Court File No. CV-17-11779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

ONTARIO SECURITIES COMMISSION

Applicant

- and -

CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, CLAYTON SMITH, CLJ EVEREST LTD., 1150752 ONTARIO LIMITED, CRYSTAL WEALTH MEDIA STRATEGY, CRYSTAL WEALTH MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED RESOURCE & PRECIOUS METALS FUND, CRYSTAL WEALTH MEDICAL STRATEGY, CRYSTAL WEALTH ENLIGHTENED FACTORING STRATEGY, ACM GROWTH FUND, ACM INCOME FUND, CRYSTAL WEALTH HIGH YIELD MORTGAGE STRATEGY, CRYSTAL ENLIGHTENED BULLION FUND, ABSOLUTE SUSTAINABLE DIVIDEND FUND, ABSOLUTE SUSTAINABLE PROPERTY FUND, CRYSTAL WEALTH ENLIGHTENED HEDGE FUND, CRYSTAL WEALTH INFRASTRUCTURE STRATEGY, CRYSTAL WEALTH CONSCIOUS CAPITAL STRATEGY, CRYSTAL WEALTH RETIREMENT ONE FUND and CHRYSALIS YOGA INC.

Respondents

APPLICATION UNDER SECTION 129 OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED

RESPONDING FACTUM OF THE COURT-APPOINTED RECEIVER, GRANT THORNTON LIMITED

Date: June 22, 2017

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RESPONDING FACTUM OF THE COURT-APPOINTED RECEIVER, GRANT THORNTON LIMITED

PART I – OVERVIEW

1. The Receiver opposes Crawley Mackewn Brush LLP's ("**CMB**") motion to be appointed representative counsel of the investors (the "**Investors**") in the 15 Respondent open-ended mutual fund trusts (the "**Crystal Wealth Funds**").

2. While the Receiver opposes the appointment of representative counsel generally, CMB is particularly conflicted from being appointed to such mandate. CMB represented the Respondent, Chrysalis Yoga Inc. ("**Chrysalis Yoga**"), in this proceeding, an entity which was co-founded by Clayton Smith ("**Smith**") and to which the Ontario Securities Commission traced monies from one of the Crystal Wealth Funds.

3. Furthermore, Alistair Crawley ("**Crawley**") of CMB was introduced to this proceeding, in part, by Tim Johnston ("**Johnston**") and Al Housego ("**Housego**"), two former registered representatives of the Respondent, Crystal Wealth Management System Limited ("the "**Company**"), who have been terminated by the Receiver since its appointment. The interests of Chrysalis Yoga, Housego, Smith, and Johnston are not aligned with Investors. CMB's alleged proxies from Investors have been obtained through an email sent by Housego encouraging Investors to support CMB's proposed appointment by clicking on a hyperlink, while falsely representing to Investors that the Receiver would bear the cost of representative counsel. CMB has proffered no evidence as to which Investors are allegedly supporting its appointment, which Funds they are invested in, how such support was obtained, or any particulars of the mandate which CMB proposes to fulfill if appointed.

4. Conversely, the Receiver's role is to protect and enhance the interest of the Investors. Since its appointment, the Receiver has maintained consistent communication with Investors

while investigating and evaluating the Crystal Wealth Funds in order to determine the appropriate approach by which to maximize Investor returns. The Receiver, as a court appointed officer, has as its primary objective the interests and needs of the Investors and has and will continue to advance them in an objective, impartial manner, and in a way that recognizes the unique interests of the Investors in each different and unique fund.

5. The Receiver has commenced monetizing certain Crystal Wealth Funds with a view to making interim distributions to Investors. A Sales Process has also been proposed by the Receiver in its First Report to gage interest from third parties with respect to the potential purchase, or management takeover, of the assets of certain Crystal Wealth Funds which otherwise might require individual and protracted realization strategies. Where appropriate, the Receiver has consulted with, and engaged, expert consultants with respect to the most appropriate realization strategies with respect to certain Crystal Wealth Funds.

