

**IN THE SUPREME COURT OF CANADA**

IN THE MATTER OF Section 53 of the *Supreme Court Act*, R.S.C. 1985,  
c. S-26;

AND IN THE MATTER OF a Reference by the Governor in Council  
concerning the proposed *Canadian Securities Act*, as set out in Order in  
Council P.C. 2010-667, dated May 26, 2010

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**NOTICE OF MOTION FOR LEAVE TO INTERVENE OF THE CANADIAN COALITION  
FOR GOOD GOVERNANCE**

**(Pursuant to Section 53(6) of the Supreme Court Act and Order of the Chief  
Justice of Canada made on June 14, 2010)**

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**IN THE SUPREME COURT OF CANADA**

IN THE MATTER OF Section 53 of the *Supreme Court Act*, R.S.C. 1985, c. S-26;

AND IN THE MATTER OF a Reference by the Governor in Council concerning the proposed Canadian *Securities Act*, as set out in Order in Council P.C. 2010-667, dated May 26, 2010

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**NOTICE OF MOTION TO A JUDGE OR REGISTRAR FOR LEAVE TO INTERVENE  
OF THE CANADIAN COALITION FOR GOOD GOVERNANCE**

**(Pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*)**

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**TAKE NOTICE** that the Canadian Coalition for Good Governance (the "CCGG") hereby applies to a judge of the Court, at a date to be fixed by the Registrar, pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada* for an order:

- (a) granting the CCGG leave to intervene in this Reference;
- (b) permitting the CCGG to file a memorandum of argument not exceeding 20 pages;
- (c) permitting the CCGG to present oral argument not exceeding 15 minutes; and
- (d) for such further or other order as the said judge may deem appropriate.

**AND FURTHER TAKE NOTICE** that the following documents will be referred to in support of the motion:

- (a) the affidavit of Stephen J. Griggs, sworn July, 8, 2010, and

- (b) such further and other material as counsel may advise and this Court permit.

**AND FURTHER TAKE NOTICE** that the motion shall be made on the following grounds:

- (a) the CCGG is a federally incorporated non-profit national organization of most of Canada's leading institutional investors, formed to promote good governance practices in Canadian public companies. The CCGG's members believe that good governance practices and an efficient and effective regulatory environment enhance a company's ability to create value for its shareholders, reduce investment risk and lower the cost of capital for companies;
- (b) the CCGG currently has 41 members who in total manage over \$1.4 trillion in assets as fiduciaries on behalf of Canadian investors, an amount equal to more than half of the retirement savings of all Canadians. The CCGG's members own or control approximately 20% of the common shares of most corporations on the TSX/S&P Composite Index;
- (c) in recent years, the CCGG has made submissions to numerous bodies in support of good corporate governance and an effective regulatory environment. Two recurring themes in the CCGG's submissions are the need for Canadian corporate governance principles to keep pace with domestic and international best practices, and the need for consistent, nation-wide enforcement to enhance deterrence of corporate wrongdoing;
- (d) the outcome of this Reference will have a profound effect on corporate governance and the Canadian capital markets. Given the CCGG's longstanding dedication and expertise in the areas of promoting good governance practices in Canadian public companies and improving the regulatory environment, the CCGG seeks leave to intervene in this Reference in order to assist the Court in understanding the important role the enforcement aspect of the proposed national *Securities Act* should play in determining the "dominant purpose" of the act;
- (e) the CCGG proposes to make submissions that will be relevant to this Reference, useful to the Court, and different from what it anticipates will be the submissions of the various Attorneys General;
- (f) the CCGG's perspective is that of a sophisticated organization with extensive experience representing the interests of institutional investors and their millions of beneficiaries whom securities laws are aimed at protecting. The CCGG has played an important role in developing the law, policy and practice of corporate governance in Canada and is in an

ideal position to provide the Court with an independent analysis of the problems that a national enforcement regime can solve;

- (g) the CCGG will bring to the Reference a national focus on the importance of a strong enforcement regime. The various Attorneys General are properly focused on the interests of their particular constituencies. The CCGG's interest, however, is in protecting the millions of individual Canadian investors across the country that its members represent, and the national public interest in a stronger enforcement regime. The CCGG's interest is distinct from those of any of the Attorneys General;
- (h) the CCGG proposes to make the following submissions (on which it will expand if leave to intervene is granted) in order to assist the Court in understanding the important role the enforcement aspect of the proposed national *Securities Act* should play in determining the dominant purpose of the act:
  - (i) the current fractured system of criminal and administrative enforcement of provincial securities laws and federal criminal law across Canada does not support the timely or routine enforcement of offences involving the Canadian capital markets which are part of globally-integrated capital markets;
  - (ii) a well-conceived, national securities enforcement agency would bring improved co-ordination, expertise, consistency, accountability and efficiency to the prosecution of criminal and administrative securities offences; and
  - (iii) improved enforcement will bring a much-needed deterrent effect that is currently lacking in Canada in comparison to other jurisdictions around the world.
- (i) the proposed intervention will not cause delay or prejudice to the parties;
- (j) Rules 47 and 55 of the *Rules of the Supreme Court of Canada*; and
- (k) such further and other grounds as counsel may advise and this Court permit.

Dated at Toronto, Ontario this 12th day July 2010.

