

Court of Appeal File No.:

Court File No.: N/C/41/08

IN THE COURT OF APPEAL OF NEW BRUNSWICK

B E T W E E N:

**ALBERT JOHN GAY, KIMBERLEY
ANN DOYLE and JAMES BLISS
WILSON**

INTENDED APPELLANTS
(Plaintiffs),

- and -

REGIONAL HEALTH AUTHORITY 7,
a corporation incorporated under the
laws of the Province of New Brunswick
INTENDED RESPONDENT
(First Defendant),

- and -

DR. RAJGOPAL S. MENON
INTENDED RESPONDENT
(Second Defendant).

**NOTICE OF MOTION FOR LEAVE TO APPEAL
(FORM 62A)**

The intended Appellants, **ALBERT JOHN GAY, KIMBERLEY ANN DOYLE** and **JAMES BLISS WILSON**, will apply under Rule 62.03 to the Honourable Chief Justice of New Brunswick, J. Ernest Drapeau, or another Justice of the Court of Appeal as may be sitting, at his or her chambers in the Justice Building, Queen Street, Fredericton, New Brunswick on the ____ day of _____, 2012, at ____ a.m. for leave to appeal, pursuant to the *Class Proceedings Act*, s. 38(3)(a) and the *Rules of Court*, rule 62.03(4), from the decision of the Honourable Justice Jean-Paul Ouellette, dated the 8th of March, 2012.

Relief Sought:

The intended Appellants, if successful on this motion, will request that the decision of the Honourable Mr. Justice Jean-Paul Ouellette with respect to the certification of the within action as a class proceeding be reversed.

The Grounds intended to be argued are as follows:

1. The learned motion Judge erred in law and fact in misconstruing and misapplying the requirements of Section 6 of the *Class Proceedings Act*, in particular:

- a) by rejecting propositions of law which are novel but arguable;
 - b) by making contradictory holdings of law;
 - c) by applying the recognizable psychological injury test from tort to causes of action in contract and fiduciary duty;
 - d) by misconstruing the task of true construction of the pathology testing contract to require individual evidence; and
 - e) by failing to consider the potential availability of aggregate monetary relief as a means of quantifying damages for mental distress.
2. The learned motion Judge erred in fact and law by finding that the class definition was subjective and unreasonably overbroad.
 3. The learned motion Judge erred in law by giving unintelligible reasons for decision which do not meet minimum standards of rationality and fail to perform the basic functions of reasons under the rule of law.
 4. On the basis of the foregoing, the Intended Appellants rely on the provisions of **Rule 62.03(4)** and state that

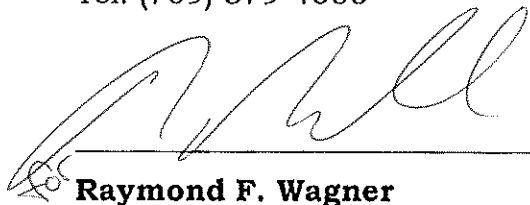
the following are grounds which justify the granting of leave:

- a. There is a conflicting decision by another judge or court upon a question involved in the proposed appeal;
 - b. The correctness of the decision may be doubted;
 - c. The decision of the learned motion Judge proceeded on incorrect principles of law, thus resulting in injustice, and is incorrect;
 - d. The proposed appeal involves matters of such importance that leave to appeal should be granted; and
 - e. The order or decision in question is not interlocutory but final.
5. Upon the hearing of the motion, the following affidavits or other documentary evidence will be presented:
- a. The ruling of the Honourable Mr. Justice Jean-Paul Ouellette, dated March 8, 2012;

- b. The Record on Motion, all Exhibits and other Affidavits before the Court on the hearing of the motion before the Judge of first instance.

DATED this 14th day of March, 2012.

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**Solicitors for the Intended
Appellants (Plaintiffs)**