

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

KENNETH SMITH, as Estate Trustee of the Last Will and Testament of
Margaret Smith, deceased, and RONALD ORIET

Plaintiffs

and

SUTTS, STROSBERG LLP, HEENAN BLAIKIE LLP, PALIARE ROLAND
ROTHSTEIN ROSENBERG LLP and KOSKIE MINSKY LLP

Appellants

and

NATIONAL MONEY MART COMPANY and
DOLLAR FINANCIAL GROUP, INC.

Defendants
(Respondents)

Proceeding under the *Class Proceedings Act, 1992*

**SUPPLEMENTARY FACTUM OF THE APPELLANTS RE: SECTIONS 32 & 33 OF
THE CLASS PROCEEDINGS ACT, 1992**

February 23, 2011

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SUPPLEMENTARY FACTUM OF THE APPELLANTS

INTRODUCTION

1. By way of a letter dated February 4, 2011, the Court asked for further submissions as to why the fees in this case fall to be determined under s. 33(7) of the *Class Proceedings Act, 1992* (the "Act"), rather than s. 32(4) of the Act. These submissions address that question.

2. Although s. 32(4) and s. 33(7) each provide a statutory basis upon which a court can determine the appropriate fees to be paid to class counsel, the process for determining the quantum of those fees is essentially the same under both sections. Specifically, as discussed in

the Appellants' initial appeal factum, on a motion to approve or fix counsel fees, the court must do the following:

- (i) Determine a fair and reasonable base fee for class counsel, having regard to a set of nine factors identified in the case law;
- (ii) If applicable, determine a fair and reasonable premium to be added to that base fee, having regard to the risk undertaken by class counsel in prosecuting the action and the success obtained.

3. In order to explain why the court's analysis under both s. 32(4) and s. 33(7) is identical, these submissions explain and analyze the relationship between ss. 32 and 33. After that, those sections are applied to the case at bar.

SECTION 32 OF THE ACT

4. Section 32 deals with fee agreements generally, including those where payment is contingent on success or otherwise. Section 32(1) sets out certain formal requirements that all fee agreements must meet. They must be in writing, state the terms under which fees and disbursements shall be paid [s. 32(1)(a)], provide an estimate of the expected fee [s. 32(1)(b)] and state the method by which payment is to be made [s. 32(1)(c)].

Garland v. Enbridge Gas Distribution Inc. (2006), 56 C.P.C. (6th) 357 (Ont. S.C.), at para. 16 [Tab 1, New BOA]

5. While s. 32(1)(b) has not presented the courts with any difficulties, there appears to have been some confusion between the role played by s. 32(1)(a) and that played by s. 32(1)(c).

6. Section 32(1)(a) concerns the manner in which fees are to be calculated, and the conditions under which class counsel are eligible to receive a fee. For example, if the payment of fees is contingent on success, s. 32(1)(a) requires this to be reflected in the agreement. Similarly, if fees are to be calculated on an hourly basis, s. 32(1)(a) requires this to be reflected in the agreement.

7. Section 32(1)(c), by contrast, addresses the manner in which those fees will actually be paid, and provides examples: by lump sum, salary or otherwise. As examples, fees could be payable monthly or in one lump sum out of any recovery obtained by the class. While there is some jurisprudence that suggests that the manner in which fees are calculated (such as by multiplier or a percentage of an eventual recovery) falls under s. 32(1)(c), these are not “methods” by which payment “is to be made”. Instead, it is s. 32(1)(a) that mandates that agreements to have class counsel paid through a multiplier or a percentage of the recovery must be in writing.

Nantais v. Telectronics Proprietary (Canada) Ltd., 28 O.R. (3d)
523 (S.C.) (“*Nantais*”), at paras. 11-12 [Tab 2, New BOA]

8. A written fee agreement between class counsel and a representative plaintiff, whether or not it makes payment contingent on success, is not enforceable unless it is approved by the court, pursuant to s. 32(2). Approval can be sought by class counsel upon motion.

Nantais, at para. 11 [Tab 2, New BOA]

9. If a written fee agreement is not approved, s. 32(4) allows the court to determine the amount owing to class counsel in respect of fees and disbursements. Section 32(4) does not direct the court as to how this determination is to be made.