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**IN THE SUPREME COURT OF CANADA**

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AND IN THE MATTER OF a Reference by the Governor in Council concerning the proposed Canadian *Securities Act*, as set out in Order in Council P.C. 2010-667, dated May 26, 2010

**AFFIDAVIT OF STEPHEN J. GRIGGS**

(sworn July 8, 2010)

(Motion for Leave to Intervene pursuant to Rules 47 and 55 of the *Rules of the Supreme Court of Canada*)

I, STEPHEN J. GRIGGS, Barrister and Solicitor, of the City of Mississauga, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am Executive Director of the Canadian Coalition for Good Governance (the "CCGG"), and as such have knowledge of the matters to which I depose. A copy of my *curriculum vitae* is attached as **Exhibit "A"** to this Affidavit. Where I do not have personal knowledge, I have indicated the source of my information, which I believe to be true.

2. The CCGG seeks leave to intervene in the Reference by the Governor in Council concerning the proposed Canadian *Securities Act* (the "Reference").

**The CCGG**

3. The CCGG is a federally incorporated non-profit national organization of most of Canada's leading institutional investors, formed to promote good governance practices in Canadian public companies. Coalition members believe that good

governance practices and an efficient and effective regulatory environment enhance a company's ability to create value for its shareholders, reduce investment risk and lower the cost of capital for companies.

4. The CCGG currently has 41 members who in total manage over \$1.4 trillion in assets as fiduciaries on behalf of Canadian investors from all walks of life, an amount equal to more than half of the retirement savings of all Canadians. Based on information received from CCGG's members, I believe that in general our members own or control approximately 20% of the common shares of most corporations on the TSX/S&P Composite Index. The CCGG's members include:

- major federal institutions such as the Canada Pension Plan Investment Board and the Public Sector Pension Investment Board;
- many of Canada's largest public sector employee pension plans, such as the Ontario Municipal Employees Retirement Board and the Hospitals of Ontario Pension Plan;
- public sector pension plans from Alberta, British Columbia and New Brunswick; and
- prominent investment managers from across the country.

A complete list of CCGG's members is attached as **Exhibit "B"** to this Affidavit.

#### **The CCGG's Expertise Regarding Corporate Governance Generally**

5. The CCGG is dedicated to promoting good governance practices in Canadian public companies and improving the regulatory environment. The CCGG's goals are to:

- (a) Align the interests of boards and management with those of their shareholders; and
- (b) promote the efficiency and effectiveness of the Canadian capital markets.

6. The CCGG's efforts in the policy arena fall into two categories. First, the CCGG issues best practices guidelines that exceed minimum statutory or regulatory requirements, and urges companies to adopt them. Second, the CCGG makes submissions concerning important proposed statutory or regulatory amendments affecting corporate governance to Parliament, legislatures, the Canadian Securities Administrators (CSA), provincial securities commissions, and stock exchanges across Canada.

7. Among other things, in recent years the CCGG has made submissions to the following bodies in support of good corporate governance and an effective regulatory environment:

- The Parliamentary Committee on Industry, Science and Technology Regarding the Statutory Review of the *Canada Business Corporations Act*;
- The Ontario Standing Committee on Government Agencies as part of their review of the Ontario Securities Commission;
- The CSA concerning a proposal to reduce the "Early Warning Threshold" for Take-over Bids and Issuer Bids;
- The TSX on the Proposed Changes to Part VI of the Company Manual – Shareholder Approval in Dilutive Transactions;
- The CSA on Proposed Changes to the Corporate Governance Guidelines;
- The Ministère des Finances du Québec regarding the Working Paper on the Reform of the Quebec *Corporations Act*;
- The CSA on Possible Changes to Securities Rules Relating to International Financial Reporting Standards;
- The CSA on National Instrument 51-102 (Proxy Solicitation Provisions); and
- The Expert Panel on Securities Regulation.

8. The CCGG has a policy not to intervene publicly in the affairs of individual companies. However, the CCGG's members are very active in this regard. In the past month alone, five of the CCGG's largest members<sup>1</sup> were granted intervener status in the Ontario Securities Commission's hearing of *In the Matter of Magna International Inc.*, concerning the proposed reorganization of Magna International Inc. to collapse Magna's multiple voting share structure. A copy of the Order granting leave to intervene is attached as **Exhibit "C"** to this Affidavit.

9. Two recurring themes in the CCGG's submissions are the need for Canadian corporate governance principles to keep pace with domestic and international best practices, and the need for consistent, nation-wide enforcement to enhance deterrence of corporate wrongdoing. The focus of the CCGG's proposed intervention in this Reference is the need for a national, integrated enforcement regime, such as that found in the proposed national *Securities Act*.

#### **The CCGG and the Proposed Canadian *Securities Act***

10. As a long-time promoter of good corporate governance, the CCGG has consistently demonstrated an interest in the proposed national *Securities Act*, and in particular on the opportunity to enhance enforcement as part of any proposed national regime. For example, in 2008 the CCGG made a submission to the Expert Panel on Securities Regulation, the mandate of which was to provide advice and recommendations concerning the future of securities regulation in Canada to the

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<sup>1</sup> The Ontario Teachers' Pension Plan Board, the Canada Pension Plan Investment Board, OMERS Administration Corporation, the Alberta Investment Management Corporation and the British Columbia Investment Management Corporation.