File No.: _____

BEFORE THE

# Supreme Court of Canada

*ON APPEAL FROM JUDGMENT OF THE COURT OF APPEAL OF THE PROVINCE OF QUÉBEC (500-09-023604-135)*

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**BETWEEN :**

**GILLES GARGANTIEL**

**APPLICANT**
(Appellant)

**AND :**

**PROCUREUR GÉNÉRAL DU QUÉBEC**

**RESPONDENT**
(Respondent)

**AND :**

**SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC**

**INTERVENER**
(Mise en cause)

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**APPLICATION FOR LEAVE TO APPEAL**
**(Section 40 of the *Supreme Court Act*;**
**Rule 25 of the *Rules of the Supreme Court of Canada*)**

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## PART I – CONCISE OVERVIEW OF APPLICANT'S POSITION WITH RESPECT TO ISSUES OF PUBLIC IMPORTANCE AND STATEMENT OF FACTS

### Overview on public importance

1. This is the first time that the Supreme Court of Canada has been called upon to determine whether article 83.57 of Quebec's *Automobile Insurance Act*. R.S.Q. c. A-25 (the "**Act"**) prevents an automobile accident victim in Quebec from suing a third party who causes new or additional injuries to the said victim as a result of an intervening act of negligence (a civil fault) following the automobile accident.

2. This situation was in no way contemplated by the recent Supreme Court decision in *Rossy*,[1] which did not evaluate the scope of the Act and the immunities it provides when there is an intervening act of negligence by a third party following an accident.

3. In fact, no definitive decision has been rendered by this Court on this issue in relation to any province that has a no-fault automobile insurance scheme, namely Quebec, Manitoba, British Columbia and Saskatchewan.

4. Although it may be argued that this Court's decisions of *St-Jean* c. *Mercier*[2] as well as *Amos v. Insurance Corp. of British Columbia*[3] allude to the right to sue a third party when that party has committed an intervening act of negligence following the accident that causes either new or aggravated injuries, these judgements do not say so expressly, which may be why the Quebec Court of Appeal did not follow those decisions.

5. The crux of this application for leave, therefore, is for the Supreme Court to set clear guidelines and principles as to whether an accident victim may sue a third party following its negligent intervention after an accident, which intervention causes new or aggravated injuries to the victim, and under what conditions, in provinces where there is legislation governing a no-fault automobile insurance scheme.

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1 *Westmount (Ville)* c. *Rossy*, 2012 CSC 30 (CanLII), [2012] 2 R.C.S. 136, **Applicant's Book of Authorities, hereinafter « A.B. », Tab 13**.
2 [2002] 1 SCR 491, 2002 SCC 15 (CanLII), **A.B., Tab 12**.
3 [1995] 3 SCR 405, 1995 CanLII 66 (SCC), **A.B., Tab 1**.

6. The Court is also being called upon to determine whether the receipt and deposit of indemnities from the *Société d'assurance automobile du Québec* (the "**SAAQ**") by the accident victim, in and of itself and without any evidence as to the surrounding circumstances, constitutes a renunciation from suing the third party responsible for the injuries caused by that party's alleged negligent intervention.

7. When the Quebec Court of Appeal issued its judgement in the present matter on February 9th 2015, it also rendered its judgment of *Godbout* c. *Pagé*,[4] a case where the issues of law before the Court are identical, and where both judgments refer directly to one another and one must be read in light of the other.[5] Gargantiel also intervened in that appeal.

8. The *Gargantiel* and *Godbout* Quebec Court of Appeal judgments are the first of their kind in Quebec, the Court never having previously contemplated an accident victim's right to sue a third party following a new act of negligence causing distinct or aggravated damages following an automobile accident.

9. The Quebec Court of Appeal came to the bold and incorrect conclusion that in order to have a *novus actus interveniens* following an automobile accident that would allow the accident victim to pursue the third party responsible for new injuries sustained, there must be a complete break in the chain of causation between the initial accident and the ultimate injuries sustained by the accident victim.[6]

10. The Court of Appeal's rational that there must be a complete break in the causal link between the automobile accident and the ultimate injury sustained is a departure from the explanation of a *novus actus interveniens* by the Supreme Court in *Moore's Taxi*[7] and in *Dallaire*[8], in which no such complete break of causal connection is required.

11. By ruling in this manner, the Quebec Court of Appeal further expanded the coverage of article 83.57 of the Act, even beyond what is contemplated in this Court's decision in *Rossy*, which case

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4 2015 QCCA 225 (CanLII).
5 See para. 1 of *Gargantiel* 2015 QCCA 224 (CanLII) and *Godbout*, 2015 QCCA 225 (CanLII).
6 Paras. 24 & 29 of Court of Appeal judgment, **Applicant's Application for Leave to Appeal, hereinafter « A.A. », p. 35 and 38**.
7 Law, Union & Rock Insurance Co. v. Moore's Taxi Ltd., [1960] SCR 80, 1959 CanLII 81 (SCC), **A.B., Tab 8**.
8 *Dallaire* v. *Paul-Émile Martel inc*., [1989] 2 SCR 419, pages 424, 425, 427, **A.B., Tab 7**.

does not contemplate the situation of when a third-party commits a new intervening act of negligence following an accident.