10. The approval contemplated by s. 32(2) has been subject to recent and potentially inconsistent jurisprudence. At issue is whether approval is concerned solely with whether the agreement complies with the formal requirements of s. 32(1), or whether s. 32(2) also addresses the size of the fee envisioned by the agreement.

11. For example, in *Atlas*, the court found that there was “no reason to refuse to approve the fee agreement as I am satisfied that it complies with sections 32 and 33 of the *CPA*.” However, despite this approval, the court proceeded to award a multiplier of 2.6 even though the fee agreement provided for a multiplier of 4. The court thus “approved” the fee agreement because it complied with the formal requirements of the Act, yet did not consider this approval to extend to the actual numbers contained in that agreement.

***Charles Trust (Trustees of) v. Atlas Cold Storage Holdings Inc.*
(2009), 78 C.P.C. (6th) 142 (Ont. S.C.), at paras. 50, 59, 72 [Tab
8, Original BOA]**

12. By contrast, in *Martin v. Barrett*, it was held that s. 32(2) requires a court to “determine whether the agreement should be approved *as fair and reasonable*” (emphasis added). The court noted that the question of whether a fee agreement is to be approved requires an assessment of the degree of risk assumed by class counsel and the quality of services provided to the class. As such, the court held that “approval” under s. 32(2) contemplated approval of not just the form of the written agreement, but also its particular content.

***Martin v. Barrett*, 2008 CarswellOnt 9521 (S.C.) (“*Martin*”), at
para. 35 [Tab 3, New BOA]**

13. Compounding the problem posed by this apparent inconsistency is the fact that, in the majority of cases, the court does not specifically approve *or* refuse to approve the fee agreement

between class counsel and the representative plaintiff. Rather, the court simply determines what a fair and reasonable class counsel fee would be, using the fee agreement as a factor to consider.

14. In order to resolve this apparent inconsistency, the role played by s. 33 must be examined.

SECTION 33 OF THE ACT

15. While s. 32 deals generally with all written fee agreements, s. 33 contains provisions that deal specifically with a certain subspecies, i.e.: agreements for payment in the event of success. Section 33(1) provides that agreements for payment in the event of success between class counsel and representative plaintiffs are permitted, and s. 33(2) provides the definition of success. Although s. 32(1) refers to agreements for payment in the event of success, it is s. 33(1) that actually establishes that they are permissible.

***Nantais*, at para. 11 [Tab 2, New BOA]**

16. Subsections 33(3) – 33(9) have an even more specific focus than ss. 33(1) and (2). While the initial two subsections address the legality of agreements for payment in the event of success generally, the subsequent subsections are concerned solely with a particular form of these agreements: those that entitle class counsel to increase their base fee by a multiplier in the event of success.

***Garland*, at para. 16 [Tab 1, New BOA]**

***Nantais*, at paras.11-12 [Tab 2, New BOA]**

17. Section 33(4) permits class counsel to make a motion to the court to have their base fee increased by a multiplier. On such a motion, s. 33(7) provides that the court shall first determine class counsel's base fee and then may then apply a multiplier to that base fee.

18. Although the “multiplied base fee” method is the only method specifically contemplated in the Act for awarding class counsel a premium, it is not the only method that is permitted. Fee agreements that provide for fees to be calculated as a percentage of the recovery are also acceptable.

***Nantais*, at para. 12 [Tab 2, New BOA]**

***Crown Bay Hotel Ltd. Partnership v. Zurich Indemnity Co. of Canada* (1998), 40 O.R. (3d) 83 (Gen. Div.) (“*Crown Bay*”), at para. 8 [Tab 4, New BOA]**

19. While it is s. 33(1) that authorizes agreements for payment in the event of success, and despite the fact that premiums calculated by a multiplier are determined pursuant to ss. 33(4)-(7), the jurisprudence is clear that the approval and application of agreements for payment in the event of success that employ a “percentage of recovery” approach are governed by s. 32, rather than s. 33.

***Crown Bay*, at para. 8 [Tab 4, New BOA]**

***Martin*, at para. 35 [Tab 3, New BOA]**

THE MEANING OF APPROVAL UNDER SECTION 32(2)

20. As noted above, there is an apparent conflict in the case law regarding whether s. 32(2) contemplates mere formal approval of a fee agreement or approval of its substantive content.

