Court File No. 34308

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

UNITED STEELWORKERS

Applicant
(Appellant)

- and -

MORNEAU SOBECO LIMITED PARTNERSHIP and THE SUPERINTENDENT OF FINANCIAL SERVICES

Respondents
(Interveners)

RESPONSE of the MORNEAU SHEPELL LTD.
ON THE APPLICATION FOR LEAVE TO APPEAL
(pursuant to s. 40 of the *Supreme Court Act* and Rule 27)

VOLUME I - MEMORANDUM OF ARGUMENT

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RESPONSE of the MORNEAU SHEPELL LTD.
ON THE APPLICATION FOR LEAVE TO APPEAL

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OVERVIEW

1. The United Steelworkers (the "USW") seeks leave to appeal from a single paragraph of a costs endorsement. This paragraph raises no issues of public or national importance. Paragraph 3 of the costs endorsement of the Ontario Court of Appeal dated September 7, 2011 (the "Costs Endorsement") contains no principles of law, is strictly confined to its facts, and is, in any event, correct in the circumstances of this litigation. The Costs Endorsement does not depart from the prior jurisprudence of this Court, nor does it conflict with other appellate jurisprudence. There is nothing that warrants the intervention of this Court.

2. The USW raises in its application several overarching statements of law. None of these are stated, raised or even implied by the Costs Endorsement. The USW has taken factors mentioned by the Court of Appeal during the exercise of their discretion and raised them to the level of legal principles. It was manifestly not the intent of the Court of Appeal to enunciate broad legal principles; the details of this case do not raise issues of national importance.

3. The USW argues against principles of law raised by Morneau Shepell Ltd. ("Morneau Shepell") in its submissions to the Court of Appeal. With respect, it is not the submissions of Morneau Shepell at the court below that should be the subject of an appeal or are of concern to this Court. Appeals are taken from orders of courts, not arguments made before them.

4. In any event, the decision of the Court of Appeal is correct. In the circumstances present in this litigation, the USW is not entitled to the payment of its costs from the pension fund.

PART I – STATEMENT OF FACTS

5. Morneau Shepell acts as the administrator of the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies (the "Executive Plan") and the Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies (the "Salaried Plan", together, the "Plans"). The Plans, both registered with the Financial Services Commission of Ontario ("FSCO"), had previously been sponsored and administered by Indalex Limited.[1]

6. Morneau Shepell is a human resources consulting firm, which is, from time to time, appointed by the Superintendent of Financial Services (the "Superintendent") pursuant to subsection 71(1) of the Ontario *Pension Benefits Act* ("PBA") to act as a third party administrator. This typically takes place where pension plans do not have an administrator, or where an administrator fails to act, such as when, as here, a plan sponsor and/or administrator have become insolvent.

7. Morneau Shepell was appointed administrator of the Plans on November 5, 2009, following the application by Indalex for creditor protection pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"). The initial motions which are the subject of the main appeal took place on August 28, 2009, before Morneau Shepell was appointed.

[1] As in the submissions of the USW, "Indalex" refers collectively to Indalex Limited and its associated companies, Indalex Holdings (B.C.) Ltd., 632765 Canada Inc. and Novar Inc.

8. Morneau Shepell intervened in the appeals at the Court of Appeal in support of the positions taken by the USW and the members of the Executive Plan (the "Retirees")[2]. For greater certainty, Morneau Shepell supported the USW and the Retirees on the merits, and takes no position on the previously filed leave to appeal applications with respect to the merits of the appeal, without prejudice to its rights to make submissions on the appeal. Leave to appeal was granted on December 1, 2011.

9. Morneau Shepell agrees with and adopts the USW's characterization of the facts in paragraphs 16 though 27 of its submissions. However, the following additional facts should be noted.

10. After the facta of all parties were filed before the Ontario Court of Appeal, the USW brought a motion before the Ontario Superior Court of Justice to direct that the costs of the litigation be paid from the funds of the Salaried Plan. That motion was, on the consent of the parties, adjourned pending the outcome of the appeal and has not been dismissed or discontinued.

