

SCC File No.:

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC)

BETWEEN:

**ELLIOT C. WIGHTMAN, et al (see Annex A)**

**APPLICANTS**  
(Appellants)

-and -

**ESTATE OF PETER N.T. WIDDRINGTON**

**RESPONDENT**  
(Respondent)

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**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**  
(ELLIOT C. WIGHTMAN, et al, APPLICANTS)  
(Pursuant to Rule 25 of the *Rules of the Supreme Court of Canada*)

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**TAKE NOTICE** that the Applicants, Elliot C. Wightman, et al, hereby apply for leave to appeal to the Court, pursuant to Section 40 of the *Supreme Court Act*, R.S.C. 1985, c. S-26, from the judgment of the Court of Appeal of Quebec, docket no. 500-09-021691-118 (500-05-001686-946), made July 8, 2013, and for such further or other order that the Court may deem appropriate;

**AND FURTHER TAKE NOTICE** that this application for leave is made on the following grounds:

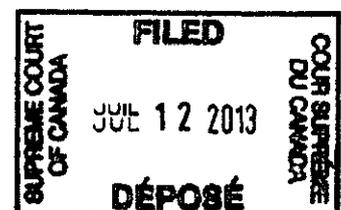
**Issue 1: Conflicts of Law - Auditor Liability to a Foreign (Non-Client) Third Party?**

*Lex Loci Delicti* or *Lex Societatis* – Private Wrong or Company Law?

Is the delictual liability of a corporation's auditor for a faulty performance of his duties as auditor governed by:

- the *lex loci delicti* rule or
- the company law that creates and defines his/her office, capacity and duties?

Should the delictual liability of a corporation's auditor be governed by the same law that is applicable to the corporation? Does subjecting the directors and auditors to different laws in relation to financial statements and reporting lead to inextricable difficulties and conflicting results – including conflicting results across Canada?



*What Does the Lex Loci Delicti Rule Now Mean?*

Which jurisdiction's law should be applied to delict claims when harmful material is prepared in one jurisdiction but is received, relied on and causes harm in another jurisdiction – the law of the jurisdiction where it was prepared and issued or the law of the jurisdiction where it was received, used and caused harm?

**Issue 2: Should there be Two Standards or Indeterminate Liability for Auditors in Canada?**

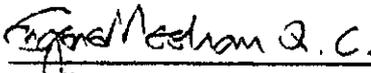
Should an auditor who issues an opinion be liable to anyone who happens to rely on it under either Canadian common law or Quebec civil law, irrespective of whether that person was an intended recipient or whether that person used it for a different purpose than that for which it was prepared? Is or should the result be materially different in Quebec because of this Quebec Court of Appeal's approach to its prior conflicting decisions and Supreme Court of Canada's analyses? Can or should the effects of the laws applicable in Canada be harmonized?

**Issue 3: Can Corporate Directors Avoid the Consequences of their own Negligence and Illegal Acts?**

Should corporate directors bear the consequences of their own faults or can they now shift liability for their breaches of duty – for example, declaration of corporate dividends, including to themselves – over to auditors?

To what extent does the characterization of "outside" director impact a corporate director's duty of due diligence?

Dated at the City of Ottawa, in the Province of Ontario, this 12<sup>th</sup> day of July, 2013.

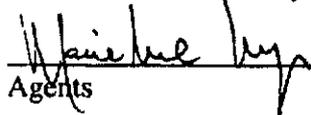
  
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**NOTICE TO THE RESPONDENT:** A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the *Supreme Court Act*.

## ANNEX A

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W. DAVID POWER  
RICHARD ROHDE  
JAMES S. SALOMAN  
CHARLES L. SEGUIN  
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DAVID W. SMITH  
ROBERT J. SPINDLER

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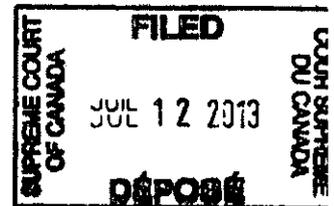
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Please find enclosed letter to the Registrar and Notice of Application for Leave to Appeal and Certificate of Counsel which we are serving upon you pursuant to the Rules of the Supreme Court of Canada and as a courtesy.

*Handwritten signature of Marie-France Major*  
Marie-France Major

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