

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class Actions)

No: 500-06-001164-215

**STEVEN HOLCMAN ET AL.**

Plaintiffs

v.

**LIGHTSPEED COMMERCE INC. ET AL.**

Defendants

**APPLICATION DE BENE ESSE BY DEFENDANT PRICEWATERHOUSECOOPERS  
LLP TO CROSS-EXAMINE THE PLAINTIFFS AND THEIR EXPERTS UNDER  
QUÉBEC SECURITIES ACT AND APPLICATION FOR LEAVE TO EXAMINE THE  
PLAINTIFFS UNDER THE CODE OF CIVIL PROCEDURE**

(Section 225.4 of the Québec *Securities Act* and articles 574 al. 3 and 575 of the CCP)

**TO THE HONOURABLE JUSTICE LUKASZ GRANOSIK OF THE SUPERIOR COURT  
OF QUÉBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, DEFENDANT  
PRICEWATERHOUSECOOPERS LLP RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. This application seeks the examination of the plaintiffs and the cross-examination of the plaintiffs' experts in defence of a proposed securities class action.
2. The application relates to a hybrid proceeding in which the plaintiffs Steve Holcman and Tarique Plummer (the "**Plaintiffs**") seek to bring a securities class action against Lightspeed Commerce Inc., Lightspeed POS Inc. (together with Lightspeed Commerce Inc., "**Lightspeed**"), Dax Dasilva, Jean Paul Chauvet, Marie-Josée Lamonthe, Patrick Pichette, Rob Williams, Paul McFeeters, Merline Saintil, Daniel Micak, Asha Bakshani (the "**Individual Defendants**"), and PricewaterhouseCoopers LLP ("**PwC**") (collectively with Lightspeed and the Individual Defendants, the "**Defendants**").
3. The Plaintiffs seek two distinct authorizations. First, they seek leave to bring a statutory action in damages for misrepresentations on the secondary market pursuant to section 225.4 of the Québec *securities Act* ("**QSA**"). Second, they seek authorization to assert the same statutory action, as well as other statutory and civil liability causes of action, by way of a class action pursuant to article 574 of the *Code of Civil Procedure* ("**CCP**").

4. In support of both authorizations, the Plaintiffs rely on an expert report from Professor Ramy Elitzur, Ph.D. (“**Prof. Elitzur**”), which report is referred to as the “**Elitzur Report**”, and an expert report from Mr. Frank C. Torchio (“**Mr. Torchio**”), which is referred to as the “**Torchio Report**”. As part of its challenge of both authorizations, PwC has retained KPMG to respond to the Elitzur Report.
5. The present application is two-fold. First, for the purposes of the QSA authorization, PwC is entitled, as of right, to examine the Plaintiffs and cross-examine the Plaintiffs’ experts. However, it has transpired that the Plaintiffs object to all examinations and cross-examinations, even in the context of the QSA.
6. Thus, despite that PwC is entitled to examine the Plaintiffs and cross-examine the Plaintiffs’ experts without prior authorization, the *de bene esse* portion of this application is rendered necessary by the Plaintiffs’ wrongful refusal to allow for said examinations and cross-examinations.
7. Second, PwC seeks leave under article 574 CCP to examine the Plaintiffs as proposed class representatives in the context of the CCP authorization.
8. PwC intends to file in due course its remaining preliminary applications to adduce relevant evidence for the purposes of the CCP authorization, as stated in its letter dated November 8, 2022, by March 2023, and reserves all its rights in this regard.