11. After the decision of the Court of Appeal was rendered, Morneau Shepell and the Retirees came to an agreement with respect to the payment of the costs of the litigation from the fund of the Executive Plan. As reflected in paragraph 2 of the Costs Endorsement, the key features of this agreement were:

a. The full indemnity fees and disbursements are to be paid from the portion of the fund of the Executive Plan attributable to each of the 14 (out of 17

[2] Not all of the members of the Executive Plan are retired. However, the term "Retirees" has been used throughout the litigation.

total members) Retirees' accrued pension benefits. No other member of the Executive Plan is responsible for the costs of the litigation.

b. An affidavit was presented to Morneau Shepell attaching the consents of each of the Retirees; and

c. Any costs recovered from other parties in the litigation would be returned to the Executive Plan fund and allocated among the 14 members.

12. The USW sought a similar order, despite the fact that very different circumstances applied to it. Morneau Shepell and the Superintendent of Financial Services of Ontario (the "Superintendent") opposed that order on that basis.

13. The Court of Appeal held that the USW was in a "materially different" position than the Retirees. In its entirety, the paragraph the USW seeks to appeal reads:

> The USW sought an order to the same effect in respect of the Salaried Plan. We decline to make that order because the USW is in a materially different position than the Retirees. The Retirees are beneficiaries of the pension fund. The individual represented Retirees, who comprise 14 of 17 members of the Executive Plan, have consented to the payment of costs from their individual benefit entitlements. Those who have not consented will not be affected by the payment. By contrast, the USW is the bargaining agent (not a beneficiary) for only 7 of the 169 beneficiaries of the Salaried Plan, none of whom have been given notice of, or consented to, the payment of legal costs from the Salaried Plan. It is also significant that we are not dealing with surplus pension funds as the Salaried Plan is underfunded.[3]

[3] Reasons of the Court of Appeal, Application for Leave to Appeal, Vol. I, Tab 3E, p. 30, para. 3.

PART II – QUESTIONS IN ISSUE

14. The following question is raised by this Application for Leave to Appeal:

a. Does paragraph 3 of the Costs Endorsement raise issues of national and public importance?

PART III – STATEMENT OF ARGUMENT

A. There are No Issues of Public and National Importance

15. Section 40 of the *Supreme Court Act* grants that leave to appeal to the Supreme Court of Canada may be allowed where "the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance ...one that ought to be decided by the Supreme Court."[4]

16. The Court has specified that the criterion of public importance in this section refers to issues of fundamental legal significance that affect the nation as a whole.[5] Accordingly, the Supreme Court is "not a court of error and the fact that a court of appeal reached the wrong result is in itself insufficient."[6] Instead, an appeal must raise an issue of national importance to warrant the Supreme Court's exercise of its supervisory jurisdiction.

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[4] *Supreme Court Act*, R.S.C., 1985, c. S-26, at s. 40(1).
[5] *Lake Erie and Detroit River Railway Co. v. Marsh* (1904), 35 S.C.R. 197; *R. v. Henry*, 2005 SCC 76, [2005] 3 S.C.R. 609, at para. 53.
[6] Justice John Sopinka, "The Supreme Court of Canada," reprinted in Brown ed., *Supreme Court of Canada Practice 2011*, (Toronto: Thompson Reuters Canada Ltd., 2010), at p. 488.

17. Morneau Shepell submits that this appeal of the Costs Endorsement of the Court of Appeal is not of sufficient national or public importance to warrant intervention by this Court.

18. First, none of the questions raised by the USW are raised by the Costs Endorsement. Secondly, the Costs Endorsement was confined to its facts.

i. None of the Issues Raised by the USW Arise from the Costs Endorsement

19. In its Memorandum of Argument, the USW asserts that the Ontario Court of Appeal's Costs Endorsement raises three issues of public importance:

a. Whether the Court of Appeal erred in holding that the bargaining agent for unionized pension plan members does not have the right to obtain payment of costs from a pension trust fund on behalf of its unionized members/plan beneficiaries?

b. Whether the Court of Appeal erred in requiring consent from pension plan beneficiaries as a prerequisite to ordering payment of costs from a pension trust fund when the proceeding is non-adversarial between pension plan beneficiaries, has been initiated to enforce the due administration of the trust and is for the benefit of all pension plan beneficiaries?

c. Whether the Court of Appeal erred in considering the funding status of a pension plan as a prerequisite to ordering the payment of costs from a pension trust fund when the proceeding is non-adversarial between pension plan beneficiaries, has

been initiated to enforce the due administration of the trust and is for the benefit of all pension plan beneficiaries?

