

COURT FILE NO.: 46300 CP & 47959 CP

DATE: April 25, 2008

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JAMES JEFFREY AND D'ALTON S. RUDD -and- LONDON LIFE
INSURANCE COMPANY and THE GREAT-WEST LIFE ASSURANCE
COMPANY

AND RE: JOHN DOUGLAS McKITTRICK -and- THE GREAT-WEST LIFE
ASSURANCE COMPANY and GREAT-WEST LIFECO INC.

BEFORE: JUSTICE T. D. LITTLE

COUNSEL: David B. Williams & Jonathan J. Foreman for the Plaintiffs

Wendy Matheson, Crawford Smith for the Defendants

HEARD: April 21, 2008

ENDORSEMENT

[1] Leave to appeal is granted.

[2] Rule 62.02(4)(a) has been satisfied.

[3] Cumming J.'s decision in *Millgate* to permit the central issue to be resolved before considering certification remains a "conflicting decision". Doubt exists as to whether or not the "more liberal interpretation" theory derived from the *Cloud*, *Pearson* and *Cassano* cases subsequently decided, goes so far as to negate the logic of deciding the "central issue" first. Such decision, if favourable to the defendant, may obviate the necessity of any class proceeding at all.

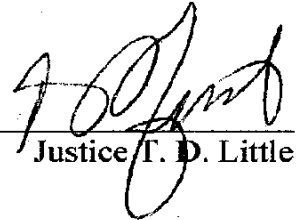
[4] This determination does not involve the exercise of discretion thus meriting "special deference".

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[5] Further, it is desirable that leave be granted as:

- a) Cumming J.'s decision already mentioned deserves further review and adjudication as it impacts on all future "stakeholder" cases;
- b) Rule 77.09.1 and s. 28.1(1) of the *Solicitor's Act* suggest that "case management" and "contingency fees" do not favour certification; and
- c) The "perceived advantage" of contingency fees and their "preferability" to counsel when determining "access to justice" as set out in *Hollick* is questionable.

[6] I may be addressed on the issue of costs.



Justice T. D. Little

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