## II. **BACKGROUND**

9. On October 1, 2021, the Plaintiffs filed an *Application for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act* (the “**Application**”) against the Defendants.
10. On February 14, 2022, Plaintiffs filed a *Motion for Leave to Amend the Application for Authorization* (the “**Motion for Leave to Amend**”) and communicated an *Amended Application for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Quebec Securities Act* (the “**Amended Application**”).
11. On April 11, 2022, the Court granted the Motion for Leave to Amend. In addition, it endorsed the timetable negotiated between the parties, which provided for the Plaintiffs further amending the Amended Application and filing their expert evidence by June 17, 2022.
12. On or about June 17, 2022, Plaintiffs filed another *Motion for Leave to Amend the Application for Authorization* (the “**Motion for Leave to Re-Amend**”) and communicated a *Re-Amended Application for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Quebec Securities Act* (the “**Re-Amended Application**”).

13. As appears from paragraphs 0.1(f) and 1 of the Re-Amended Application, Plaintiffs seek authorization to bring a securities class action on behalf of the following class members, other than the Excluded Persons, as defined in the Re-Amended Application:
  - (i) **Primary Market Sub-Class:** All persons and entities who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities in an Offering on or after March 7, 2019, and held some or all of those securities until after the close of trading on (1) September 28, 2021 or (2) November 3, 2021, excluding United States residents who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities in an Offering in the United States between September 11, 2020 and September 28, 2021; and
  - (ii) **Secondary Market Sub-Class:** All persons and entities who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities on the secondary market on or after March 7, 2019, and held some or all of those securities until after the close of trading on (1) September 28, 2021 or (2) November 3, 2021, excluding investors who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities on a U.S. exchange between September 11, 2020 and September 28, 2021;
14. On August 1, 2022, Plaintiffs filed a *Notice of Communication of an Expert Report* and communicated the expert report of Prof. Elitzur, dated August 1, 2022 (i.e. the Elitzur Report – Exhibit R-3 in support of Lightspeed’s Application, as defined below).
15. On September 8, 2022, the Court held a case management conference during which it granted the Plaintiffs’ Motion for Leave to Re-Amend and gave the Defendants until November 8, 2022, to disclose all the preliminary applications they intend to file, as appears from the Court record.
16. On November 8, 2022, PwC disclosed its preliminary applications. In the context of the CCP authorization, PwC indicated its intention to file an application for leave to adduce relevant evidence, including an expert report from KPMG in response to the Elitzur Report, and an application for leave to examine the proposed class representatives, as appears from the letter from PwC’s counsel to Justice Granosik dated November 8, 2022, a copy of which is disclosed herewith as **Exhibit R-1**.
17. Moreover, in the context of the QSA authorization, PwC disclosed its intention to exercise its right to cross-examine the Plaintiffs’ experts as soon as possible. It stated its expectation to cross-examine Mr. Torchio as early as December 2021, and Prof. Elitzur, with the assistance of KPMG, in January or February of 2023, the whole as also appears from the letter from PwC’s counsel to Justice Granosik dated November 8, 2022 (Exhibit R-1).
18. On the same day, Lightspeed and the Individual Defendants similarly indicated their intention to file an application for leave to adduce relevant evidence for the purposes of the CCP authorization, as well as their intention to exercise their right to cross-examine the Plaintiffs’ experts as part of the QSA authorization, the whole as appears from a copy of the letter from counsel for Lightspeed and the Individual

Defendants to Justice Granosik dated November 8, 2022 (Exhibit R-4 in support of Lightspeed's Application).

19. On November 9, 2022, the Court agreed with the Defendants' proposed timeline, as appears from the e-mail from Justice Granosik to counsels for the Plaintiffs and Defendants (Exhibit R-5 in support of Lightspeed's Application).
20. On January 10, 2023, Lightspeed and the Individual Defendants filed their *Application for Leave De Bene Esse to Examine Proposed Class Representatives and Plaintiffs' Experts under the Québec Securities Act, for Leave to Examine Proposed Class Representatives under the Code of Civil Procedure and to Strike Exhibit P-71* ("**Lightspeed's Application**").

