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CITATION: Mayotte v. Her Majesty the Queen, 2010 ONSC 5275
DIVISIONAL COURT FILE NO: 361/10
COURT FILE NO.: CV-09-389686-CP00
DATE: 2010/09/24

**SUPERIOR COURT OF JUSTICE -- ONTARIO
DIVISIONAL COURT**

RE: Mayotte v. Her Majesty the Queen in the Right of Ontario

BEFORE: H.Sachs J.

COUNSEL: John Kelly, Edmund Huang and Kevin Hille, for the Moving Party/Her Majesty the Queen

David Sterns and Allan D.J. Dick, for the Responding Party/Mayotte

DATE HEARD September 23, 2010 at Toronto

ENDORSEMENT

[1] The Moving Party seeks leave to appeal to the Divisional Court from the Order of Perrell J. certifying the Responding Party's action as a class proceeding. The Moving Party submits that the certification judge erred when he found that the action had met the first element of the test for certification, which requires the plaintiff to disclose a reasonable cause of action.

[2] As is apparent from the reasons of the certification judge, in particular paragraphs 42 to 49 thereof, all of the arguments that were advanced before me were also thoroughly canvassed before him. Having heard those submissions I find that there is no reason to doubt the correctness of the certification judge's conclusion that the standard for showing a cause of action under s.5(1) of *The Class Proceedings Act* has been met. That standard is a low one, requiring a demonstration that is not plain and obvious that the plaintiff's claim will fail. In this case it is not plain and obvious that the plaintiff's claim will fail. I will make no further comments on the relative merits of the arguments that have been made on the questions raised as it is my view it would not be helpful to do so at this stage.

[3] In terms of the importance of the issues raised by the proposed appeal I would simply note that as yet there has been no decision on the merits or any finding that the claim is likely to succeed. Thus, I find it difficult to accept the proposition that the decision that is the subject of the motion before me will "affect the way in which Ontario enters into contracts and conducts its contractual relationships with parties across the province."

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- 2 -

[4] For these reasons the motion for leave to appeal is dismissed. As agreed if this was my finding, the Moving Party is to pay the Responding Party his costs of the motion fixed in the amount of \$15,000.00.


H. Sachs J.

DATE: September 24, 2010