



February 10, 2015

Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

Your Honour:

There is a clear and significant conflict and inequality in law across the nation in the provincial courts of appeal and a continued conflict and inequality at all levels of courts across Canada regarding the appointment and role of an umpire in an insurance appraisal. The insurance appraisal is of public interest that affects the rights of every citizen that purchases the security of an insurance policy for a peace of mind. The appointment of an umpire for an insurance appraisal forms a part of every provincial statute in Canada.

The Court of Appeal for Ontario, in this case, *Phylum Corporation v. The Dominion of Canada General Insurance Company*, 2014 ONCA 886, has chosen to overrule a prior decision set by the Supreme Court of Canada in *Sport Maska Inc. v. Zittler*, [1988] 1 S.C.R. 564 where the Supreme Court of Canada held that an insurance appraisal is a valuation and not an arbitration and that an expert opinion would be required by the appointed umpire in the insurance appraisal.

The Saskatchewan Court of Appeal in *Shinkaruk Enterprises LTD. v Commonwealth Insurance Co. (1990)*, 71 D.L.R. (4th) 681 has adopted the decision set by the Supreme Court of Canada ruling in *Sport Maska*

“Moreover, the reasoning employed in Pfeil and Krofchick, has now been specifically approved by the Supreme Court of Canada in *Sport Maska Inc. v. Zittler*, [1988] 1 S.C.R. 564 at 588. It may now be considered settled that an appraisal under s. 108 and condition 11 under the Act is a valuation and not an arbitration.”

The Divisional Court of Ontario in *Krofchick et al. v Provincial Insurance Co. Ltd. et al.* (1978), 21 O.R. (2d) 805 held:

“... the function of the appraisers and umpire was not to hear evidence, but rather to arrive at a decision on the basis of their own knowledge and expertise...”

Mary Zgrablic in her affidavit for support of the Applicant’s (Phylum’s) Application for Leave to Appeal states:

“... the Court of Appeal ruling in *Phylum v Dominion*, which found that the umpire in this case did not possess the proper knowledge and experience to provide an expert opinion but

ruled that the umpire was properly qualified and provided no reasons for that decision. The Court of Appeal for Ontario has further stated that an umpire can hear evidence from the parties setting a provincial precedent in contradicting the Supreme Court of Canada.”

The Supreme Court of Canada in *Canada v Craig*, 2012 SCC 43, [2012] 2 S.C.R. 489 held:

“[26] Courts must proceed with caution when deciding to overrule a prior decision...No Justice is entitled to ignore the decisions and reasoning of his predecessors, and to arrive at his own judgment as though the pages of the law reports were blank...”

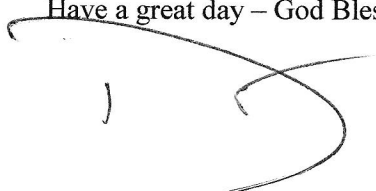
The Applicant, Phylum Corporation, is seeking leave to appeal this case, *Phylum v Dominion*, so that the Supreme Court of Canada may have the opportunity to consider whether all provincial courts of appeal and lower courts are equal regarding an appointment of an umpire in an insurance appraisal and a further consideration to reaffirm past precedent set by the Supreme Court of Canada in *Sport Maska* so that there may be equality for every citizen across the nation and that each citizen will know what to expect in law given a case with similar material facts.

The Applicant, Phylum Corporation, is further seeking leave to appeal so that the Supreme Court of Canada may have the opportunity to provide guidance to the lower courts and to the citizens in consideration of one of the most critical questions for an insurance appraisal, what qualifications are necessary for a person to act as an umpire in an insurance appraisal? The consideration of this question may serve as a relief to the lower courts in this area of the law.

We trust that in light of your strong commitment to equality and access to justice that you will find this issue as disconcerting as we do.

For more information on this case please go to www.phylumvdominion.com or refer to Supreme Court of Canada file #: 36235 and Court of Appeal for Ontario file #: C59125

Have a great day – God Bless



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Cc: Kathleen Wynne

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