20. These issues may be of public importance. However, they are not issues flowing from the Costs Endorsement. The Costs Endorsement simply cannot bear the interpretation the USW urges upon this Court.

21. As this Court has recognized in other pension cases, "costs awards are quintessentially discretionary" and courts are entitled to consider a number of factors when determining whether costs are payable from the pension fund.[7] In *White*, the Nova Scotia Court of Appeal held that "costs are within the discretion of the Court and each case must be assessed in light of its particular circumstances and the relevant considerations weighed and balanced."[8]

22. Here, the Court of Appeal considered, as it has done in other cases, including in *Kerry* and *Burke*, various factors in its decision to refuse costs on the facts of this particular case and in these particular circumstances.[9] With respect, the USW is mistaking observations made in the process of use of this discretion for holdings by the Court. For example:

a. The Court of Appeal noted that the USW was the bargaining agent for the Salaried Employees. It did not hold that that the bargaining agent for unionized pension plan members does not have the right to obtain

[7] *Nolan v. Kerry (Canada) Inc.*, [2009] 2 S.C.R. 678 ("*Kerry* SCC") at para. 126.
[8] *White v. Halifax (Regional Municipality) Pension Committee*, [2007] N.S.J. No. 61 (C.A.) ("*White*") at para. 101.
[9] *Burke v. Hudson's Bay Co.*, 2008 ONCA 690 (CanLII) ("*Burke* CA"), aff'd 2010 SCC 34 ("*Burke*").

payment of costs from a pension trust fund on behalf of its unionized members/plan beneficiaries.

b. The Court of Appeal noted that the Retirees had provided consent to the payment of the costs from their pension entitlements. It did not hold that such consent is a pre-requisite to payment of costs from a pension fund.

c. The Court of Appeal also noted that the Salaried Plan was underfunded. It did not hold that costs could not be paid from an underfunded pension plan.

23. The USW argues that the Court of Appeal's decision created a dichotomy between members of a pension plan who are represented by a union and those who are not. However, the Retirees had reached an agreement with the Plan Administrator. The Costs Endorsement merely recognizes and approves that agreement and then proceeds to examine the particular circumstances of the USW, who had not reached an agreement. That is the only dichotomy created by the Costs Endorsement.

24. Moreover, the USW places a great deal of emphasis on the arguments of Morneau Shepell. For example:

a. Paragraph 35 notes that Morneau Shepell argues that the USW should have pursued a representative order.

b. Paragraph 45 notes that Morneau Shepell cited cases regarding the approaches of CCAA courts to funding orders.

c. Paragraph 61 notes that Morneau Shepell argued that an underfunded trust fund should not be subjected to the same principles as a fund in surplus.

25. Morneau Shepell argued these points, and it continues to submit that these principles are correct, as detailed below. However, these are not the decisions of the Court of Appeal that are subject to review by this Court. Again, the Court of Appeal may have mentioned these points when exercising its discretion, but it neither elaborated on them nor enunciated principles of law. Morneau Shepell's submissions before the Court of Appeal are not matters of national or public importance.

26. Moreover, what the USW fails to also note is that the submissions of both Morneau Shepell and the Superintendent were very clear: the arguments put before the court were confined to the circumstances present in this singular and fairly extraordinary set of facts.

ii. The Costs Endorsement is Confined to Its Facts

27. Indeed, the Court of Appeal based its decision on what the USW agrees are the "unique circumstances of this case."[10] As such, the Court of Appeal determined that, based on the specific circumstances before it in this litigation, the USW was not entitled to the payment of costs from the Salaried Plan. This is not a decision of wide-ranging and public importance.

28. The approach taken by the Court of Appeal in paragraph 3 should be contrasted with its approach in paragraph 4, where it applies policy reasons and law to the issue of costs generally in CCAA proceedings.[11] This is a clear application and expansion of a

[10] Memorandum of Argument of the USW, Application for Leave to Appeal, Vol. I, Tab 4, p. 120, para. 1.
[11] Decision of the Court of Appeal, Application for Leave to Appeal, Vol. I, Tab 3E, p. 30, para. 4.

general policy, and not a finding confined to this particular proceeding. Where the Court wished to apply and expand the law, it clearly did so.