### **III. THE EXAMINATION OF THE PLAINTIFFS AS PROPOSED CLASS REPRESENTATIVES**

21. PwC hereby seeks leave to examine the Plaintiffs, as proposed class representatives, for the purposes of the CCP. It also seeks to enforce its entitlement to examine the Plaintiffs for the purposes of the QSA.
22. In the context of the CCP authorization, PwC seeks leave to examine the Plaintiffs with respect to the following topics:
  - (a) the facts surrounding the Plaintiffs' alleged purchase of Lightspeed securities and subsequent disposal;
  - (b) the Plaintiffs' knowledge of Lightspeed's public disclosure documents at the time of purchase and disposal;
  - (c) the facts relating to the Plaintiffs' knowledge of the proposed class action;
  - (d) documents, information, and other factors which influenced the Plaintiffs' decision to purchase and sell Lightspeed securities; and
  - (e) the Plaintiffs' suitability as representatives of the proposed class.
23. In the context of the QSA authorization, PwC seeks to enforce its right to examine the Plaintiffs regarding all facts that are relevant to the Plaintiffs' authorization application under article 225.4 of the QSA.
24. Considering the elements to be covered, PwC submits that the examination of each proposed class representative should last approximately one (1) hour and that it could be conducted out-of-Court using technological means as soon as the parties are available.
25. These proposed examinations, which are limited in scope and duration, are necessary and indispensable to assist the Court in determining whether the Plaintiffs meet the authorization criteria of the proposed securities class action under the CCP and the QSA.

26. The proposed examinations are also consistent with the respective purposes of the CCP and QSA authorizations and proportionate to the nature and complexity of the matter.

#### **IV. THE CROSS-EXAMINATIONS OF THE PLAINTIFFS' EXPERTS**

27. Given the limited scope of the proposed cross-examinations of the Plaintiffs' experts, Prof. Elitzur and Mr. Torchio, PwC submits that each cross-examination should last approximately two (2) hours and that it could be conducted out-of-Court before the end of February 2023 using technological means.
28. The proposed cross-examinations of the Plaintiffs' experts, which are limited in scope and duration, are consistent with the purposes of the QSA authorization and are directly relevant as to whether there is a reasonable possibility that the proposed securities class action will be resolved in favour of the Plaintiffs.
29. PwC submits that the cross-examinations of the Plaintiffs' experts are essential and indispensable to PwC's challenge of the QSA authorization, are proportionate to the nature and complexity of the matter and are in the interest of justice.

#### **B. Prof. Elitzur's cross-examination**

30. In the Re-Amended Application, including at paragraphs 6.1, 6.2, and 22.6 to 24.1, Plaintiffs allege that PwC, in its capacity of Lightspeed's auditor, is liable for alleged misrepresentations in Lightspeed's public disclosures because it:
  - (a) audited Lightspeed's year-end consolidated balance sheets, consolidated statements of loss and comprehensive loss, cash flows and changes in shareholders' equity for the year;
  - (b) reviewed or should have reviewed Lightspeed's interim filings;
  - (c) assessed or should have assessed Lightspeed's internal controls over financial reporting;
  - (d) performed services in connection with some or all of Lightspeed's Offerings, as appears from the prospectuses filed;
  - (e) should have communicated to the public any weaknesses or problems that it identified; and
  - (f) overall failed to comply with the applicable professional standards and norms, as well as its statutory and civil obligations.
31. To support these allegations, the Plaintiffs rely heavily on the Elitzur Report. As appears from paragraphs 0.10, 0.11, 6.1, 19, 19.1, and 22.6 to 24.1, among others, of the Re-Amended Application, Plaintiffs claim that Prof. Elitzur is a "reputable expert in accounting, auditing, and finance" (para. 0.10) before alleging that "based on Dr. Elitzur's expert report, there is evidence of [...] numerous violations by the Auditor [PwC] of applicable standards" (para. 0.11) and that "PwC

failed to comply with its statutory and civil obligations, in addition to the applicable auditing standards, as appears, in part, from the Elitzur Report" (para. 23) (our emphasis).

