products to avoid exposing customers to diseases such as Hepatitis A.

[10] All of these allegations are denied by Loblaws which has, among other defences, pleaded that, during the period July 19 to August 16, 2002, it had no knowledge, or any reason for suspecting, that one of its employees had contracted Hepatitis A, that it was not in breach of any regulatory requirements and had acted diligently in accordance with the standards of a reasonably prudent supermarket operating in Ontario, that it co-operated fully with TPH and complied with its directives and that any damages suffered by class members were not caused or contributed to by any breach of duty or breach of contract committed by it or anyone for whom it may be found responsible at law. Specifically, it pleads that any implied term of a contract that fresh Produce sold in the store was fit for the purpose for consumption was conditioned on it first being thoroughly washed. In the alternative, contributory negligence is pleaded where this was not done.

[11] The harm for which damages are claimed in respect of class members who contracted Hepatitis A includes pain and suffering, nervous shock and mental distress, loss of income, impairment of earning ability, future care costs, medical costs, loss of amenities and enjoyment of life and out-of-pocket expenses. For those who did not contract the disease, damages are claimed for nervous shock and mental distress, fear for their health loss of enjoyment of life and out-of-pocket expenses. There was also a claim for punitive, exemplary or aggravated damages of $5 million.

[12] I will deal first with the motion to certify the proceedings under the CPA.

Certification

[13] The defendants' consent to certification does not relieve the plaintiffs of the burden of demonstrating that the requirements of section 5 (1) of the CPA are satisfied. The rights and interests of the class are involved. If the action is tried, or dismissed against some members of the class on the motion for summary judgment, it will be *res judicata* insofar as the members affected by the judgment are concerned.

[14] For the purpose of section 5 (1) (a), I must assume that the facts alleged in the statement of claim will be proven. With one qualification, I accept that they disclose causes of action in negligence and breach of contract for the purpose of section 5 (1) (a). The existence of the defendants' intention to contest the allegations of material facts from which the causes of action arise is not to the point.

[15] The qualification is that, although the relevant paragraphs of the statement of claim that plead breaches of contract are not framed as clearly as they might be, they appear to allege that a contractual relationship existed between Loblaws and all members of the class. In my opinion, no material facts are pleaded that would support this legal conclusion in respect of class members other than customers of Loblaws who purchased Produce from the store in question or handled it there. In consequence, causes of action for breaches of contract are disclosed only for such customers. As already mentioned, these causes of action are based on allegations that it was an implied term of the contracts that Loblaws, and its employees, would exercise reasonable care to avoid infecting, or exposing, customers to potentially infectious diseases and that the produce sold to them would be fit and safe for human consumption. I do not think it is plain and obvious that the existence, and the breach, of such terms could not be established at a trial.

[16] The claim for punitive damages is, in my opinion, adequately pleaded. As well as general allegations that the defendants' conduct was "high-handed and arrogant" and demonstrated a "wanton and callous disregard" for customer safety, the relevant paragraphs of the statement of claim plead that:

> ... the conduct of the defendants, which involved the preparation and handling of food products, such as the Produce, for human consumption, where such consumption may occur without further cooking of the Produce, created a significant public danger, contrary to the provisions of the *Health Protection and Promotion Act* and, as a result, warrants the imposition of punitive, aggravated or exemplary damages to ensure future conduct will be in accordance with proper standards.

[17] I do not think it is plain and obvious that, if these, and the other, allegations in the statement of claim are proven, the "independent actionable wrong" required by Binnie J. in *Whiten v. Pilot Insurance Co*, [2002] S.C.J. No. 19 (S.C.C.), at paragraphs 84 - 92, would not be found to exist.

[18] The class, as defined in paragraph 5 of the amended amended statement of claim - and summarized above in these reasons - satisfies the requirements of section 5 (1) (b) of the CPA. There is some overlapping between the members of Group (d) in the summary with those of the preceding Groups. I do not see why this should give rise to difficulties but it could be remedied simply by limiting Group (d) to persons other than class members who fall within the preceding three Groups in the summary.

