

COURT OF APPEAL

CANADA
 PROVINCE OF QUEBEC
 REGISTRY OF MONTREAL

No: 500-09-015219-041
 (500-06-000215-034)

MINUTES OF THE HEARING

DATE: 11 MARS 2005

CORAM: THE HONOURABLE ANDRÉ ROCHON, J.A.
 YVES-MARIE MORISSETTE, J.A.
 ALLAN R. HILTON, J.A.

APPELLANT(S)	ATTORNEY (S)
CIBC ASSET MANAGEMENT INC.	Mtre. MORTIMER FREIHÉIT Mtre. NATHALIE MERCIER-FILTEAU (STIKEMAN, ELLIOTT)

RESPONDENT(S)	ATTORNEY (S)
MARK RABINOVITCH	Mtre. ROBERT KUGLER (KUGLER, KANDESTIN) Mtre. NEIL H. STEIN (STEIN & STEIN)

	ATTORNEY (S)

In appeal of a judgment rendered on DECEMBER 3, 2004 by the Honourable Justice PIERRE JOURNET of the SUPERIOR COURT District of MONTREAL
NATURE OF THE APPEAL: OBJECTIONS

CLERK: **ROBERT OSADCHUCK** **COURTROOM:** PIERRE-BASILE MIGNAULT

BY THE COURT

JUDGMENT

[1] We are unanimously of the view that the judgment appealed from should be reversed in part, to the extent only that it disallows questions pertaining to the respondent's reaction upon learning of the change affecting the investors' exposure to currency risks.

[2] Answers to such questions may provide the appellant with information relevant to the issue of ratification or acceptance of the change, or even of awareness of the change prior to the date when the appellant took control of the fund.

[3] At this stage, the Court should not decide issues of fundamental importance on the basis of an objection to the admissibility of evidence in the context of an examination on discovery before plea.

[4] As regards, however, the second objection, we are of the view that the judgment *a quo* is well founded. At this stage of the action, the information thus sought is at most tenuous circumstantial evidence of the respondent's personal reaction to the change of circumstances, is not relevant to the issues raised in the demand, and might at best pertain to the determination of liability with respect to the respondent alone.

[5] **FOR THESE REASONS, THE COURT:**

[6] **ALLOWS** the appeal in part, with costs;

[7] **REVERSES** the judgment of the Superior Court in part; and

[8] **DISMISSES** the first objection referred to in paragraph [18] (1) of the Superior Court judgment.

ANDRÉ ROCHON, J.A.

YVES-MARIE MORISSETTE, J.A.

ALLAN R. HILTON, J.A.