32. Clearly, the Elitzur Report is at the heart of the allegations made against PwC in support of the QSA authorization. The expertise and credibility of Prof. Elitzur are, by the same token, integral to the debate on the QSA authorization.
33. Prof. Elitzur's cross-examination is essential and indispensable for PwC to challenge the QSA authorization. As mentioned in its letter dated November 8, 2022 (Exhibit R-2), PwC intends to counter the Elitzur Report with its own expert report from KPMG. Yet, KPMG cannot effectively respond to the Elitzur Report without clarifications as to the bases for Prof. Elitzur's opinions. It is equally important for PwC to test Prof. Elitzur's expertise and credibility.
34. More specifically, PwC intends to cross-examine Prof. Elitzur about the following topics:
  - (a) the context in which Prof. Elitzur was mandated to be expert in this class action;
  - (b) the methodology used in the Elitzur Report, and more specifically:
    - (i) the estimated materiality calculation used in the Elitzur Report, since it concludes that Lightspeed materially violated accounting standards, but this amount is not indicated in the Elitzur Report;
    - (ii) the identification of the anomalies identified by Benford's Law and the Beneish Manipulation Index that according to the Elitzur Report automatically led to a violation of accounting standards;
    - (iii) further information about the applicability of the Beneish Manipulation Index as applied to industries and other situations; and
    - (iv) further explanations about how measurement error was accounted for in the Elitzur Report;
  - (c) the information and documents used, relied upon, or consulted by Prof. Elitzur to produce the Elitzur Report;
  - (d) the data and data analytics tools used, consulted, and relied upon by Prof. Elitzur for the "Beneish Manipulation Index Analysis" and the "Benford's Law Analysis" made in the Elitzur Report;
  - (e) Prof. Elitzur's practical experience, professional and academic background, and skills in the securities field; and
  - (f) Prof. Elitzur's potential bias as an expert for Plaintiffs in a securities class action.

**C. Mr. Torchio's cross-examination**

35. The Plaintiffs also rely on the Torchio Report to argue that Lightspeed's stock price declined is the result of the alleged corrections of the alleged misrepresentations, as appears from paragraphs 9.2 to 9.3, 16 and 17 of the Re-Amended Application.
36. Accordingly, the Torchio Report is also at the core of the Plaintiffs' alleged causes of action against the Defendants, and in particular, the alleged causal link between the alleged misrepresentations and the variations in Lightspeed's stock price.
37. Mr. Torchio's cross-examination is essential and indispensable for PwC to challenge the QSA authorization in order to understand how Mr. Torchio arrived at the conclusions contained in the Torchio Report, including the alleged causes of the variations in Lightspeed's stock price. It is equally important for PwC to test Mr. Torchio's expertise and credibility.
38. More specifically, PwC intends to cross-examine Mr. Torchio about the following topics:
  - (a) Mr. Torchio's prior experience as an expert on issues of market efficiency and market impact;
  - (b) the contributory causes considered in determining whether any alternative or contributory cause had contributed to the price variation on or after September 29 or November 4, 2021;
  - (c) Mr. Torchio's choice of industry proxy;
  - (d) the consideration given, and methodology used by Mr. Torchio:
    - (i) to consider the impact of allegations made in the short seller report titled "*Putting the Brakes on Lightspeed*", published by Spruce Point Capital Management LLC, which could not, even if true, amount to misrepresentations; and
    - (ii) to consider the impact of other information disclosed by Lightspeed on November 4, 2021.
39. The present application is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:**

**GRANT** the present *Application De Bene Esse* by Defendant PricewaterhouseCoopers LLP to Cross-Examine the Plaintiffs and their Experts under the Québec Securities Act and Application for Leave to Examine the Plaintiffs under the Code of Civil Procedure;