[19] The common issues proposed by the plaintiffs, and accepted by Loblaws, are as follows:

> (a) Were the defendants negligent in exposing the Class members to the Hepatitis A virus and, if so, when and how?
>
> (b) Did the defendants owe a duty of care to the Class members?
>
> (c) Are the defendants vicariously liable for acts and/or omissions of the infected employee and/or any other employees and/or agents?
>
> (d) Did the defendants breach the standard of conduct/care expected of them, and if so, when and how?
>
> (e) Did the defendants breach a statutory warranty to Class members who purchased its food products, pursuant to the *Sale of Goods Act* and/or the *Food and Drugs Act*, and/or the *Health Protection and Promotion Act?*
>
> (f) What were the implied terms of any contract that the defendants may have had with their customers?
>
> (g) Did the defendants breach a term of an implied contract they had with the Class members and, if so, when and how?
>
> (h) Should the defendants pay punitive and/or exemplary damages and if so, in what amount and to whom?

[20] In accordance with my comments on the causes of action disclosed in the pleading, proposed common issue (g) must be confined to customers of Loblaws who purchased or handled Produce in the store. There is also a question with respect to a proposed aggregate assessment of damages to which I will refer. The proposed common issues are, in my opinion, otherwise acceptable.

[21] Given the nature of the class as pleaded, and the composition and potential size of the class, I am in agreement with counsel that, if the claims are to be litigated, the procedures under the CPA are eminently well-suited to govern the conduct of the action. Access to justice would be achieved for members of the class who might otherwise find it prohibitively expensive to commence individual actions; for other class members, it would be clearly in the interests of

judicial economy to avoid repetitive proceedings; and, if the allegations are proven, this may well tend to achieve behavioural modification by the defendants and others involved in the retail sale of food products.

[22] There is evidence that, of the five individuals proposed as representative plaintiffs, two of them purchased, and consumed, Produce and became infected with Hepatitis A and two others purchased and consumed Produce, were allegedly exposed to the risk of becoming infected and were subsequently vaccinated or in receipt of medical treatment. The fifth, Mr Nagy, consumed Produce purchased by others and was subsequently vaccinated at a TPH clinic. All claim to have suffered harm as pleaded. They are, in my opinion, sufficiently representative of the diverse Groups within the class and there was nothing to suggest at this stage that there are conflicts of interest, or that any are likely to emerge. They have retained experienced class counsel, one of whom has testified that the proposed representatives understand the nature of the proceedings and are capable of providing instructions as required. Ms Silmer, has sworn an affidavit to this effect. Their suitability as representative plaintiffs has not been challenged and I find that they satisfy the requirements of section 5 (1) (e) (i) and (iii) of the CPA in that they would fairly and adequately represent the interests of the class and do not have conflicts of interest with other class members in respect of the common issues.

[23] The litigation plan presented on behalf of the representative plaintiffs addresses in some detail the proposed methods of communicating with, and providing notice of certification and of the right to opt out, to class members; the stages of the proceedings prior to the trial of the common issues; the possibility of mediation and other forms of non-binding ADR; the identification of class members; the assessment of damages; and the distribution of any damages recovered.

[24] A common damages assessment for class members who did not contract Hepatitis A is proposed so that individual issues with respect to the computation of damages would arise only with respect to the remaining members of the class. It is proposed that the damages to be awarded to such remaining members would be determined by arbitration. The evidence on this motion suggests that they are unlikely to be numerous. Whether an aggregate assessment of damages is to be made for the uninfected members would be in the discretion of the trial judge pursuant to section 24 of the CPA and will not be determined by the plaintiffs or by an agreement between the parties. For that reason, the possibility of such an assessment in class proceedings is most often formulated as a common issue for the class, or a subclass of members. Whether or not this is strictly necessary, I believe it is good practice as it would inform the trial judge at the outset of a matter that may need to be determined at the trial.

[25] As the question of an aggregate assessment is one for the trial judge to decide, it is not the function of a motions judge to determine whether an aggregate award would be made. It is, I believe, sufficient at this stage if there is a reasonable likelihood that the preconditions in section 24 (1) of the CPA would be satisfied and an aggregate assessment made if the plaintiffs are otherwise successful at a trial for common issues. I believe that is the case here. The appropriate methods of distributing any such award are, again, for the trial judge to determine pursuant to section 26.

[26] For the above reasons, I am in agreement with counsels' submissions that the statutory requirements have been satisfied. Accordingly, there will be an order certifying the proceedings.