6. The appointment of representative counsel, with an undefined mandate and charge over the entirety of the Property of the Crystal Wealth Group as CMB is proposing, will only result in costs being unnecessarily incurred by all Investors and stakeholders of the Crystal Wealth Group, and will not further the administration and efficiency of the proceeding.

PART II – FACTS

I. Background

7. On April 7, 2017, the OSC issued a temporary order providing that the trading of units of all of the Crystal Wealth Funds cease.[1]

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[1] The Temporary Order was extended by the OSC on April 26, 2017 to October 3, 2017. See Appendix "2" of the First Report to the Court of the Receiver dated June 22, 2017 [First Report], contained in the Motion Record of the Receiver dated June 22, 2017 [Receiver Motion Record], p. 131.

8. On April 26, 2017, on application of the OSC, Grant Thornton Limited was appointed as receiver and manager (in such capacities, the "**Receiver**"), without security, of all of the assets, undertakings and properties (collectively, the "**Property**") of each of each of the Respondents, except the Respondent, Chrysalis Yoga (excluding Chrysalis Yoga, the "**Crystal Wealth Group**"); and (ii) as Receiver of the bank account of Chrysalis Yoga, No. 87296 00518 10 at Bank of Nova Scotia, to which funds from one of the Crystal Wealth Funds were traced by the OSC.[2]

9. The appointment of the Receiver was based, in part, on the OSC's concerns regarding potential breaches of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Securities Act**"), by the Company and its principal, Smith.[3]

II. The Prior Role of CMB in these Proceedings and Corresponding Conflict

10. At the time of the Receiver's appointment, CMB acted as counsel to Chrysalis Yoga and appeared on its behalf at the hearing before the Honourable Justice Newbould on April 26, 2017. In its evidentiary record in support of the appointment of the Receiver, the OSC tendered evidence tracing $187,000 advanced by the Respondent, Crystal Wealth Media Strategy (the "**Media Fund**"), purportedly in its purchase of film loans from a third party, to Chrysalis Yoga. Chrysalis Yoga is a yoga studio in Burlington, Ontario, which Smith co-founded with his former common law spouse.[4]

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[2] First Report at paras. 1-2, Receiver Motion Record, tab 2, p. 53; Receiver Motion Record, Appendix "2" (Extension Order dated April 28, 2017), tab 2, p. 131.
[3] First Report at paras. 4-5, Receiver Motion Record, tab 2, pp. 54-55; Receiver Motion Record, Appendix "5" (Commission Affidavits), tab 5, p. 211.
[4] First Report at para. 220, Receiver Motion Record, tab 2; Receiver Motion Record, Appendix "5" (Affidavit of Michael Ho sworn April 17, 2017), tab 5, p. 240, para. 20 (see also p. 237, para. 14(iii); p.243, para. 25(iii); and p. 245, para. 30).

11. Shortly following the hearing on April 26, 2017, counsel for the Receiver, Aird & Berlis LLP ("**A&B**"), was contacted by Crawley, a lawyer at CMB. Crawley indicated that he had been informally speaking with an investor named Tony Murphy, as well as Johnston, a now terminated registered representative of the Company. On May 10, 2017, Crawley advised A&B that CMB would be interested in seeking an appointment as representative counsel for Investors, but has acknowledged that neither he nor CMB has previously acted in such a role. At that time, CMB remained counsel to Chrysalis Yoga in this proceeding.[5]

12. On May 11, 2017 Crawley advised A&B and the Receiver that he was also introduced to this proceeding by Housego.[6]

13. On May 16, 2017, Crawley sent a letter to A&B reiterating CMB's interest in being appointed representative counsel (the "**May 16th Crawley Letter**"). On May 17, 2017, A&B sent a letter in response to the May 16th Crawley Letter reiterating the Receiver's view, and rationale for it, that it was premature for representative counsel to be appointed at that juncture.[7]