12. In *Gargantiel* and *Godbout*, the Quebec Court of Appeal effectively created a civil immunity for third parties who commit intervening acts of negligence towards an accident victim following the accident.

13. Article 83.57 of the Act does not, and was not intended to create such a civil immunity and the Quebec Court of Appeal erroneously enlarged the scope of the coverage of the Act.

14. The judgements of *Godbout* and *Gargantiel*, therefore, are of public interest in Quebec, since the ruling creates precedent and deprives accident victims of their fundamental right to institute proceedings against a third party responsible for aggravating injuries that they would have otherwise not have suffered.

15. The result is that victims who are in the rare circumstance of suffering new or aggravated injuries following an accident, may be left undercompensated, which is certainly not the intention of the legislature.

16. Another disastrous effect of these judgments is that third parties who commit acts of negligence following an automobile accident are immune from civil recourses. As a result, a doctor who commits malpractice, a policeman that does not properly respond to a 911 call and a first responder that is negligent in the aftermath of an automobile accident will not be sanctioned financially for their negligence. With respect, the Quebec legislature never intended to provide these immunities.

17. This case also has a national interest, given that aside from Quebec, the Provinces of Manitoba, Saskatchewan and British Columbia all have some form of no-fault automobile insurance schemes in which compensation for bodily injuries sustained in an automobile accident are covered by the provincial no-fault scheme and preclude the accident victim from suing the party responsible for the accident.

18. Although the legislative intent of the no-fault schemes in Quebec and Manitoba are the same, the Court of Appeal rulings of the respective provinces are completely contrary to one another. They

reach contradictory conclusions on the scope of the no-fault scheme with respect to third parties who commit negligent intervening acts following the accident, and also on the degree of causation required in order to allow an accident victim the right to sue a third party when the conditions so allow.

19. The Court of Appeals of Manitoba and Saskatchewan do not require there to be a total absence of causal connection between the original accident and the ultimate damage sustained, whereas Quebec does.

20. There is now a very clear inconsistency between appellate court rulings in Manitoba and Saskatchewan versus Quebec, on identical matters of law and where the statutes in question are very similar. Therefore, the principle of seeking uniformity and consistency of the application of similar legislation is not followed as a result of the Quebec Court of Appeal's judgments in *Gargantiel* and *Godbout*.

21. In *Amos,* this Court in 1995 tacitly endorsed the concept of *novus actus interveniens* in connection with an automobile accident under a no-fault scheme, by stating:

> *The appellant's injuries arose out of the ownership, use and operation of his van. They originated from, flowed from, or were causally connected with its ownership, use and operation. Neither can it be said that there was an intervening act, independent of the ownership, use or operation of the vehicle, which broke the chain of causation. The appellant is therefore entitled to Part VII no-fault benefits to compensate him for the injuries suffered as a result of the accident.*[9]

22. The facts in *Amos,* however, did not involve any intervening act of negligence as a man was shot while driving his van and sustained serious injuries. Nevertheless, an *a contrario* argument can be made to the above citation that had there been an intervening act of negligence, it could break the chain of causation.

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9 [1995] 3 SCR 405, 1995, par. 27.

23. In 2002, this Court rendered its decision in *St-Jean* wherein an accident victim sued the orthopedic surgeon who treated the injuries sustained in his accident, for malpractice,[10] quite similar to the situation in *Godbout.*

24. One could argue that the mere fact that the Supreme Court of Canada allowed the case to proceed at a time when Quebec did in fact have a no-fault scheme in force (and article 4 of the Act then in force is the equivalent of today's article 83.57 of the Act), is a tacit acceptance by this Court that article 83.57 of the Act does not bar a civil recourse when there is an intervening act of negligence following an accident.

25. Unfortunately, the SAAQ was not originally impleaded in that case and tried to intervene only at the time that the case was destined for the Supreme Court, wherein it tried to have the case dismissed on the ground that article 4 of the Automobile Insurance Act then in force created a civil immunity that should not have allowed the victim's lawsuit to proceed.

26. In a decision of January 15th 2001, this Court held that the issue of the interpretation of article 4 (today's 83.57 of the Act) and the scope of its immunity raised a new ground that could have been raised earlier.[11] Consequently, this important issue that could have potentially been dealt with by the Supreme Court, was not.

27. It is noteworthy that the SAAQ, the government body responsible for administering the Act, is an intervenant in both the Gargantiel and Godbout case. In both the Court of first instance and the Appellate Court, the SAAQ has argued in favour of the Applicant's position herein.

