

Reasons of Mme Justice Molloy

May 12, 2000

There are no conflicting decisions here. Farley J. applied well-established principles developed in the case law. On the facts of this case, he may have reached a different conclusion (or applied the principles differently) than another judge has done on different facts. That does not constitute a conflicting decision for purposes of leave to appeal test: *Webb v K-Mart Canada*. The moving party must therefore demonstrate that there is reason to doubt the correctness of Farley J.'s order. There is no real issue with respect to any part of the order, other than the identification of the liability of McColl Turner as a common issue. It is possible that issues of reliance might arise that would require individual determinations before liability could be found. It is also possible that liability could be determined, one way or the other, on the basis of finding on common issues and that individual trials might not be necessary. Farley J. specifically addressed his mind to that possibility at para 36 of his Reasons and decided that if that possibility arose there was scope under the Act to address it later in the proceeding and that in any event, a class proceeding was a preferable procedure as the resolution of the common issues would advance the litigation. In my opinion, he was correct on both issues. I see no reason to doubt the correctness of his decision. Further, even if I did, there is no issue involved arising from his Order which is of broad public or general importance so as to meet the second branch of the test. Leave to appeal is denied. Costs to the respondents/plaintiffs fixed at \$1,500.00.

Molloy, J.