14. On May 17, 2017, the Receiver was made aware of an email sent by Housego to a group of Investors in the Crystal Wealth Funds using the email address crystalwealthupdates@gmail.com (the "**Housego Email**"). The Housego Email, among other things, "strongly recommended" that Investors endorse the appointment of Crawley and CMB as representative counsel for Investors. Housego's recommendation supporting Crawley and CMB was done utilizing false statements. Most notably, Housego asserted that the cost of CMB's services to the Investors would be borne by the Receiver. The Housego Email contained a

[5] First Report at paras. 221 and 222, Receiver Motion Record, tab 2, pp. 120-121.
[6] First Report at para. 222, Receiver Motion Record, tab 2, p. 121.

hyperlink which Investors could click on to support CMB's appointment as Representative Counsel.[8]

15. On May 19, 2017 (two days after the Housego Email was sent), Crawley sent a letter to A&B (the "**May 19th Crawley Letter**"). The May 19th Crawley Letter, among other things, contained a critical and aggressive tone towards the Receiver and its actions taken to date and made many incorrect assumptions regarding same. In the letter, Crawley took issue with the fact that the Receiver had not contacted Housego with respect to the management of certain Crystal Wealth Funds. A&B responded to Crawley by letter dated May 19, 2017 advising, among other things, that it was "surprised by the aggressive tone of [Crawley's] letter", while reiterating that the Receiver believed it to be premature to introduce representative counsel at that stage, and to unnecessarily levy the cost of representative counsel to Investors at that time. A&B further advised CMB that the Receiver had intentionally not consulted with Housego, given the Receiver's view that it was neither necessary nor desirable to do so in order for the Receiver to review and make appropriate decisions in connection with the Crystal Wealth Funds.[9]

16. The Receiver does not consider Housego to be a reliable and impartial source of information with respect to the Crystal Wealth Funds. Upon securing the books and records of the Crystal Wealth Group following its appointment, the Receiver discovered that certain emails contained in the inbox and sent items of the email account of Housego had either been deleted in

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[7] First Report at para. 223, Receiver Motion Record, tab 2, p. 121; Receiver Motion Record, Appendix "30" (May 16th Crawley Letter dated May 16, 2017), tab 30, p.463; Receiver Motion Record, Appendix "31" (A&B Response to May 16th Crawley Letter dated May 17, 2017), tab 31, p. 465.
[8] First Report at para. 216, Receiver Motion Record, tab 2, p. 119; Receiver Motion Record, Appendix "27" (Housego Email dated May 17, 2017), tab 27, p. 460.
[9] First Report at para. 224, Receiver Motion Record, tab 2, p. 121; Receiver Motion Record, Appendix "32" (May 19th Crawley Letter dated May 19, 2017), tab 32, p.467; Receiver Motion Record, Appendix "33" (A&B Response to May 19th Crawley Letter dated May 19, 2017), tab 33, p.471.

their entirety, or had been removed.[10] Furthermore, Crystal Wealth Enlightened Hedge Fund and Crystal Wealth Enlightened Factoring Strategy, of which Housego had been the lead portfolio strategist, had entered into Gold Certificate Subscription Agreements with Onstar Exploration Ltd. ("**Onstar**") pursuant to which gold deliveries to the funds were to commence on April 30, 2017, yet no gold has been delivered to either fund by Onstar.[11]

17. At the June 2, 2017 hearing before the Honourable Justice Hainey, Crawley attended to advise the Court of CMB's intention to bring this motion to be appointed as representative counsel for the Investors in the Crystal Wealth Funds.[12]

PART III – ISSUES, LAW & AUTHORITY

18. The issue before this Honourable Court is whether representative counsel ought to be appointed for the Investors, and if so, should CMB be appointed to fulfil that mandate.

I. The Authority by which the Court may Appoint Representative Counsel

19. The Court's authority to appoint representative counsel is derived from Rules 10.01 and 12.07 of the *Rules of Civil Procedure*. There are no reported decisions where the appointment of representative counsel has been contested in the context of a *Securities Act* receivership.