28. We therefore invite the Supreme Court of Canada to review this case and render a definitive judgment on the important legal question as to whether a Quebec motor vehicle accident victim may sue a third party who commits an intervening act of negligence following the accident and which results in either new or aggravated injuries, and under what conditions.

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[10] Supra note 2.

[11] *St-Jean* c. *Mercier,* decision of the Supreme Court of Canada on the Motion to quash the appeal, January 15, 2001, [2002] 1 SCR 491, 2002 SCC 15 (CanLII), **A.B., Tab 11**.

**Background facts**

29. The facts are not really in dispute at this stage; however, it must be mentioned that the judgements from the Courts below had to hold the facts alleged in Applicant's *Requête introductive d'instance amendée* in first instance as being admitted, given that these judgments stem from a Motion to Dismiss.[12] The facts may be summarized as follows.

30. On October 18th 2009, just after 6:00P.M., Applicant lost control of his automobile and careened off the road into a patch of bushes within a short proximity off route 148, near Plaisance, Quebec.

31. His automobile was equipped with the OnStar system, which is configured with a Global Positioning System ("**GPS**"), permitting OnStar to locate the exact position of an automobile equipped with OnStar in the event of an accident.

32. OnStar was unable to communicate with Applicant following the accident, presumably because he was unconscious. Therefore, OnStar immediately notified the *Sûreté du Québec* ("**SQ**") of the accident and provided them with precise GPS coordinates of the location of the accident and specific details of where Applicant's automobile was located off the highway.

33. In the two hours following the accident, the SQ agents only did a cursory search for Applicant and his automobile, never having stopped to search at the precise location indicated to them by the GPS coordinates, which negligence resulted in never finding him or his automobile, and is the true cause of the amputation by his leg.

34. Applicant's submission is that these faults committed by the SQ agents broke the causal link between the automobile accident and the distinct injuries that Applicant sustained as a direct cause of the SQ's faults.

35. Applicant was only found approximately two days after the accident, in a semi-conscious state, on October 20th 2009, by a railway worker doing a routine inspection of the tracks. Applicant was rushed to the hospital where he was treated for severe injuries.

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[12] *Canada* (Attorney General) v. Confédération des syndicats nationaux, 2014 SCC 49 (CanLII), **A.B., Tab 5**.

36. On October 21st 2009, while still in the hospital with limited cognitive functions, a *demande d'indemnité générale* with the *Société de l'assurance automobile du Québec* ("**SAAQ**") was filled in on behalf of Applicant.

37. On October 30th 2009 doctors determined that Applicant's right leg would have to be amputated, which amputation eventually took place on November 18th 2009 on Applicant's right leg below the knee.

38. On December 29th 2009, Applicant was transferred from the *l'Hôpital de Hull* to the *Centre regional de réadaptation La Ressource* for further therapy and rehabilitation, particularly due to the amputation. Applicant remained there for four months where he received continuous therapy and a prosthetic leg. He was released on April 30th 2010, over six months after the accident.

39. At present, Applicant continues to suffer from permanent physical and mental incapacities related to the accident itself, and from distinct injuries caused by the SQ's negligence, including the amputation of his right leg.

40. The evidence of record, which is held to be admitted at this stage, is to the effect that Applicant's amputation was caused by suffering server frostbite from being left out in the cold for over two days without being found, and not from the accident itself.[13]

41. Applicant's admits having made a claim with the SAAQ and having received and deposited indemnities from it in relation to injuries sustained in his accident, as well as his amputation. It has paid a total of $103,878.12 for loss of enjoyment of life, representing a final payment for that category of damages.

**Legislative History**

42. On October 17th 2012, Applicant instituted legal proceedings against Respondent alleging that he was entitled to damages caused by the SQ agents as a result of their negligent search for Applicant and his vehicle on the night of October 18th 2009.

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[13] See the *Rapport d'expertise complémentaire du Dr. Claude Godin of June 19, 2012, files as Exhibit P-11*, **A.A., p. 106**.

43. On December 13th 2012, Respondent served Applicant with an *Avis de denunciation du défendeur d'un moyen de non-recevabilité pour absence de fondement juridique* on the basis of articles 159 and 165(4) of the *Code of Civil Procedure*, on the ground that Applicant had already been entirely indemnified by the SAAQ for the entirety of the injuries that he suffered following his automobile accident of October 18th 2009.

44. On March 5th 2013, Applicant served Respondent with its amended introductory motion and wherein it impleaded the SAAQ as Mise-en-cause.

45. On March 20th 2013, the hearing on Respondent's Motion to Dismiss was held before Judge Paul Mayer of the Superior Court of Quebec, and the letter rendered his judgement on May 1st 2013, granting the Motion to Dismiss, dismissing Applicant's action.

46. Judge Mayer essentially dismissed the action on two grounds. First, he states that Quebec has a legal principle by which all bodily injury suffered by an automobile accident victim, either in the accident or in subsequent events following the accident, including the fault of a third party, must be indemnified solely by the SAAQ, to the exclusion of the courts.