21. The distinction between fee agreements that provide for a multiplier and other agreements may offer a resolution to this apparent conflict. Where a fee agreement does not employ a multiplied base fee approach, approval of the fee agreement under s. 32(2) requires approval of its content as well as its form. Approval will only be granted if the actual fee that it obligates the class to pay is fair and reasonable.

22. However, where the fee agreement provides for a multiplier to be applied to class counsel's base fee in the event of success, as in *Atlas*, approval of the written agreement under s. 32(2) is merely formal. The court must ensure that the agreement complies with the formal requirements of s. 32(1). If the agreement is approved in form, determination of the actual fee to be awarded occurs pursuant to s. 33(7).

THE RELATIONSHIP BETWEEN SECTIONS 32(4) AND 33(7)

23. Given the above, there are three potential statutory provisions under which a court may determine the appropriate fee to be awarded to class counsel:

- (i) If the fee agreement provides for the fee to be calculated in any manner other than by a multiplied base fee, the court will consider whether to approve the agreement under s. 32(2), and in so doing will determine whether the fee is fair and reasonable.
- (ii) If the fee agreement provides for the fee to be calculated by way of a multiplied base fee, and the agreement meets the formal requirements of s. 32(1), the court will determine the appropriate base fee and multiplier by way of s. 33(7).
- (iii) If the fee agreement is not approved, either due to a formal deficiency or (where it does not involve a multiplied base fee) because the fee contained within is not fair and reasonable, the court will determine the fee to be awarded pursuant to s. 32(4).

24. While there are therefore three different provisions under which a court may determine whether class counsel's fees are reasonable, there are no substantive differences as to the nature

of the inquiry under each provision. Rather, as held in *Martin*, the task of the court “is essentially the same: it is to determine what would be a fair and reasonable fee”.

***Martin*, at para. 34 [Tab 3, New BOA]**

***Parsons v. Canadian Red Cross Society* (2000), 49 O.R. (3d) 281
(S.C.), at paras. 13-14 [Tab 5, New BOA]**

25. For that reason, whether the court uses s. 32(2), s. 32(4) or s. 33(7) as its statutory basis for approving class counsel fees should ultimately make no difference to the result. Indeed, the jurisprudence reveals only one potential difference between the provisions in this respect. That difference is whether the court is obligated to bifurcate counsel fees into a “base fee” and a “premium” when operating under s. 32(2) or s. 32(4).

26. Section 33(7) specifies that, when asked to award a multiplier, the court shall first determine class counsel’s base fee. By contrast, ss. 32(2) and 32(4) contain no such reference to a base fee. In *Martin*, in *obiter dicta*, it was suggested that there is no statutory obligation on a court to separate class counsel’s fee award into base fee and premium under s. 32.

***Martin*, at para. 38 [Tab 3, New BOA]**

27. Whether or not there is a statutory obligation under s. 32 to separate a fee into a base fee and a premium, there appears to be a common law obligation to do so. In *Gagne*, this court held that where class counsel are entitled to a premium for their work, the size of the fee should be evaluated against three yardsticks: as a percentage of the class’ gross recovery, the size of the multiplier in comparison to multipliers applied in other cases and the retainer agreement. If the

court were to award a fee in one undifferentiated sum, the second of these yardsticks would be impossible to apply.

Gagne v. Silcorp Ltd. (1998), 41 O.R. (3d) 417 (C.A.), at p. 425
[Tab 7, Old BOA]

Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd., [2005]
O.J. No. 1117 (S.C.), at para. 47 [Tab 6, New BOA]

28. Further, it is necessary to separate a fee award into base fee and premium because different factors are relevant when assessing the size of each. As noted in our initial appeal factum, at para. 55, there are nine factors that are relevant to the determination of the base fee. These factors include the time expended by class counsel and the legal complexity of the matter. This inquiry is concerned, generally, with whether class counsel's hourly rates are appropriate, whether the file was appropriately staffed, whether reasonable amounts of time were expended on each aspect of the file and what the client had been led to expect as to the cost of prosecuting the action.