20. The appointment of representative counsel has been considered in the context of proceedings under the *Companies' Creditors Arrangement Act,* which has independent considerations, in part, arising from s. 11.52 of the *CCAA.* In *Canwest Publishing Inc.*, Madam Justice Pepall (as Her Honour then was) summarized certain factors regularly considered by the

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[10] First Report at para. 178d), Receiver Motion Record, tab 2, pp. 111-112.
[11] First Report at para 68d), Receiver Motion Record, tab 2, p. 79.
[12] First Report at para. 219, Receiver Motion Record, tab 2, p. 120.

Court in CCAA proceedings when determining whether to issue a representative counsel order, including:

- the vulnerability and resources of the group sought to be represented;
- any benefit to the companies under CCAA protection;
- the facilitation of the administration of the proceedings and efficiency;
- the avoidance of a multiplicity of legal retainers;
- the balance of convenience and whether it is fair and just, including to the creditors of the Estate; and
- the position of the other stakeholders and the Monitor.[13]

21. Whether to appoint representative counsel is a question of equity; there can be no hard and fast rules governing any particular case.[14] In this particular case, the relevant considerations do not support the appointment of representative counsel.

<u>II. Application of the Relevant Canwest Factors</u>

i. Vulnerability and Resources of the Investors

22. This is not a case where representative counsel is warranted on the basis that Investors' interests are not being advanced or protected. The Receiver was appointed given Justice Newbould's finding that the relief sought by the OSC was "fully justified", and that the requirements of s. 129 of the *Securities Act* had been met. Implicit therein, Justice Newbould

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[13] *CanWest Publishing Inc. (Re)*, 2010 ONSC 1328 [*CanWest*] at para 21, tab 1 of the Receiver's Brief of Authorities dated June 29, 2017 [Brief of Authorities]. See also *Re Target Canada Co.*, 2015 ONSC 303 [*Target*] Brief of Authorities, tab 2 at paras. 60-61, and *Urbancorp Inc. (Re)*, 2016 ONSC 5426 [*Urbancorp*] Brief of Authorities, tab 4 at para 11.
[14] *Urbancorp* at para 12, *supra* note 13.

recognized that the requirements of ss. 129(2)(a) of the *Securities Act* had been met, and that the appointment of the Receiver was in the best interests of Investors in the Crystal Wealth Funds.[15]

23. Nor is this a case, such as in the CCAA proceedings of *Target*, *Fraser Papers Inc.* and *Canwest*, where current and former employees – with common interests – had little or no assistance or means to advance their interests and protect their rights.[16] Rather, the Receiver is acting in a manner to best advance the divergent interests of all Investors.[17] In fact, that is the fulcrum objective of its role.

ii. Representative counsel will not benefit the administration of the Crystal Wealth Funds or facilitate efficiency

24. Representative counsel will not provide a consistent and streamlined process to the overall benefit of all Investors, given the existing role of the Receiver and the divergent interests among the Investors in different funds.

25. As is outlined in the First Report, the Receiver has thoroughly taken steps to understand, and evaluate each of the Crystal Wealth Funds, and their divergent interests, and to efficiently carry out the administration of the Crystal Wealth Funds for the benefit of all Investors. In so doing, the Receiver has:

(a) collected monthly payments and funds held by third-parties administering certain Crystal Wealth Funds and/or their assets;[18]

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[15] Receiver Motion Record, Appendix "3" (Endorsement of Justice Newbould issued April 26, 2017), tab 3, p. 199; *Securities Act*, ss. 129(2)(a).
[16] *Fraser Papers Inc. (Re)*, 2009 CarswellOnt 6169, [2009] O.J. No. 4287, 181 A.C.W.S. (3d) 256 [*Fraser Papers*], Brief of Authorities, tab 5; *Target* at para. 60, *supra* note 13; *Urbancorp* at para 21, *supra* note 13.
[17] First Report at para. 225(a), Receiver Motion Record, tab 2, p. 122.
[18] First Report at para. 78 ("Administration of the Funds"), Receiver Motion Record, tab 2, p. 111.

