[1] Given the following, we would not grant leave to appeal:

- there appears to be no dispute as to the applicable law;
- the issues are complicated, idiosyncratic and essentially factual; and
- the advantaged position of Ground J., who had addressed these issues on an ongoing basis over many months.

[2] We did, however, have the benefit of full oral argument by counsel on both sides and in deference to that argument, we will address the merits briefly.

[3] By the end of argument, it was clear to us that there was no real dispute about the underlying legal principles. If the expert (KMPG) went beyond the mandate given to it in the agreements, the report prepared by the expert cannot stand. Equally, if the expert stayed within its mandate, its report is final and binding and not subject to judicial review: *Jones v. Sherwood Computer Services,* [1992] 1 W.L.R. 277 (C.A.); *Glaister v. Amalgamated Dairies Ltd.,* [2002] NZLR LEXIS 84 (Auk. H.C.); *Shinkaruk Enterprises Ltd. v. Commonwealth Insurance Co.* (1990), 71 D.L.R. (4th) 681 (Sask. C.A.).

[4] On our review of the agreements, the written submissions provided to the expert by the parties pursuant to the protocol developed by the court, and the relevant orders made by the court, the expert performed the task assigned to it and contemplated by the parties. In preparing its review of Exhibits "B" and "C" based on the position advanced to the expert by the appellant, Heico, the expert applied what it deemed to be the

appropriate GAAP principles. The expert determined upon its understanding of those principles that CICA 4250 was not applicable to Exhibit "B". That decision was squarely a matter within the accounting expertise of the expert and did not engage any question of law.

[5] The expert's determination was directly responsive to the position advanced by Heico in its submissions to the expert and the position taken by Heico before Ground J., namely, that Exhibit "B" was a forecast to which CICA 4250 applied. The expert rejected that claim as unsound from an accounting perspective. In our view, that is precisely the expertise that he was obligated to bring to bear on that question.

[6] Leave to appeal will be refused.

[7] Costs to Monitor in the amount of $35,000, all inclusive.