B. The Decision of the Court of Appeal is Correct

29. This Court is not a court of error and Morneau Shepell submits that there are insufficient issues of national and public importance raised by paragraph 3 of the Costs Endorsement to merit review by this Court. However, Morneau Shepell further submits that the Court of Appeal was correct, in these circumstances, to find that the costs of the USW should not be paid out of the Salaried Plan.

i. The USW has not Sought Alternate Funding

30. As the Plan Administrator, Morneau Shepell is charged with the protection of the trust fund and the interests of the beneficiaries. In these circumstances, it is the view of Morneau Shepell that resort to the fund by the USW is premature. The USW has not exhausted all avenues of potential funding. Unlike in most conventional pension litigation there was, or is, another potential avenue for funding. It has become more common for a CCAA Court to appoint representative counsel for employee or retiree groups who would otherwise not have representation in the proceeding, in order to ensure that the interests of such groups will be represented in the proceeding.[12]

[12] *Canwest Publishing Inc., Re*, 2010 ONSC 1328 (S.C.J.) at para. 21.

31. If a representative order is granted and if the counsel has no other source of funding (in other words, where the representative is not the bargaining agent), the court has granted funding from the estate (or the Monitor or the secured lenders).[13]

32. No such application was made by the USW. Instead, the USW sought no order as to costs until now, late in the proceedings, where the funds of the Plan are becoming increasingly depleted.

33. It is possible that the USW may not be granted funding from the estate, although this issue has not been considered by a Court of Appeal. Where the party that seeks representation is the bargaining agent for the plan members, the courts have held that funding "should only be provided for the benefit of those who otherwise would have no legal representation."[14] In other words, the bargaining agent is bound by its role as the labour relations representative to represent its members in insolvency litigation regarding pension plans, even where there is no funding from the estate of the insolvent company.

34. Until such time as the USW has sought, and has gained or been denied access to funding from the estate of the insolvent company, it is premature to determine whether the litigation should be funded by the underfunded Salaried Plan.

ii. There was No Deviation from the "Costs Payment Test"

35. In general, whether or not a Court will order litigation costs to be funded by a pension plan depends on two general principles: if the litigation can be characterized as

[13] *Canwest, supra*, at para. 26. See also *Fraser Papers Inc., Re*, [2009] O.J. No. 4287 (S.C.J.) at para. 18.
[14] *Fraser Papers Inc., supra*, at para. 18.

being for the benefit of all the beneficiaries, rather than adversarial, or if the litigation raises an issue with respect to the administration of the Plan. [15]

36. In the Supreme Court of Canada decision in *Kerry,* Rothstein J. quoted from the decision of Cullity J. in *Sutherland v. Hudson's Bay Co.* where he held that:

> Orders for the payment of costs out of trust funds are most commonly made in either of two cases. One is where the rights of the unsuccessful parties to funds held in trust are not clearly and unambiguously dealt with in the terms of the trust instrument. ... The other case is where the claim of the unsuccessful party may reasonably be considered to have been advanced for the benefit of all of the persons beneficially interested in the trust fund.[16]

37. He concluded that the rules in prior case law and *Sutherland* could allow a Court to award costs from a pension plan "where there is a legitimate uncertainty as to how to properly proceed and where the dispute is not adversarial".[17]

38. Further, this Court held in *Kerry* that a party claiming its costs from a pension plan must establish that: (1) such costs are incurred for the benefit of all of the beneficiaries; and (2) are necessary to ensure the due administration of the pension trust fund. Rothstein J. held that:

> Claims that are adversarial amongst beneficiaries will not qualify for a costs award from the fund. However, not even every claim in which the beneficiaries have a common interest in the litigation will entitle them to their costs from the fund. A claim might still be adversarial, even if it is not adversarial amongst beneficiaries. Costs will only be

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[15] *Burke* CA, *supra*, at para. 10; *Kerry (Canada) Inc. v. Ontario (Superintendent of Financial Services)* (2007), 282 D.LR. (4th) 625 (C.A.) at para. 10-12, *Kerry* SCC, supra.
[16] *Kerry* SCC, *supra*, at para. 120; *Sutherland v. Hudson's Bay Co.* (2006), 53 C.C.P.B. 154 (Ont. S.C.J.) (Cullity J.) at para. 11.
[17] *Kerry* SCC, *supra*, at para. 121.

