



**March 2, 2015**

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

**Re: *Phylum v. Dominion* SCC file #: 36235 – follow up to February 10, 2015 letter.**

**Your Honour:**

Since our last letter to you, February 10, 2015, some further facts have come to light and it was necessary to update you so that you receive a larger picture.

The Respondent undeniably reinforces that there are conflicts at all levels of the courts regarding the appointment of an umpire for an insurance appraisal.

The Respondent presents a case from the Supreme Court of Nova Scotia in *265 Commercial Street Ltd. v. ING Insurance Company of Canada*, 2010, NSSC 14 where a building was damaged by a fire and the parties were engaged in a motion for the courts to appoint an umpire pursuant to the Insurance Act of Nova Scotia. The Supreme Court of Nova Scotia held that:

“[36] The nature of the dispute between the parties requires the expertise of an appraiser, or a person with equivalent experience with the appraisal process, combined with a knowledge of construction standards.”

*265 Commercial Street Ltd. v. ING Insurance Company of Canada*, 2010, NSSC 14,  
Tab 4, p. 64 of the Respondents – Response to the Application for Leave to Appeal

The Respondent submits at para 28 of its ‘Response to the Application for Leave to Appeal’ that:

“The Respondent submitted before the motion judge in this case did not require any particular expertise and that the most qualified umpire in the circumstances of this case was one of familiarity with the appraisal process under the Ontario Insurance Act and prior experience acting as an umpire.”

Respondent’s – Response to the Application for Leave to Appeal, Tab 1, p. 8, para 28

The Respondent's argument is at odds with the Supreme Court of Nova Scotia in *265 Commercial Street Ltd. v. ING Insurance Company of Canada* who determined that the combination of both the appraisal process and knowledge of construction standards formed the expertise of the appropriate umpire for the insurance appraisal.

The Respondent failed its duty in the determination of justice to bring to light to the motions Judge and to the Court of Appeal that the selected umpire in this case did not have any knowledge in Construction Standards.

Reply to the Response to the Application for Leave to Appeal, Tab 2, p. 6, Exhibit AA  
– Affidavit of Dik Lee affirmed June 4, 2014 – Curriculum Vitae of Larry Gilbertson

If this case was to succeed and the Application for Leave to Appeal dismissed, this case would overrule the Supreme Court of Canada ruling in *Sport Maska*; it would be at odds with the Supreme Court of Nova Scotia in *265 Commercial Street Ltd. v. ING Insurance Company of Canada*; it would be at odds with Court of Queen's Bench of Alberta in *Matti v Wawanesa Mutual Insurance Company*. The Applicant submits that this is a matter of public and national importance.

If this case was to succeed and the Application for Leave to Appeal dismissed it would further widen the gap of inequality throughout the nation and it would further rule that an umpire can provide an expert opinion despite the fact that the umpire does not have the experience or knowledge in what the insurance appraisal is tasked to value. This is at odds with the Supreme Court of Canada ruling in *Sport Maska*.

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](http://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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