**DECLARE** that the Defendant PricewaterhouseCoopers LLP is entitled, as of right, to examine the Plaintiffs, Steve Holcman and Tarique Plummer, in the context of the authorization proceeding of section 225.4 of the Québec *Securities Act*;

**GRANT** leave under article 574 of the *Code of Civil Procedure* for the Defendant PricewaterhouseCoopers LLP to examine the Plaintiffs, as proposed class representatives, in the context of the authorization proceeding of article 574 and following of the *Code of Civil Procedure*;

**AUTHORIZE** the Defendant PricewaterhouseCoopers LLP to examine the Plaintiffs for one (1) hour each, out-of-Court through technological means, with respect to the following topics:

- (a) with respect to the authorization proceeding under article 574 and following of the *Code of Civil Procedure*:
  - (i) the facts surrounding the Plaintiffs' alleged purchase of Lightspeed securities and subsequent disposal;
  - (ii) the Plaintiffs' knowledge of Lightspeed's public disclosure documents at the time of purchase and disposal;
  - (iii) the facts relating to the Plaintiffs' knowledge of the proposed class action;
  - (iv) documents, information, and other factors which influenced the Plaintiffs' decision to purchase and sell Lightspeed securities; and
  - (v) the Plaintiffs' suitability as representatives of the proposed class;
- (b) with respect to the authorization proceeding of section 225.4 of the Québec *Securities Act*:
  - (i) all facts relevant to the leave application under article 225.4 of the QSA.

**DECLARE** that the Defendant PricewaterhouseCoopers LLP is entitled, as of right, to cross-examine the Plaintiffs' experts, Professor Ramy Elitzur, Ph.D. and Mr. Frank C. Torchio, in the context of the leave application under section 225.4 of the Québec *Securities Act*;

**AUTHORIZE** the Defendant PricewaterhouseCoopers LLP to cross-examine Professor Ramy Elitzur, Ph.D., for two (2) hours, out-of-Court through technological means, with respect to the following topics:

- (c) the context in which Prof. Elitzur was mandated to be expert in this class action;
- (d) the methodology used in the Elitzur Report, and more specifically:



- (i) the estimated materiality calculation used in the Elitzur Report, since it concludes that Lightspeed materially violated accounting standards, but this amount is not indicated in the Elitzur Report;
  - (ii) the identification of the anomalies identified by Benford's Law and the Beneish Manipulation Index that according to the Elitzur Report automatically led to a violation of accounting standards;
  - (iii) further information about the applicability of the Beneish Manipulation Index as applied to industries and other situations; and
  - (iv) further explanations about how measurement error was accounted for in the Elitzur Report;
- (e) the information and documents used, relied upon, or consulted by Prof. Elitzur to produce the Elitzur Report;
  - (f) the data and data analytics tools used, consulted, and relied upon by Prof. Elitzur for the "Beneish Manipulation Index Analysis" and the "Benford's Law Analysis" made in the Elitzur Report;
  - (g) Prof. Elitzur's practical experience, professional and academic background, and skills in the securities field; and
  - (h) Prof. Elitzur's potential bias as an expert for Plaintiffs in a securities class actions.

**AUTHORIZE** the defendant PricewaterhouseCoopers LLP to examine Mr. Frank C. Torchio for two (2) hours, out-of-Court through technological means with respect to the following topics:

- (a) Mr. Torchio's prior experience as an expert on issues of market efficiency and market impact;
- (b) the contributory causes considered in determining whether any alternative or contributory cause had contributed to the price variation on or after September 29 or November 4, 2021;
- (c) Mr. Torchio's choice of industry proxy;
- (d) the consideration given, and methodology used by Mr. Torchio:
  - (i) to consider the impact of allegations made in the short seller report titled "*Putting the Brakes on Lightspeed*", published by Spruce Point Capital Management LLC, which could not, even if true, amount to misrepresentations; and
  - (ii) to consider the impact of other information disclosed by Lightspeed on November 4, 2021.