Windisman v. Toronto College Park Ltd. (1996), 3 C.P.C. (4th)
369 (Ont. Gen. Div.) ("*Windisman*"), at para. 8 [Tab 6, Old
BOA]

29. By contrast, the size of the premium to be applied to the base fee is determined by reference to only two factors: the risk involved in the action and the success achieved. This is because it is the premium that serves as the incentive to skilled lawyers to take on risky yet meritorious class proceedings and skilfully prosecute them.

Gagne, at p. 423 [Tab 7, Old BOA]

30. Because the reasonableness of the base fee is determined by reference to a different set of factors than are relevant to the reasonableness of the premium, it is possible for a court to find a

base fee to be unreasonably high yet approve a significant multiplier. This happened in both *Windisman* and *Atlas*. Such a result is neither strange nor surprising, given that the base fee is meant to compensate class counsel for their efforts, while the premium is intended to incentivize class counsel for successfully prosecuting risky actions.

***Windisman*, at paras. 19, 21-22 [Tab 6, Old BOA]**

***Atlas*, at para. 72 [Tab 8, Old BOA]**

31. Whether class counsel seek a premium through a multiplied base fee, a percentage of the recovery or some other method, the principles underlining the awarding of a premium remain the same. There is no principled reason to treat each case differently. As noted by Winkler J. in *Parsons*, “there are a variety of methods that may be utilized under the CPA to determine an acceptable premium on fees... the court must still adhere to the principles discussed in *Gagne* in assessing the fairness and reasonableness of the counsel fee”.

***Parsons*, at para 14 [Tab 5, New BOA]**

32. If s. 32(4) was subject to a different approach than s. 33(7), the law would then treat multiplied-base-fee agreements in a substantively different manner than percentage-of-recovery agreements. This would create a very real practical problem where, as in this case, the fee agreement contemplated *either* method being applied. The Appellants’ fee agreement entitled them to the greater of one-third of the recovery or their base fee multiplied by four. There is no utility to creating a set of rules that will require the court to adjudicate disputes as to which of the two methods should be applied every time a retainer of this sort is before the court. Indeed, it would be artificial to attempt to distinguish a multiplied base fee from a percentage-based fee. All multiplied base fees will also represent a particular percentage of the recovery, and percentage-based fees will necessarily have a multiplied base fee equivalent.

SUMMARY REGARDING SECTIONS 32 AND 33 OF THE ACT

33. Due perhaps to unclear drafting, the Act appears to offer three different provisions under which a court may be asked to determine the fees to be awarded to class counsel. However, regardless of the provision used, the approach taken by the court should be the same. That procedure is as follows:

- (i) First, the court should look to the fee agreement. If it fails to comply with the formal requirements of s. 32(1), this is an important factor to be considered when determining a fair and reasonable fee for class counsel.
- (ii) If the written agreement meets the formal requirements of s. 32(1), the court should then assess whether the size of the fee provided for in the fee agreement is fair and reasonable, however that fee is calculated, and whether the fee provided for is payable considering the recovery.
- (iii) If the court determines that the fee provided for by the agreement is not fair and reasonable, the court should then determine a fee that is fair and reasonable.¹

34. In the case of both (ii) and (iii), when determining whether a fee is fair and reasonable, the court should engage in a two-stage analysis:

- (i) First, identify a base fee, having regard to the nine factors set out in the jurisprudence. If the fee agreement was deficient in form, this is a significant fact to consider when determining the client's expectation as to the amount of the fee.
- (ii) Second, if applicable, determine the size of the premium to be awarded to class counsel (if any), having regard to the risk involved and the success achieved.

¹ Strictly speaking, if a multiplier was requested (as it was in this case), this analysis would take place pursuant to s. 33(7). Otherwise, s. 32(4) would govern. However, while the governing section may differ, the proper approach to analyze the reasonableness of the fee will be the same, as described in para. 34.

APPLICATION TO THE INSTANT CASE

35. The fee agreement² entered into between the Appellants and the representative plaintiffs provided that the Appellants were to receive the greater of: (i) one-third of the recovery or (ii) the Appellants' base fee multiplied by four.

Retainer Agreement, s. 9 (Appeal Book, Tab 8)

36. The Appellants calculated their base fee to be approximately \$10 million, and the motion judge accepted that number. Accordingly, by the terms of the fee agreement, the Appellants were entitled to at least \$40 million.