47. Second, Judge Mayer concludes that by collecting and depositing the SAAQ indemnities, which covered all of Applicant's injuries, even those that he attributes to third parties, Applicant renounced to any civil recourse that he could potentially have had.

48. On February 9th 2015, the Quebec Court of Appeal rejected the Appeal and maintained the judgment of first instance, for the same reasons.

**PART II – STATEMENT OF QUESTIONS IN ISSUE**

49. Applicant submits that the following issues are of national and public importance for residents of all provinces with no-fault schemes, being Quebec, Manitoba, Saskatchewan and British Columbia. The public in these provinces has an interest in having clear guidelines as to when, if ever, they may institute proceedings against a third party who commits an intervening act of negligence following an automobile accident. Also, the public has an interest in knowing whether accepting indemnity payments from the SAAQ creates an automatic renunciation of their right to sue.

50. The first issue to address is to determine whether the Quebec Court of Appeal was correct in its conclusion that article 83.57 of the Act creates a bar or civil immunity preventing a motor vehicle accident victim from suing a third party in damages, when the said third party commits an intervening act of negligence following the accident and which causes either new or aggravated injuries to the accident victim.

51. If this Court supports Applicant's position that article 83.57 of the Act does not create this additional civil immunity, Applicant asks this Court to determine what is the test to establish that a new act of negligence or *novus actus interveniens* has occurred, which would allow for the accident victim to pursue the third party responsible for the new or aggravated injuries.

52. Lastly, we request that this Court decide on whether the act of receiving and depositing indemnities from the SAAQ amounts to an automoatic renunciation of a claim against a third party who commits an intervening act of negligence after the accident.

**PART III – STATEMENT OF ARGUMENT**

**Issue 1: The right of an accident victim to sue a third party who commits an intervening act of negligence following the accident which causes new or aggravated injuries to the victim**

53. While the Applicant in no way contests the large and liberal interpretation of the Act and its coverage to automobile accident victims as clearly concluded by this Court in *Rossy*, it is the Applicant's position (and the Applicants in *Godbout*) that if a third party commits an intervening act of negligence towards the accident victim following the accident, which intervention causes either a new or an aggravation of injuries sustained by the victim, article 83.57 of the Act does not bar the victim to sue the third party responsible for those injuries.

54. Though it was not in reference to a no-fault automobile insurance scheme, this Court laid the foundation for *novus actus interveniens* in automobile accident cases in *Moore's Taxi,* stating that a new intervening act of negligence could break the causal link between the automobile accident and the ultimate damages sustained, stating:

> *It is sufficient to say that the words "claims arising out of [...] the ownership, use or operation of any motor vehicle" as used in this exclusion can only be construed as referring to claims based upon circumstances in which it is possible to trace a continuous chain of causation unbroken by the interposition of a new*

> *act of negligence and stretching between the negligent use and operation of a motor vehicle on the one hand and the injuries sustained by the claimant on the other.*[14]

55. The logic of *Moore's Taxi* to the effect that the Act will apply in circumstances when it "*is possible to trace a continuous chain of causation unbroken by the interposition of a new act of negligence*"[15] (and *a contrario,* it will not apply if something breaks this chain of causation) was followed by subsequent decisions of the Supreme Court and in Quebec.[16]

56. As succinctly put by Judge Pierre Bergeron j.c.s., in *Badeaux* c. *Corporation intermunicipale de transport de la Rive-Sud du Québec et Ville de Lévis* :

> «*Il faut simplement conclure que tout fait nouveau, indépendant de l'usage de l'automobile, qui intervient comme cause du préjudice, interrompt le lien de causalité avec le véhicule et fait obstacle à l'application de la Loi sur l'assurance-automobile. Novus actus interveniens*.»[17] (emphasis added)

57. As previously stated, this Court in *Amos* tacitly endorsed the concept of *novus actus interveniens* as it applies to an automobile accident in a no fault scheme and also refers to *Moore's Taxi,* stating that in " *in Canada, the "causation test" had its genesis in Law, Union & Rock Insurance Co. v. Moore's Taxi Ltd*."[18]

58. Since this Court has clearly endorsed the fact that *Moore's Taxi* is the genesis of the causation test, it was incumbent on the Quebec Court of Appeal to apply the teachings of *Moore's Taxi,* rather than concluding that the rupture in causal link must be absolute.[19] The Quebec Court of Appeal made a manifest error in law by not doing so.

