

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

BETWEEN:

**PHYLUM CORPORATION**

Applicant  
(Appellant)

-and-

**THE DOMINION OF CANADA GENERAL INSURANCE COMPANY**

Respondent  
(Respondent)

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**REPLY TO THE RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL**  
**(PHYLUM CORPORATION - APPLICANT)**  
(Pursuant to Rule 28 of the *Rules of the Supreme Court of Canada*)

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**Applicant (Appellant)**  
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## **OPENING STATEMENT**

1. The Respondent has chosen to minimize and personalize the Applicant's genuine concern in attempts to mislead this Honourable Court and devalue the importance that citizens across the nation are at risk of being treated unequal regarding the Insurance Appraisal and at risk of being treated unequal in the appointment of an umpire for the Insurance Appraisal.
2. The Applicant wishes to use this case to devote the necessary time, effort, energy and resources to do its part for the citizens and this nation to help making it a better place to live.
3. If an appeal is granted by this Honourable Court the Applicant will not seek any costs for this appeal. The Applicant is more concerned that justice would prevail.

## **RESPONDENT UNDENIABLY REINFORCES THAT THERE ARE CONFLICTS AT ALL LEVELS OF THE COURTS**

4. The Respondent does reinforce and confirm that there are some further 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

5. 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

6. 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.

7. 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 Mr. Gilbertson 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

8. 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.

## **CORRECTION TO THE RESPONDENT’S CONFUSION**

9. The Respondent at para. 24-26 of the Response to the Application for Leave to Appeal has completely misconstrued the *Matti v. Wawanesa* case law. The Respondent then made a statement: “There is no one expertise that makes a qualified umpire.”

Respondent’s – Response to the Application for Leave to Appeal, Tab 1, p. 7, para 26

10. The Respondent's statement is at odds with the Supreme Court of Canada ruling in *Sport Maska Inc. v. Zittler*, [1988] 1 S.C.R. 564 which held:

“[67] The fact that the third party makes a decision based on his personal expertise rather than on an adversarial procedure requiring the admission of evidence and argument by the parties suggests the existence of an expert opinion...”

*Sport Maska Inc. v. Zittler*, [1988] 1 S.C.R. 564, Tab 7F, p. 169 of the Applicant's Application for Leave to Appeal

11. The Supreme Court of Canada in *R v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9 did determine a definition for a properly qualified expert:

“to have acquired special or peculiar knowledge through study or experience in the respect of the matters in which he or she undertakes to testify.”

*R v. Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9, Reply to the Response to the Application for Leave to Appeal, Tab 3, p. 26

#### **CORRECTION TO THE RESPONDENT'S ERROR**

12. Mary Zgrablic is not an officer of the Applicant, Phylum Corporation. The Respondent had direct contact information of Mary Zgrablic.

Reply to the Response to the Application for Leave to Appeal, Tab 4, p. 41, para. 1-4, Affidavit of Mary Zgrablic affirmed February 25, 2015

13. The Respondent has not taken the time to verify fact and in doing so has provided erroneous information to this Honourable Court via Affidavit of Stephen H. Fay, sworn February 13, 2015.

Respondent's – Response to the Application for Leave to Appeal, Tab 1, p. 5, para 13

14. The Respondent relies upon the Affidavit of Stephen H. Fay, sworn February 13, 2015. Stephen H. Fay is listed as a lawyer for the Respondent. The Applicant respectfully submits that the Affidavit of Stephen H. Fay should be given no weight by this Honourable Court.

**FINAL REMARKS**

15. The Applicant submits that the attempts of the Respondent to minimize the Applicant's Application for Leave to Appeal is nothing more than a frustration on the part of the Respondent against the Applicant exercising its rights to justice.

16. GOD BLESS US ALL.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at the city of St. Catharines, in the Province of Ontario this 25<sup>th</sup> day of February, 2015.

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Phylum Corporation (Applicant)

Dik Lee – Representing

**TABLE OF AUTHORITIES**

<b>CASES</b>	<b>PARAGRAPH(S)</b>
<i>Matti v. Wawanesa Mutual Insurance Company</i> , 2009 ABQB 451	8, 9
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