> awarded from the fund where the proceedings are necessary for the due administration of the trust. [18]

39. Following its decision in *Kerry*, this Court has not dealt with costs from a pension fund in any extensive way. In its recent decision in *Burke*, this Court merely noted that no appeal was taken from the costs decision of the Ontario Court of Appeal.[19]

40. The Costs Endorsement does not deviate from this test. Rather, the USW has failed to meet it.

a. The USW is not a Beneficiary of the Pension Fund

41. As the Court of Appeal recognized, the USW is in a materially different position than the Retirees in terms of whether or not the USW is eligible to recover its costs from the Salaried Plan. The fact that a union is in a different position when asserting claims on behalf of its members in an insolvency proceeding was recognized by the Court in *Fraser Papers Inc.* in support of its decision to limit funding to representative counsel and not to extend funding to the USW.[20]

42. Moreover, the "Costs Payment Test", as enunciated by the USW, has one significant aspect not emphasized by the USW. This test holds, as the USW describes it, that costs are payable to the **beneficiary** of a pension fund who brings litigation that is for the benefit of plan members or to promote due administration of the Plan.[21]

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[18] *Kerry* SCC, *supra*, at para. 124.
[19] *Burke, supra,* at para. 97.
[20] *Fraser Papers Inc. (Re), supra*, at para. 10.
[21] Memorandum of Argument of the USW, Application for Leave to Appeal, Vol. I, Tab 4, pp. 121-122 at para. 6; *Kerry* SCC, *supra*, at para. 120.

43. The USW is manifestly not a beneficiary of the Salaried Plan. While it does represent a few of the members of the Salaried Plan, it cannot be the case that the USW is the only party who can represent its members in this type of litigation. If that were so, as this Court's decision in *Bisaillon* points out, this dispute would be more properly before an arbitrator.[22] It does not appear that the USW has raised a jurisdictional issue.

44. The USW cites a number of cases for the proposition that a small group of members may have their costs paid from the pension fund where the litigation is brought on behalf of all beneficiaries. Only one of these cases involves bargaining agents, and in that case, the claim was brought by a member of the pension plan in a representative capacity.[23] Here, it is not seven members who have banded together to bring the litigation, it is their bargaining agent, who is, as the USW notes, required by labour law to act on their behalf, and whose dues are paid in order that the union can carry out that function, who brought the litigation. Moreover, this Court has specifically noted that the litigation in the *Alcan* case "had no effect on other beneficiaries of the trust fund."[24] The circumstances are different.

45. Morneau Shepell does not deny that, should the Appellants be ultimately successful, additional funds will be submitted into the fund of the Salaried Plan, for the benefit of all beneficiaries. However, this litigation was commenced by a bargaining agent on behalf of seven (7) out of 169 plan members, without notice to the remaining plan members, who may not have supported the lengthy and expensive litigation. Furthermore, benefits would need to be reduced in order to fund the litigation. While the

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[22] *Bisaillon v. Concordia University*, [2006] 1 S.C.R. 666 at para. 28, 56.
[23] *C.A.S.A.W. v. Alcan Smelters and Chemicals Ltd.*, [1998] B.C.J. No. 2830 (S.C.) at para. 1, aff'd 2001 [2001] B.C.J. No. 934 (C.A.).
[24] *Kerry* SCC, *supra* at para. 126.

Retirees all have knowledge of this fact, no notice was given to the other members of the Salaried Plan.

46. In paragraph 39 of the USW's Memorandum of Argument, it notes that the payment would be approximately $1045 per member, a "seemingly minor trade-off" for each member. Indeed, what the USW does not emphasize, or mention, is that the Retirees did make that trade-off, explicitly and directly. The Retirees explicitly and directly ensured that their choice to pursue the litigation would not affect those members who did not retain counsel, while still allowing those members to benefit from the increase in their pension entitlements, should this Court find in their favour on the merits. The USW made no such overtures.

b. Dispute Arises Outside the Traditional Pension Area

47. This is not a circumstance where the issue before the court is an interpretation of a pension plan text or an expenses or surplus issue. The dispute arises from the fact that the employer does not have sufficient assets to meet its obligations to its pension plans and to its other creditors. The issue in litigation here involves the determination of legislation, creditors' rights, and other non-pension administration issues. It does not raise issues of plan interpretation and, therefore, it is doubtful if the cases relied upon by the USW (all of which are properly characterized as pension disputes involving the interpretation of pension plan terms) have any direct application.