[27] The proposed form of the notice of certification to be sent to class members did not receive close attention at the hearing but it appears to be satisfactory. I am, however, not at present persuaded that the methods of dissemination suggested by counsel are adequate. This matter is to be considered at a case conference at which counsel may make submissions on it, amendments to the litigation plan in accordance with the above comments and any further submissions they may have on the form of the notice and the terms of the draft order.

[28] The plaintiffs should, in my judgment, be awarded costs of the motion in accordance with the general principle confirmed in cases such as *Lau v. Bayview Landmark Inc.*, [1999] O. J. No. 4385 (S.C.J.). I believe such an order is an appropriate exercise of my discretion notwithstanding the defendants' consent to certification. The action was commenced by notice of action issued on August 26, 2002. The certification record was served in July, 2004 and the consent was provided shortly before the motion was scheduled to be heard in March of this year. To the extent that costs were saved by virtue of the consent, this will be reflected in the amount awarded but I see no reason why the plaintiffs should be denied their costs simply because, having prepared for a contested proceeding, they were subsequently informed that the defendants would support the motion.

[29] The plaintiffs are to file with the court and provide the defendants with their written submissions on costs and supporting material within 14 days of the release of these reasons. The defendants will have a further 10 days to respond. Any reply submissions of the plaintiffs are to be served and filed within a further five days and, if either party wishes to make oral submissions, an appointment for the purpose is then to be arranged.

Summary judgment

[30] The defendants moved for judgment dismissing the claims of all class members ("uninfected class members") other than those who contracted Hepatitis A and the persons with family law claims derived from such infected members. In general summary, the grounds for the motion are that there are no genuine issues for trial with respect to the following allegations on which the plaintiffs' case depends:

> (a) that Loblaws committed breaches of duties of care owed by it, or by the infected employee;
>
> (b) that a causal connection existed between any such breaches that may be found to have occurred and any damage suffered by uninfected class members as a consequence of the media releases by TPH on August 16, 2002 and subsequently; and
>
> (c) that uninfected persons could prove that Produce they purchased was contaminated and unfit for consumption.

[31] On the first ground, Loblaws filed evidence of Dr Paul Tepperman - Corporate Medical Director for Loblaws and its affiliated companies - and of Dr Jay Keystone whose affidavit was filed as expert evidence relating to internal medicine. In addition, its counsel examined Dr Barbara Yaffe, the Director of Communicable Disease Control and Assistant Medical Officer of Health for TPH. The following is descriptive of parts of their evidence on which Loblaws counsel relied in their factum:

> 1. Details of extensive food safety procedures followed by Loblaws, and training sessions and programmes conducted for employees, to ensure the safety and quality of their produce;
>
> 2. Ministry approval and supervision of certain of such programmes;
>
> 3. Completion by store and department managers of City of Toronto food handler examinations.
>
> 4. The undisputed fact that the store in question underwent, and passed, five health inspections by TPH personnel between May 8, 2001 and August 18, 2002 and Dr Yaffe's evidence that she had no concerns relating to Loblaws' food safety and handling procedures and the training it provided to its employees.
>
> 5. Dr Yaffe's evidence that TPH does not require, or recommend, screening of employees for Hepatitis A, their vaccination against it or the wearing of gloves.
>
> 6. Dr Yaffe's evidence that food is a very unusual source of Hepatitis A infection in Toronto and that fresh fruits and vegetables should be washed before being eaten.
>
> 7. Dr Yaffe's opinion that Loblaws' hand washing procedures are consistent with TPH recommendations for food handlers.
>
> 8. Dr Yaffe's evidence that the infected employee appeared to have had no symptoms of Hepatitis A before he went on vacation on August 3, 2002.
>
> 9. Dr Yaffe's evidence that the risk posed by the infected employee for secondary infections was very low and that only two potential cases had been identified by TPA.
>
> 10. Dr Yaffe's evidence that this is the first documented case in Toronto of a potential Hepatitis A secondary transfer from a food retailer.

> 11. Evidence that Loblaws was fully co-operative and complied with all TPH recommendations and directives throughout the investigation and that it took steps to inform customers, offer refunds, and reimburse some medical expenses.
>
> 12. Dr Yaffe's belief that there was nothing that Loblaws could have done to avoid the occurrence'.