59. The position put forth by Applicant that article 83.57 of the Act is not a bar to sue if there is an intervening act of negligence following the automobile accident has been adopted in provinces with similar no-fault legislative schemes to that of Quebec (namely in Manitoba, British

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14 Supra note 7, pages 84, 85.
15 *Ibid.*
16 *Dallaire* v. *Paul-Émile Martel inc*., [1989] 2 SCR 419, pages 424, 425, 427, *Badeaux c. Corporation intermunicipale de transport de la Rive-Sud du Québec et Ville de Lévis,* AZ-50573032 (C.S.), (11-03-1986), **A.B., Tab 3**.
17 *Badeaux c. Corporation intermunicipale de transport de la Rive-Sud du Québec et Ville de Lévis,* AZ-50573032 (C.S.), (11-03-1986), par. 35.
18 Supra note 3, at para.19
19 See para. 24 and 29 of the Quebec Court of Appeal judgment in *Gargantiel,* 2015 QCCA 224 (CanLII).

Columbia and Saskatchewan), and in Applicant's opinion, by the Supreme Court of Canada in virtue of *Amos* and *St. Jean*.

60. However, the Quebec Court of Appeal's judgment in this matter has for the first time ruled on this issue and its judgment is the complete opposite of judgments on the same issue in these other provinces.

61. In *Rossy*, this Court stated that Manitoba's *Public Insurance Corporation Act* (the "**Manitoba Act**") serves as a useful comparison for interpreting the Act, as it was modelled after it.[20]

62. In *Mitchell* v. *Rahman,*[21] the Manitoba Court of Appeal was faced with a situation where an automobile accident victim sued the physicians that treated him following his accident on the basis of their negligent diagnosis and treatment of his shoulder injuries that he had sustained in his accident, which diagnosis and treatment caused permanent damage to his shoulder.[22]

63. The court of first instance in *Rahman* dismissed the case on the ground that s. 72 of the *Manitoba Act* (the equivalent of article 83.57 of the Act) barred Plaintiff's claim, which is the same conclusion reached in *Gargantiel*, both in first instance and in appeal.

64. However, the Manitoba Court of Appeal overturned the decision and concluded that nothing in the legislative intent of the *Manitoba Act* is a bar to the accident victim's recourse where the damages that he sustains result from an intervening act, independent of the use of the automobile. It also cites *Amos* as endorsing the argument that an intervening act may break the nexus of causation between the injuries and the use of an automobile.[23]

65. In terms of analysing the causal connection from the accident to the ultimate injuries sustained, citing *Amos*, the Court acknowledged that "a direct or proximate causal connection is not required between the injuries suffered and the ownership, use or operation of a vehicle. The phrase "arising out of" is broader than "caused by", and must be interpreted in a more liberal manner."[24]

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20 Supra note 1, at para. 31.
21 2002 MBCA 19 (CanLII), **A.B., Tab 9**.
22 *Ibid.*
23 *Ibid*, at para. 42.
24 Ibid, at para. 35.

66. This position is echoed by the oft cited Quebec Court of Appeal in *Pram*[25] as to the large and liberal notion of an automobile accident and also in the leading case on the matter, this Court's judgment in *Rossy.*

67. There is therefore no disagreement between the parties as to the fact that in Quebec and Manitoba we do not look to the conventional causal link of civil law, in the case of Quebec, or the proximate or judicial cause of an accident in common law jurisdictions, in order to determine whether the no-fault scheme applies.[26]

68. Yet despite the acknowledgement of the large and liberal interpretation of the *Manitoba Act*, the Manitoba Court of Appeal tempers its scope, explaining that the ultimate injuries sustained by an accident victim must have more than an incidental or fortuitous connection to the accident.[27] This point essentially echoes the Quebec Court of Appeal in *Pram*, where the Court reminds us that despite the large and liberal interpretation of the Act, "*cette interprétation doit cependant rester plausible et logique eu égard au libellé de la loi*."[28]

69. In *Rahman,* the Court is unequivocal in its rejection of the "but for" or *sin qua non* principle in determining whether the no-fault scheme will cover the injuries that occurred or were aggravated after an accident through the negligent intervention of a third party.[29]

70. The "but for" principle essentially states that "but for" the accident, the injuries that result from treatments or interventions after the accident would not have occurred.

71. The reason for rejecting the "but for" or *sin quo non* standard of causation for deciding whether injuries arise out of an automobile accident is that the accident will in every case be the genesis of a series of events for which the accident victim ultimately sustains his or her new or aggravated injuries.

72. For example, if the accident victim is treated by a doctor and the doctor commits malpractice causing a new or an aggravation of the injuries sustained in the accident, one will always be able

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25 *Productions Pram inc.* c. *Lemay*, 1992 CanLII 3306 (QC CA), **A.B., Tab 10**.
26 Supra note 22, at para. 9 & 35.
27 Supra note 22, at para. 36, 59, 65.
28 Supra note 25 at page 4.
29 Supra note 22, at para. 34 & 36.

to say that the victim would not have been in the hospital "but for" the accident. This threshold is too high and for that reason, is rejected in *Rahman.*

73. Saskatchewan also has a no-fault scheme, the *Automobile Accident Insurance Act* (the "**AAIA**"), but as cautioned in *Rossy,* the Saskatchewan legislation allows the insured to choose between no-fault coverage and tort-based coverage, so the said legislation is less useful in comparing legislative intent.[30]

74. Nevertheless, in *Rossy* this Court acknowledges the similarities in the definitions in Quebec and Saskatchewan's no-fault schemes, and therefore, we submit that Saskatchewan's Court of Appeal's analysis on causation under its no-fault scheme is a useful tool in comparing to Quebec's.