**THE WHOLE** without costs, save in case of contestation.

Montréal, January 11, 2023

*Osler, Hoskin & Harcourt L.L.P.*

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Our file: 1226511

**NOTICE OF PRESENTATION**

To: **LPC Avocat Inc.**  
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**Faguy & Co.**  
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Attorneys for Plaintiffs

To: **Stikeman Elliott LLP**  
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Attorneys for Defendant Lightspeed and Individual Defendants

**TAKE NOTICE** that the *Application De Bene Esse by Defendant PricewaterhouseCoopers LLP to Cross-Examine the Plaintiffs and their Experts under Quebec Securities Act and Application for Leave to Examine the Plaintiffs Under the Code of Civil Procedure* will be presented for hearing before the Honourable Lukasz Granosik of the Superior Court of Québec, on **February 22, 2023**, at **9:30 a.m.**, in **Room 15.09** of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montreal, Québec, H2Y 1B6.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, January 11, 2023



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Our file: 1226511

# **EXHIBIT R-1**

Montréal

November 8, 2022

Toronto

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Our Matter Number: 1226511

Calgary

**By Electronic Mail**

Ottawa

The Honourable Lukasz Granosik, J.S.C.  
Superior Court of Québec  
Montreal Courthouse  
1 Notre-Dame Street East  
Montréal, Québec H2Y 1B6

Vancouver

New York

Dear Mr. Justice:

**Re: Steve Holchman and Tarique Plummer v Lightspeed Commerce Inc.  
et al.  
S.C. N° 500-06-001164-215**

We write to you further to the case management conference held on September 8, 2022 in the above-mentioned case. As requested by the Court, we hereby announce that our client PricewaterhouseCoopers LLP (“**PwC**”) intends to proceed with the following preliminary applications:

- (i) Motion for leave to adduce relevant evidence, consisting in:
  - a. An expert report to respond to the report of Pr Ramy Elitzur dated August 1, 2022. In this regard, we have retained KPMG, which were formally engaged on October 31, 2022.
  - b. A sworn statement from a representative of PwC, in order to respond to certain allegations contained in the application, including with regard to PwC’s mandate and work performed for the defendant Lightspeed.
- (ii) Motion for leave to examine:
  - a. The proposed class representatives.
  - b. The plaintiffs’ two experts.

As it appears from the foregoing, PwC does not intend to produce, at this stage, an expert report in response to the report of Mr. Frank Torchio dated June 17, 2022.

Based on our discussions with our co-defendants' counsel, as well as our expert, we think that we will be in a position to file our preliminary applications by the end of March 2023.

Notwithstanding the foregoing, and in the meantime, it is our client's intent to diligently move forward with this proposed securities class action. To this effect, in the context of the leave sought by the plaintiffs under the Québec *Securities Act*, PwC will proceed with the cross-examination of Mr. Torchio as soon as possible, i.e., as early as December 2021. We will also cross-examine, with the assistance of our own expert, Pr. Elitzur, likely in January or February 2023, the whole obviously subject to plaintiffs' counsel and their experts' availabilities.

In the meantime, we remain at the disposal of this Court should it has any question regarding the above.

Respectfully yours,

**Osler, Hoskin & Harcourt LLP**



Frédéric Plamondon

FP/JAT

cc: Mtre Joey Zuckran, *LPC Avocat Inc.*  
Mtre Elizabeth Meloche and Mtre Shawn K. Faguy, *Faguy & Co.*  
Mtre Stéphanie Lapierre and Mtre Frédéric Paré, *Stikeman Elliot LLP*  
Mtre Éric Préfontaine, *Osler, Hoskin & Harcourt LLP*

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**SUPERIOR COURT  
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**STEVEN HOLCMAN ET AL.**

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**Defendants**

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**APPLICATION DE BENE ESSE BY DEFENDANT  
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**ORIGINAL**

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Code : BO 0323

O/f: **1226511**

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