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Docket: L023298
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IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Madam Justice Gerow
Pronounced in Chambers
January 12, 2004

BETWEEN:

**HELEN FAKHRI and ADY AYLON
as Representative Plaintiffs**

PLAINTIFFS

AND:

**ALFALFA'S CANADA INC.
carrying on business as
CAPERS COMMUNITY MARKETS**

DEFENDANT

Counsel for Plaintiffs

D. Klein

Counsel for Defendant

W. Milman

[1] **THE COURT:** Let me deal first with the non-resident residents status. In my view, that is a practical issue and I see that as being beneficial as it allows members who are non-residents to opt in at their own instigation. The legislation in ¶ 6 contemplates that when there is a class that comprises persons resident in British Columbia and persons non-resident in British Columbia, it must be divided into sub-classes.

[2] With the potential class size as is indicated in this particular action, it would seem from a practical point of view that that distinction should be made. There are approximately 6,447 people who received the ISG injections, and it is likely that some of those would be non-residents. So I am going to allow that distinction to be made within the order itself.

[3] With respect to the issue of whether or not individuals who have settled should be excepted, I agree with the plaintiff that that is an issue that was not argued in terms of a class definition during the hearing itself. I set out in my reasons what the class definitions are. If individuals have settled with the defendant then they will not be able to advance any claim in this action but the definition itself, in my view, does not need to except them. Therefore I am agree with the way the plaintiff has set out the class definitions; that is, that that exception not be in the order itself.



The Hon. Madam Justice L.B. Gerow