75. Section 40.1 of the AAIA is the Saskatchewan equivalent of article 83.57 of the Act, and in circumstances where a victim chooses the no-fault scheme, it creates a bar from the accident victim from instituting legal proceedings arising out of injuries sustained in the accident.

76. In 2010, the Saskatchewan Court of Appeal in *Cebryk* v. *Paragon Enterprises (1984) Ltd. (Armstrong's Physiotherapy Clinic)*[31] analysed when the theory of *novus actus interveniens* could apply following an automobile accident when the victim elects the no-fault scheme.

77. In *Cebryk,* the Saskatchewan Court of Appeal overturned the lower court's decision which had concluded that s. 40.1 created a bar from an accident victim from suing a physiotherapy clinic for causing a new injury he suffered as a consequence of the clinic's negligent treatment of his accident injuries.

78. Similar to *Rahman,* the Saskatchewan Court of Appeal eloquently described that the lower court judge misinterpreted s. 40.1 of the AAIA as barring the action merely because the accident was the *sin qua non* without which the new injury would not have occurred.

> *While the words "respecting, arising out of or stemming from" may relieve a party relying on s. 40.1 from having to establish that the motor vehicle accident and resulting injuries are the proximate cause on which the plaintiff's action is based, that party still must establish a meaningful causal link, unbroken by*

30 Supra note 1, at para. 31.
31 2010 SKCA 146 (CanLII), **A.B., Tab 6**.

> *a novus actus interveniens. The mere fact that the motor vehicle accident is the causa sine qua non giving rise to the bodily injury on which the plaintiff's action is based (sometimes referred to as the "but for" principle) does not meet the requisite causal connection threshold. See Amos, supra at paras. 19-21.*[32]

79. The Saskatchewan Court of Appeal concludes that the bar for a civil recourse announced by s. 40.1 of the AAIA only applies when a "meaningful causal link exists between the motor vehicle accident and the injury on which the insured's claim is based."[33]

80. It adds that a meaningful causal link is one where the injuries sustained after the occurrence of an accident are unbroken by a *novus actus interveniens*.[34]

81. In short, the Court of Appeals of Manitoba and Saskatchewan expressly reject the "but for" standard of causation when a no-fault scheme exists.

82. In stark contrast, the Quebec Court of Appeal makes a manifest error in law by endorsing a "but for" standard relating to causation and compensation under the Act. In its judgements in *Gargantiel* and *Godbout*, the Court has effectively ruled that as long as the injury is somewhat connected to the accident, even after an intervening act of negligence by a third party, then the Act will apply and there is no civil recourse for the victim. Therefore, there is a clear inconsistency in Court of Appeal judgments of Quebec versus other provinces with similar no-fault automobile insurance schemes.

83. With respect to the Quebec Court of Appeal, their judgement has created precedent by which on the one hand, it acknowledges the existence of the principle of *novus actus interveniens* in Quebec law, but on the other hand, it cannot be realistically applied to any practical situation.

84. At paragraph 65 of the *Godbout* judgment, the Court of Appeal offers an example as to when an accident victim could potentially sue following additional damages sustained after an automobile accident, in other words, when *novus actus interveniens* could apply.[35]

85. The example is one where an accident victim is in the hospital to be treated for injuries sustained in an automobile accident and decides to take advantage of his or her opportunity in the hospital

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[32] Ibid, at para.54.
[33] Ibid at para.36.
[34] Ibid at para. 54.
[35] See para. 65 of *Godbout*, 2015 QCCA 225 (CanLII).

to undergo esthetic surgery on a body part unrelated to anything injured in the accident. The Court states that if the doctor commits malpractice in that esthetic procedure, then *novus actus interveniens* could apply.

86. With respect, if the Court of Appeal has to go to such great lengths to find such an obscure and unrealistic scenario under which *novus actus interveniens* could apply in Quebec, it is basically concluding that the principle could never be applied, which is tantamount to a *reductio ad absurdum.*

**Legislative intent of the no-fault scheme as it relates to third party immunity**

87. The legislative intent of the no-fault scheme in Quebec and Manitoba, and to a certain extent in Saskatchewan and British Columbia, is the same: to provide compensation to victims of automobile accidents for death and injury to the person, without regard to fault, while eliminating the expense and uncertainty of private civil litigation.[36]

88. Yet, the Quebec Court of Appeal confounds the large and liberal interpretation of the Act, as to mean that one can never sue a third party responsible for a negligent intervention causing new or aggravated injuries following an accident.

