

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

BETWEEN:

**UNITED STEELWORKERS**

Applicant  
(Appellant)

- and -

**FTI CONSULTING CANADA ULC, IN ITS CAPACITY AS COURT-APPOINTED  
MONITOR OF INDALEX LIMITED, ON BEHALF OF INDALEX LIMITED, GEORGE  
L MILLER, THE CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATE OF THE  
US INDALEX DEBTORS and SUN INDALEX FINANCE, LLC**

Respondents  
(Respondents)

- and -

**MORNEAU SOBECO LIMITED PARTNERSHIP and  
THE SUPERINTENDENT OF FINANCIAL SERVICES**

(Interveners)  
(Interveners)

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**NOTICE OF APPLICATION FOR LEAVE TO APPEAL(COSTS ENDORSEMENT)  
OF THE  
UNITED STEELWORKERS**

(Pursuant to Subsection 40(1) of the *Supreme Court Act*, R.S.C.1985, c. S-26 and Rule 25 of the  
*Rules of the Supreme Court of Canada*, SOR/2002-156)

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**TAKE NOTICE** that the United Steelworkers ("USW"), hereby applies for an order granting the USW leave to appeal to this Court, pursuant to subsection 40(1) of the *Supreme Court Act*, and Rule 25 of the *Rules of the Supreme Court of Canada*, from the Costs Endorsement issued by the Court of Appeal for Ontario dated September 7, 2011 relating to the decision of the Court of Appeal issued April 7, 2011 respecting Court of Appeal File Nos. C52187 and C52346; or 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:

1. The Court of Appeal's Costs Endorsement departs from previous authority and creates substantial uncertainty. This Court ought to grant leave to appeal to review the Costs Endorsement, as the proposed appeal raises at least the following questions of national and public importance requiring intervention of this Court:

- 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?

2. The USW respectfully submits that the foregoing issues, as further delineated in its Memorandum of Argument warrant the consideration of this Honourable Court.

Dated at the City of Ottawa, in the Province of Ontario, this 7<sup>th</sup> day of November, 2011.

  
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**NOTICE TO THE RESPONDENTS:** 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*.