[32] In response, the plaintiffs filed an affidavit of Dr Keith Warriner, a food microbiologist in the Department of Food Science at the University of Guelph. Dr Warriner's research is centred on food safety and the reduction of microbial hazards in food production and processing. He has been retained by commercial food companies as a consultant on food safety practices, including food handling procedures, and was accepted as an expert in a somewhat similar case involving the transfer of the Hepatitis A virus in contaminated foods sold in a supermarket in British Columbia.

[33] Dr Warriner was critical of the adequacy of the safety measures adopted by Loblaws and, in his opinion, it failed to take all the proper steps of an ordinary and prudent food retailer under the circumstances. He disputed the adequacy of the hand washing instructions given to employees and the view that neither vaccination of employees, nor the use of gloves, were reasonable safety precautions. He pointed to the lack of evidence that training sessions had ever been conducted at the store.

[34] The plaintiffs also rely on:

> (a) Dr Tepperman's ignorance of the safety measures followed in the store during the relevant period and the extent, if any, to which Loblaws' food safety policies and practices were actually implemented there and his failure to interview employees with respect to these matters;
>
> (b) Dr Yaffe's evidence of what plaintiffs' counsel submitted were weaknesses in the TPH inspection system;
>
> (c) Dr Yaffe's evidence that the infected employee had been preparing fresh food plates and that purchasers often do not wash such Produce before it is consumed; and
>
> (d) the evidence that whatever safety measures were in place were inadequate to prevent the contamination of food handled by the infected employee.

[35] Although, in their factum and, to some extent, at the hearing, defendant's counsel were critical of Dr Warriner's expertise and the reliability of his evidence, counsel did not place great weight at the hearing on this first ground for the motion for summary judgment. Indeed, at the

commencement of his submissions, Mr Stieber conceded that, on the state of the record, there were probably genuine issues for trial with respect to the standard of care and whether it was breached. I am satisfied that I could not give judgment on the basis that there was no such genuine issue without rejecting the evidence of Dr Warriner and ignoring the gaps in the evidence filed on behalf of the plaintiffs. I see no sufficient justification for doing this and, in consequence, I find that this ground for the motion has not been sustained.

[36] I make the same finding with respect to the submission of defendants' counsel that partial summary judgment should be granted in respect of the claims for breach of contract. The submission is based on a lack of evidence that any of the produce purchased, or handled, by uninfected class members was contaminated with the Hepatitis A virus. Such evidence is not, in my opinion, necessarily required to establish a breach of an implied term to take reasonable care not to expose customers to the risk of infection, or to sell only Produce that is safe for consumption. The defendants - as well as the plaintiffs - may be handicapped to some extent at this stage of the proceedings by the fact that the identity of the infected employee has not been disclosed by TPH. As, however, they have been informed that he worked in the fresh food section of the store, went on vacation on August 3, 2004 and returned to work on August 23, it is difficult to believe that they are not, at least, able to place him within a discrete group of employees. Even if, for some reason, that is not correct, the defendants have provided no evidence of the nature and extent of their employees' involvement in handling Produce, or of the actual safety practices followed, at the store during the relevant period, or at any time.

[37] For essentially the same reasons I have already given, I am satisfied that the existence, and breach, of the first of the implied terms raises triable issues.

[38] I reach the same conclusion with respect to the second. In the introduction to *Loblaws Food Safety Handbook* it is stated:

Consumers expect and demand food that is safe to consume.

[39] Despite this, Loblaws has pleaded that there is no implied term that produce would be fit for consumption without being thoroughly washed by the customer. The plea is not, in my opinion, established by the evidence and raises a genuine issue for trial. The evidence filed on behalf of Loblaws does not exclude the existence of an issue of whether Produce that may have been handled by the infected employee should be considered to have been safe to consume even if it was not actually contaminated, and irrespective of whether it was subsequently washed before it was eaten. Moreover, Dr Yaffe's evidence was that purchasers do not always wash produce before it is eaten and often do not wash fresh-food plates. The questions whether knowledge of this should be imputed to the defendants and the bearing it might have on the safety and fitness for consumption of the produce are, in my judgment, issues that must be tried.

[40] The question whether the allegations of a breach of contract raise genuine issues for trial received even less attention at the hearing than those that assert breaches of a duty of care in negligence. The principal focus of the submissions of counsel for Loblaws was on the second of

the grounds on which judgment was sought - the question of causation. This he said was the crux of the motion.