48. Moreover, it is clear that in developing the concept of due administration of the pension trust, the courts, in the cases cited by the USW, had in mind disputes which raise

issues concerning the interpretation and application of pension trust terms – a feature absent in this case. Therefore, it cannot be said that the USW has established that the litigation is for the due administration of the trust as is necessary to give rise to an entitlement to recover costs from the pension fund.

49. In *Burke*, the Court of Appeal placed heavy emphasis on the fact that the pension plan was in surplus and the issue litigated was regarding surplus entitlement. As Gillese J.A. stated, "this case was about surplus entitlement and, historically, costs in surplus cases have been awarded from the fund."[25]

50. In *Kerry* at this Court, a similar emphasis on the surplus entitlement was placed, even though the members were unsuccessful:

> In this case, the Company was successful, i.e., it does not have to pay into the Fund to cover expenses at issue and may take contribution holidays. There is no reason to penalize it by reducing the Fund surplus and thereby reducing its opportunity for contribution holidays.[26]

51. There is no surplus in the Salaried Plan. There is no possibility for surplus in the Salaried Plan. It has been wound-up, and the plan sponsor is insolvent. If unsuccessful, this litigation will be funded directly through the reduction in benefits for all members of the Salaried Plan.

52. The members of the Executive Plan have been notified of this possibility, and have explicitly accepted it. Those who have not been notified or who have not consented will not have their benefits reduced for this litigation.

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[25] *Burke* C.A., *supra*, at para. 13.
[26] *Kerry* SCC, *supra*, at para. 128.

53. No party argues that notification and consent, or the other factors discussed above, should be, or will be, a factor in all pension litigation. However, in the totality of the circumstances, the above factors are relevant and should be taken into consideration. While what the USW characterizes as the "Costs Payment Test" is the law in Canada, this Court has recognized that costs orders remain, even in pension litigation, essentially discretionary. The Court of Appeal properly exercised its discretion in these circumstances, and its decision should stand.

PART IV – SUBMISSION ON COSTS

54. Morneau Shepell seeks no order as to costs.

PART V – ORDER SOUGHT

55. The respondent respectfully requests that the application for leave to appeal be dismissed, without costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st DAY OF DECEMBER, 2011.

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PART VI: TABLE OF AUTHORITIES

CASE LAW	Paragraph Reference in Memorandum of Argument
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PART VII: STATUTES, REGULATIONS, RULES, ETC.

STATUTE	Tab Number and Page Number in Record
Supreme Court Act, R.S.C., 1985, c. S-26	Tab A, p. 20

A. *Supreme Court Act*, R.S.C., 1985, c. S-26, s. 40(1)

Appeals with leave of Supreme Court

40.(1) Subject to subsection (3), an appeal lies to the Supreme Court from any final or other judgment of the Federal Court of Appeal or of the highest court of final resort in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, whether or not leave to appeal to the Supreme Court has been refused by any other court, where, with respect to the particular case sought to be appealed, the Supreme Court is of the opinion that any question involved therein is, by reason of its public importance or the importance of any issue of law or any issue of mixed law and fact involved in that question, one that ought to be decided by the Supreme Court or is, for any other reason, of such a nature or significance as to warrant decision by it, and leave to appeal from that judgment is accordingly granted by the Supreme Court.

.....

Appel avec l'autorisation de la Cour

40.(1) Sous réserve du paragraphe (3), il peut être interjeté appel devant la Cour de tout jugement, définitif ou autre, rendu par la Cour d'appel fédérale ou par le plus haut tribunal de dernier ressort habilité, dans une province, à juger l'affaire en question, ou par l'un des juges de ces juridictions inférieures, que l'autorisation d'en appeler à la Cour ait ou non été refusée par une autre juridiction, lorsque la Cour estime, compte tenu de l'importance de l'affaire pour le public, ou de l'importance des questions de droit ou des questions mixtes de droit et de fait qu'elle comporte, ou de sa nature ou importance à tout égard, qu'elle devrait en être saisie et lorsqu'elle accorde en conséquence l'autorisation d'en appeler.