89. The Manitoba Court of Appeal in *Rahman* provides a much more logical assessment on weighing the legislative intent of the no-fault scheme when there is an occurrence of an intervening act of negligence following an accident, stating:

> *And it is not at all inconsistent with the legislative intent of Part 2 of the Act. That intent, as articulated by Helper J.A. in McMillan v. Thompson (Rural Municipality) (at para. 54), is "an all-encompassing insurance scheme to provide immediate compensatory benefits to all Manitobans who suffer bodily injuries in accidents involving an automobile." There is nothing in Part 2 of the Act to indicate that its object and legislative intent is to compensate persons for injuries that have no nexus or causal link to an automobile or to the use of an automobile, or to relieve tortfeasors from responsibility for the negligence that has caused those injuries.*
>
> *Nor does the language of Part 2 of the Act demonstrate a clear and unambiguous intent to take away the right of an injured person to sue for compensation for injuries that have no more than an incidental or fortuitous connection, not a*

[36] Supra note 1, at para.17.

> *causal link, to an automobile or to the use of an automobile. As Dickson J. (as he then was) observed in R. v. Riddle[21] (at p. 390):*

90. The Saskatchewan Court of Appeal in *Cebryk* reasons the same way, deciding that nothing in s.40.1 of the AAIA demonstrates a clear legislative intent to give immunity to a party who commits a negligent *novus actus interveniens* causing injuries to the victim following the accident.[37]

91. As stated in *Cebryk*, the right to sue someone who commits a fault is a fundamental right on which citizens should not be deprived unless there is a clear legislative intent to do so.[38] We submit that in reading article 83.57 of the Act, it is impossible to find this clear legislative intent either.

92. The rational of not providing immunity to a third party who commits a new act of negligence following an automobile accident is obvious, because the results of providing such immunity would be absurd. Such immunity would allow medical practitioners, policemen, paramedics and other first responders to commit unfathomable acts of negligence towards accident victims and they would be absolved of responsibility by invoking article 83.57 of the Act. This is clearly not the intention of the legislature.

93. In both *Gargantiel* (par. 32) and *Godbout* (par. 57), the Quebec Court of Appeal demonstrated concern that to rule in favour of Gargantiel and Godbout, and to allow them to pursue the third party who committed an intervening act of negligence following an accident, would destabilize the no-fault system and the protection it provides to victims.

94. The Courts reasoning is that the SAAQ could cut its coverage to people in situations like Gargantiel and Godbout, thereby undermining the *raison d'être* of the no-fault scheme, which is to provide rapid indemnification to accident victims without having to prove fault.

95. This reasoning by the Quebec Court of Appeal is, with respect, deeply flawed; to permit Gargantiel and Godbout to proceed with their actions against the negligent third parties does not in any manner whatsoever jeopardize the legislative intent of maintaining the large and liberal remedial nature of the Act as contemplated by *Rossy*.

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37 Supra note 31 at para.10, 36, 51, 52, 58 and 59.
38 Surpa note 31, at para. 58.

96. First, the concern that accident victims could be left without indemnification is without merit. It is only in the extremely rare circumstances (consider that only a handful of cases discuss the notion of *novus actus interveniens* in regard to automobile accidents in all of Quebec's judicial history) that the issue of a third party intervener who commits negligence following an accident, that the issue of assessing whether there is a break in a causal link would apply.

97. In all other accidents, when there is no alleged intervention of the third party breaking a causal link, the SAAQ is and will continue to be required to indemnify accident victims for the totality of the injuries arising out of an accident, even those that are quite remote. *Rossy* will continue to guide the SAAQ as to the large and liberal interpretation of an accident.

98. In the those rare cases, like Godbout and Gargantiel, when the accident victim should have a right to sue, the concern of the Court of Appeal that the perpetrator of the fault is insolvent and the victim is left under compensated is misguided and unfounded.

99. In all the cases cited by the parties in the appeal dealing with an intervening act of negligence (except Assurance-Automobile-68[39] – and in that case, it was the victim himself who was negligent following the accident, causing new injuries and was therefore not compensated by the SAAQ!), the third party pursued by the accident victim was always a first responder to the accident or a medical practitioner. The right of action of the victim in all cases to date have been against government bodies, doctors who are insured and hospitals. These institutions will not have problems paying the victim if a court ruled as to their liability.

100. In addition, as argued by counsel for the SAAQ, the latter neither has the mandate nor the resources to analyze each individual accident case and to determine whether a new act of negligence has arisen. Therefore, there will not be an increase in refused SAAQ claims if Gargantiel and Godbout are permitted to proceed with their actions.