[41] In Mr Stieber's submission, as far as the uninfected class members are concerned, it is irrelevant whether Loblaws committed breaches of a duty of care owed to them - or breaches of a contract with them - as it is clear that there would have been no causal connection between any such breaches and the harm that such persons are alleged to have suffered. In his submission, the sole cause in fact of such harm consisted of the conduct of TPH in its public announcements through media releases and otherwise. Mr Stieber did not suggest that TPH was at fault to any degree in making these announcements. He did not dispute the position of counsel for the plaintiff that TPH was discharging its statutory responsibility to respond to a public health risk and to take such measures as it deemed appropriate to contain, control and limit the spread of contagion. Nor did Mr Stieber submit that the measures taken by TPH, and its recommendations to the public, were excessive or otherwise inappropriate. Essentially, his position - and that of Loblaws - was that the decisions of TPH were in no way responsive to, or connected with, any conduct of Loblaws or of the infected employee. Loblaws was not involved in the decisions or in their implementation and, in Mr Stieber's submission, the nervous shock, distress and other harm that the uninfected class members are alleged to have suffered must be attributed to an independent act of TPH and not to any breach of duty alleged to have been committed by Loblaws or its employees.

[42] I do find these submissions to be persuasive. The evidence is clear that TPH was responding to what it considered to be a risk to public health. If it is proven at a trial that the risk was created - caused by - the negligence of Loblaws, or of those for whom it is vicariously liable, I do not believe that TPH's response to that risk in its discharge of its public responsibilities can be considered to be an intervening act that necessarily broke the chain of causation. Loblaws was aware of the responsibilities of TPH and, in my opinion, the response of the latter might well be considered to be the natural, probable and reasonably foreseeable consequence of any negligent acts that created the risk. Whether this was so is an issue that must be tried. As Sharpe J.A. stated in *Renaissance Leisure Group Inc. v. Frazer*, [2004] O J. No. 3486 (C.A.), at para 40:

> Where the act that causes the damage is "part of the ordinary course of events", it does not break the chain of causation: *Derksen* v. 539938 Ontario Ltd., [2001] 3 S.C.R. 398 at para 33. As explained in *Martin v. McNamara Construction Company Ltd and Walcheske*, [1955] O. R. 523 at 528 - 529 (C.A.), quoting from *Haynes v. Harwood*, [1935] 1 K.B. 146: "If what is relied upon as novus actus interveniens is the very kind of thing which is likely to happen if the want of care which is alleged takes place, the principle embodied in the maxim is no defence.

[43] The situation is analogous to those in which it has been held that the intervention of a would-be rescuer does not break the chain of causation between the acts of a person that created a risk of harm to others and the consequences of such intervention. *Haynes v. Harwood*, to which

Sharpe J.A. referred, was such a case. *The Oropesa,*[1943] P. 32 (C.A.) is another where essentially the same principle was applied.

[44] It follows that the existence of a causal connection between the alleged breach and harm allegedly suffered by uninfected members is not necessarily excluded by the fact that, at the time of its public announcements, TPH had no knowledge or, at appears, suspicion of any breach of duty of care by Loblaws, or by the admission that TPH's response would have been the same whether or not there was any breach of duty by Loblaws. The issue of causation arises only in relation to a breach of duty that has been identified and it cannot be determined in the abstract. If it is found that the risk to the public would not have existed but for the negligence of Loblaws or its employee, or employees, the "but for" test could, in my opinion, be satisfied also with respect to the intervention of TPH and the further consequences that flowed from it.

[45] In consequence, I do not accept as correct the defendants' position that causation could not be established between any breaches of duty that were found to be committed by Loblaws and the harm allegedly suffered by uninfected class members. Causation is, in my judgment, an issue to be determined at trial.

[46] For the above reasons, the motion for summary judgment is dismissed.

[47] Submissions on costs may be made in the manner, and within the same time limits, as are applicable to the remaining matters relating to the motion to certify the proceedings.

CULLITY J.

Released: May 16, 2005

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DATE: 200505

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MATTHEW VEZINA , EILEEN MORRISON, KEN WILSON, LINDA SILMER AND ATTILA NAGY

Plaintiffs

- **and** -

LOBLAW COMPANIES LIMITED AND LOBLAWS SUPERMARKETS LTD.

Defendants

REASONS FOR DECISION

CULLITY J.

Released: May , 2005