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AVOCATS - LAWYERS

Montréal, February 3, 2022

BY EMAIL

Ms. Chantal Carbonneau
Registrar
Supreme Court of Canada
311 Wellington
Ottawa, Ontario, K1A OJ1

Re: ***Frederick Langford Sharp v. Autorité des marchés financiers***
SCC Court File Nº: 39920

Dear Madam,

Please consider the present letter as the Reply of Frederick Langford Sharp to the Response of the *Autorité des marchés financiers* (the "**AMF**").

The AMF's interpretation of the impugned judgment of the Québec Court of Appeal (the "**QCCA Judgment**") is a stark departure from any established conception of adjudicative jurisdiction, be it under the *Civil Code of Québec* (the ("**C.C.Q**.") or at common law. The AMF asserts that the QCCA Judgment empowers a provincial administrative body, the Financial Markets Administrative Tribunal (the "**FMAT**"), to assert jurisdiction over any foreign defendant on the sole basis of a finding of legislative jurisdiction.[1] According to the AMF, where the FMAT finds that a given statutory provision is constitutionally applicable to an out-of-province defendant, its jurisdictional analysis ends there. The AMF posits that the FMAT need not consider any C.C.Q. rules governing the *International Jurisdiction of Québec Authorities*, nor any conflict rules developed under the "real and substantial connection" test at common law. The AMF further submits that, for the purpose of this analysis, any "theory of the case" alleged in its proceedings is presumed to be admitted.[2]

At bottom, the AMF's position entails that the FMAT will assert territorial jurisdiction over any proceedings in which the AMF simply alleges Québec securities legislation to apply. This, coupled with the AMF's broad conception of its statutory public interest discretion[3], would effectively result in unlimited extraterritorial reach of the FMAT – one that extends far beyond the jurisdiction of Canada's Superior Courts.

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[1] AMF's Memorandum of Argument at para. 50.
[2] AMF's Memorandum of Argument at para. 5.
[3] AMF's Memorandum of Argument at paras. 18 to 20.

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The AMF further argues that the "sufficient connection" test for legislative jurisdiction is more stringent than the "real and substantial connection" test for adjudicative jurisdiction, such that the latter can be conflated with – and subsumed into – the former.[4] The AMF's position is directly contradicted by the jurisprudence of this Court, and the text of art. 3136 of the C.C.Q., which expressly distinguishes between the notions of a "sufficient connection" with Québec and Québec authorities' "jurisdiction to hear a dispute":

> **3136.** Even though a Québec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the dispute has a sufficient connection with Québec, if proceedings abroad prove impossible or the institution of proceedings abroad cannot reasonably be required.

Accordingly, the novel test adopted in the QCCA Judgment, as interpreted by the AMF, would short-circuit the express intent of Québec's legislature that its adjudicative authorities assert territorial jurisdiction based on established objective connecting factors, and not based on discretionary findings of a "sufficient connection".

Finally, the AMF's submission that the "forum of necessity" provision of art. 3136 C.C.Q. enables the FMAT to assert jurisdiction in this case and others because it is inevitably "impossible" for the AMF to institute proceedings outside of Québec is both unprecedented and erroneous. The AMF's position, which was not raised in the instances below, ignores the existence of equivalent securities regulators outside of Québec. Indeed, the Québec *Securities Act* contains reciprocity provisions recognizing that where another Canadian securities regulatory authority issues a decision, it will automatically apply in Québec as a final decision of the FMAT.[5] By asserting that the AMF will automatically satisfy the impossibility criteria of art. 3136 in all cases, the QCCA Judgment and the AMF have further deviated from the overarching intent of Québec's legislature.

Ultimately, the QCCA Judgment, as interpreted and applied by the AMF, will result in confusion, uncertainty, unfairness, and jurisdictional overreach in this case and others. This Court's intervention is required to provide clear direction on these novel issues of national and public importance. We therefore reiterate that leave to appeal should be granted.

Respectfully submitted,

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c. c. M^e^ Stéphanie Jolin and Me Jean-Nicolas Boutin-Wilkins, counsel for the AMF
M^e^ Patrick Ferland and M^e^ Sébastien Caron, LCM Avocats Inc., counsel for the Applicants Rocca, Van Damme and Carnovale

[4] AMF's Memorandum of Argument at para. 45.
[5] CQLR c. V-1.1., ss. 308.2.1.1 to 308.2.1.6