37. Due to factors beyond the Appellants' control, as articulated in our earlier factum, the settlement provided only \$27.5 million of cash. It was thus impossible for the Appellants to enforce the precise terms of the fee agreement. For that reason, before the motion judge, the Appellants sought approval of a base fee of approximately \$10 million, plus a multiplier of approximately 2.45 to result in a total fee of \$27.5 million (including taxes and disbursements).

38. In their Notice of Motion, the Appellants asked for an order, *inter alia*, "fixing the amount of class counsel's fees at \$27.5 million". In their grounds for the motion, the Appellants referred to both ss. 32 and 33 of the Act, and submitted that the "fees and disbursements sought by Class Counsel are fair and reasonable under all of the circumstances".

Notice of Motion dated February 11, 2010, at pp. 2, 3 (Exhibit Book, Tab 1)

² A separate fee agreement was entered into with both of the representative plaintiffs in this action. Although they were entered into at different times, the two agreements are identical to each other.

39. The Notice of the Approval Hearing provided to class members, which was approved by the Superior Court of Justice, contained the following:

Class counsel fees are a first charge against the cash payment. Class counsel will ask the court to approve their fee agreement with the plaintiffs and award \$27.5 million in cash in full payment of the plaintiffs' obligations to class counsel.

**Notice of the Approval Hearing on February 22, 2010, p. 2
(Exhibit Book, Tab 6E)**

40. The motion judge approved the Appellants' base fee but awarded a significantly lower premium than requested, resulting in a total fee of \$14.5 million, inclusive of taxes and disbursements. As noted at para. 71 of the Appellants' initial appeal factum, this results in a multiplier of approximately 1.29.

41. As is common, the motion judge did not specify whether or not he approved of the Appellants' fee agreement. In the circumstances, this is not surprising. The Appellants did not seek to have the specific formula contained in the fee agreement approved, because there was not sufficient cash available to allow the terms of the fee agreement to be enforced.

42. However, there is no suggestion that the motion judge found that the Appellants' fee agreements failed to comply with the formal requirements of s. 32(1). The fee agreement is formally compliant with s. 32(1), and if it was not, it can only be assumed that the motion judge would have considered this fact when making his decision.

43. It is apparent from his reasons that, as in *Atlas*, the motion judge approved of the Appellants' fee agreement as to form, but did not believe that the specific fees sought by the Appellants were reasonable. Thus, as the Appellants sought a multiplier of their base fee, his decision should have been made pursuant to s. 33(7). However, unlike *Atlas*, the motion judge

did not properly perform the procedure laid out in s. 33(7). He improperly applied factors relevant only to the base fee in determining the size of premium that the Appellants were entitled to, and failed to compare the resulting total to the *Gagne* yardsticks, as laid out in detail in the Appellants' initial appeal factum.

Conclusion

44. The motion judge did not specify whether he awarded the Appellants' fees pursuant to s. 32 or s. 33 of the Act. However, the precise section used should not matter. In either case, the analysis is and should be the same. The motion judge should have determined the Appellants' base fee, and then awarded them a premium having regard to the incredible risk and substantial success that they achieved. While the motion judge approved their base fee, he misapplied the law as regards the awarding of a premium.

45. Even if the analysis under s. 32(4) is different from that under s. 33(7), the Appellants clearly fell under s. 33(7). Their fee agreement entitled them to receive a multiplied base fee, and they brought a motion seeking approval of a multiplied base fee in an amount less than their agreement allowed. In the event that the analysis under s. 32(4) differs from that under s. 33(7), it is the latter that applies to this case.

The Timing of the Motion Judge's Order

46. Pursuant to the order of the motion judge, at paras. 33(c) and 33(d), National Money Mart Company is required to pay to the class the balance of the \$27.5 million cash provided for in the settlement, being \$13 million, to eligible class members from and after July 15, 2011. However, this Court's decision in this appeal may alter the amount of money that is available for

distribution to the class. For that reason, it is crucial that a decision in this appeal be rendered before that date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of February, 2011.