101. Perhaps more importantly, the concern of the Quebec Court of Appeal, with respect, on how ruling in favour of Gargantiel and Godbout would affect policy is not their decision to make and is best left for the legislature. Given that there is no clear immunity to third parties who commit new acts of negligence following an accident under article 83.57 of the Act, the Court of Appeal

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[39] *Assurance Automobile-68*, C.A.S., (1997-05-14), SOQUIJ AZ-97051052, **A.B., Tab 2**.

must apply the law as it is. This position is exactly what the Manitoba Court of Appeal determined in *Rahman:*

> *65 Whether financial responsibility for injuries that have no more than an incidental or fortuitous connection to the use of an automobile should be transferred from negligent third parties to the owners of motor vehicles in Manitoba is an exceedingly complex and far-reaching policy question that must be left to the Legislature.*[40]

102. If the legislature had truly intended there to be a third party immunity following an intervening act of negligence, it would have done so. The spirit of the Act is to protect accident victims, not to exonerate all liability of third parties responsible for an intervening act of negligence causing new or aggravated injuries.

**Issue 2: Is the act of receiving and depositing indemnities from the SAAQ amount to a renunciation of a claim against a third party responsible for injuries sustained after the accident?**

103. The Quebec Court of Appeal ruled that the acceptance and deposit of the SAAQ indemnity payments by the Applicant, in and of itself and without evidence of the surrounding circumstances, constitutes a renunciation of his rights against Respondent. However, this position completely contradicts this Court's decision of January 15th 2001 on the Application to Quash an Appeal and Request for Intervention by the SAAQ in *St-Jean* c. *Mercier.*

104. This Court clearly ruled that :

> *"WHEREAS moreover the review of the administrative decision on the benefits and their payment to the appellant does not result in an automatic waiver by the appellant of his rights against the respondent for damages not caused by an automobile accident."*[41]

Therefore, the Quebec Court of Appeal has committed an error in law by ruling against the Supreme Court on the same issue and in Applicant's opinion, this matter should therefore be moot.

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40 Supra note 22 at para. 65.

41 *St-Jean* c. *Mercier,* decision of the Supreme Court of Canada on the Motion to quash the appeal, January 15, 2001, [2002] 1 SCR 491, 2002 SCC 15 (CanLII).

105. Moreover, in Applicant's admitted facts, there is not one fact to substantiate the Court of Appeal's finding that Applicant renounced to any claims against a third party, such as Respondent, when he accepted his indemnity from the SAAQ. Applicant submits that any renunciation by him would have had to be express. This Court in *Brilliant Silk MFG Co. vs. Kauffman,*[42] established the legal principle that renunciation of a claim is a question of fact, not law.[43] Without any proof on the part of Respondent, it cannot be said that Applicant knowingly renounced to his claim.

106. It is a precondition that in order to renounce to a right, especially a fundamental right like the right to sue another party who causes them injuries[44], a party would have to be aware of the right to which he or she is renouncing. There would have to be an informed consent on the part of Applicant to willingly renounce his rights to pursue a third party. Since there is no provision in any law applicable to the case at bar (particularly in the Act) stating that by making a claim to the SAAQ and receiving an indemnity, he renounces to his right against third party, it is a manifest error in law to conclude that he renounced to this right.

**National importance and Public Interest**

107. As elaborated in the overview herein, the matters addressed in this Application for Leave are of national and public importance, given that they focus on the interpretation on statutory no-fault insurance schemes which exist in several provinces across Canada. The public has an interest in having the Supreme Court render a definitive decision to resolve ambiguity and contradictory jurisprudence amongst provinces with no-fault schemes on whether the civil immunity contemplated in these statutes extends to people who commit intervening acts of negligence following an accident which results in new or aggravated injuries to the victim

108. It is also of national and public importance for an accident victim to know if, by accepting an indemnity from the SAAQ (or the equivalent under a no fault regime in another province), they are waiving their right to sue in these types of situations. It is of national importance to resolve this uncertainty because it relates to a fundamental right, which people should therefore know if they are waiving.

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42 [1925] S.C.R. 249, **A.B., Tab 4**.
43 *Ibid.* page 259.
44 Article 1607 C.c.Q., see also Supra note 31, par. 58 of Cebryk on the fundamental right to sue in common law.

109. In light of the novel nature of these matters before the Court and the national and public interest of not only Quebec, but all provinces with no fault schemes, Applicant submits that leave to the Supreme Court of Canada should be granted.

**PART IV – COST SUBMISSION**

110. Given that this Application for Leave to Appeal raises issues of national and public importance, Applicant requests that if leave to appeal is granted, it be awarded costs in the cause.

**PART V – ORDER SOUGHT**

111. For the foregoing reasons, may it please this Honourable Court to:

**GRANT** the present Application for Leave to Appeal to the Supreme Court of Canada, with costs in the cause.

Montréal, April 8, 2015

**(S) LEONARD KLIGER, AVOCAT**

**Me Andrew Kliger**
**Me Leonard Kliger**
**Leonard Kliger, Avocat**
**Attorneys for Applicant**

**PART VI – AUTHORITIES**

**Paragraph(s)**

**PART VII – LEGISLATION**