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SCHEDULE A

LIST OF AUTHORITIES

1. *Garland v. Enbridge Gas Distribution Inc.* (2006), 56 C.P.C. (6th) 357 (Ont. S.C.)
2. *Nantais v. Telectronics Proprietary (Canada) Ltd.*, 28 O.R. (3d) 523 (S.C.)
3. *Charles Trust (Trustee of) v. Atlas Cold Storage Holdings Inc.* (2009), 78 C.P.C. (6th) 142 (Ont. S.C.)
4. *Martin v. Barrett*, 2008 CarswellOnt 9521 (S.C.)
5. *Crown Bay Hotel Ltd. Partnership v. Zurich Indemnity Co. of Canada* (1998), 40 O.R. (3d) 83 (Gen. Div.)
6. *Parsons v. Canadian Red Cross Society* (2000), 49 O.R. (3d) 281 (S.C.)
7. *Gagne v. Silcorp Ltd.* (1998), 41 O.R. (3d) 417 (C.A.)
8. *Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd.*, [2005] O.J. No. 1117 (S.C.)
9. *Windisman v. Toronto College Park Ltd.* (1996), 3 C.P.C. (4th) 369 (Ont. Gen. Div.)

SCHEDULE B

TEXT OF STATUTES, REGULATIONS & BY-LAWS

1. *Class Proceedings Act, 1992, S.O. 1992, c. 6:*

Fees and disbursements

32. (1) An agreement respecting fees and disbursements between a solicitor and a representative party shall be in writing and shall,

(a) state the terms under which fees and disbursements shall be paid;

(b) give an estimate of the expected fee, whether contingent on success in the class proceeding or not; and

(c) state the method by which payment is to be made, whether by lump sum, salary or otherwise.

Court to approve agreements

(2) An agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the court, on the motion of the solicitor.

Priority of amounts owed under approved agreement

(3) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

Determination of fees where agreement not approved

(4) If an agreement is not approved by the court, the court may,

(a) determine the amount owing to the solicitor in respect of fees and disbursements;

(b) direct a reference under the rules of court to determine the amount owing; or

(c) direct that the amount owing be determined in any other manner.

Agreements for payment only in the event of success

33. (1) Despite the *Solicitors Act* and *An Act Respecting Champerty*, being chapter 327 of Revised Statutes of Ontario, 1897, a solicitor and a representative party may enter into a written agreement providing for payment of fees and disbursements only in the event of success in a class proceeding.

Interpretation: success in a proceeding

(2) For the purpose of subsection (1), success in a class proceeding includes,

(a) a judgment on common issues in favour of some or all class members; and

(b) a settlement that benefits one or more class members.

Definitions

(3) For the purposes of subsections (4) to (7),

"base fee" means the result of multiplying the total number of hours worked by an hourly rate; ("honoraires de base")

"multiplier" means a multiple to be applied to a base fee. ("multiplicateur")

Agreements to increase fees by a multiplier

(4) An agreement under subsection (1) may permit the solicitor to make a motion to the court to have his or her fees increased by a multiplier.

Motion to increase fee by a multiplier

(5) A motion under subsection (4) shall be heard by a judge who has,

(a) given judgment on common issues in favour of some or all class members; or

(b) approved a settlement that benefits any class member.

Idem

(6) Where the judge referred to in subsection (5) is unavailable for any reason, the regional senior judge shall assign another judge of the court for the purpose.

Idem

(7) On the motion of a solicitor who has entered into an agreement under subsection (4), the court,

(a) shall determine the amount of the solicitor's base fee;

(b) may apply a multiplier to the base fee that results in fair and reasonable compensation to the solicitor for the risk incurred in undertaking and continuing the proceeding under an agreement for payment only in the event of success; and

(c) shall determine the amount of disbursements to which the solicitor is entitled, including interest calculated on the disbursements incurred, as totalled at the end of each six-month period following the date of the agreement.

Idem

(8) In making a determination under clause (7) (a), the court shall allow only a reasonable fee.

Idem

(9) In making a determination under clause (7) (b), the court may consider the manner in which the solicitor conducted the proceeding.

KENNETH SMITH as Estate Trustee, et al. - and - SUTTS, STROSBERG LLP, et al. - and - NATIONAL MONEY MART COMPANY, et al.
Plaintiffs Appellants Defendants (Respondents)

Court File No. C51893

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

FACTUM

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