(b) begun monetizing marketable securities of certain Crystal Wealth Funds, which realization process is anticipated to be completed by June 30, 2017.[19] Once the monetization process is complete, the Receiver intends to make interim distributions to Investors, where possible, in accordance with the Unit Holder Listings maintained by International Financial Data Services (Canada) Limited;[20]

(c) with respect to certain of the Crystal Wealth Funds which contain significant Off-Book Assets, such as mortgages, term loans, factoring contracts, film loan purchases, and other alternative investments, the Receiver has put forth for Court Approval a Sales Process by which: (i) potential bidders may make an offer to purchase the investments from one or more of the Crystal Wealth Funds; and/or (ii) potential managers may present an offer to assume the management of one or more of the Crystal Wealth Funds' investment activities;[21] and

(d) the Receiver has engaged an expert consultant to assist it in the management and development of realization strategies of the Media Fund, arguably one of, if not the most complex investments of the Crystal Wealth Funds, and will consider the need for such a specialized advisor in respect of any other Fund if the circumstances warrant it.[22]

26. Throughout its administration, the Receiver has diligently kept Investors apprised of the Receiver's activities and efforts to advance the administration in their interests. The Receiver has:

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[19] First Report at paras. 136-138, Receiver Motion Record, tab 2, p. 96-96.
[20] First Report at para. 175, Receiver Motion Record, tab 2, p. 108.
[21] First Report at paras. 130 - 144, Receiver Motion Record, tab 2, p. 97.

(a) established a Crystal Wealth Funds toll free number and email account;

(b) responded to numerous calls and emails from Investors, and counsel on their behalf;

(c) published the fact of this proceeding in the national editions of the Globe and Mail and the National Post on May 4, 2017; and

(d) distributed four (4) notices from the Receiver to all Investors on May 1, 2017, May 10, 2017, May 17, 2017, and June 9, 2017, updating them on the receivership as events unfolded. These notices were also posted to the Receiver's Case Website.[23]

27. The balance of convenience does not favour the appointment of representative counsel. As an officer of the Court, the Receiver functions as one focused point of contact for all Investors, advancing the interests of each of them.[24] Conversely, an omnibus representative counsel will not likely have a meaningful role, given the differences between the Crystal Wealth Funds, and the varying realization strategies among them.[25] The appointment of representative counsel at this point, in the context of these facts, can only serve to create mixed messages and create confusion among Investors as to the status and role of the Receiver.

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[22] First Report at para. 225(d), Receiver Motion Record, tab 2, p. 122; See also the Supplement to the First Report dated June 29, 2017, paras. 9-10 and Confidential Appendix "1".
[23] First Report at para 178 (Investor Matters), Receiver Motion Record, tab 2, p. 110.
[24] First Report at para. 225(a), Receiver Motion Record, tab 2, p. 122.
[25] First Report at para. 225(c) and (d), Receiver Motion Record, tab 2, p. 122.

iii. CMB Ought Not to be Appointed Representative Counsel

28. While the Receiver is of the view that the appointment of representative counsel in not warranted, in the event this Honourable Court nevertheless believes that representative counsel should be appointed, it is the Receiver's view that CMB – which has not previously acted as representative counsel[26] – ought not be appointed.[27]

29. Of critical importance, CMB is conflicted from acting on behalf of the Investors given its previous representation of Chrysalis Yoga, which was the recipient of funds traced from the Media Fund.[28]

30. CMB's ability to act in the interest of Investors is further compromised by its acknowledgement that it was introduced to this proceeding, in part, by Housego and Johnston. Both of these individuals were actively working with Smith, were registered representatives of the Company prior to being terminated by the Receiver, were subject to the OSC's Temporary Order and Extension Order, and are the subject of the Receiver's continued investigation. The interests of Investors, on the first part, and of Chrysalis Yoga, Housego, and Johnston, on the second part, are in conflict.

31. With respect to CMB's alleged proxies from Investors, the credibility of such Investor support is compromised by the fact that the Housego Email strongly supported CMB's appointment as representative counsel, and falsely represented that the cost of representative counsel would be borne by the Receiver, while including the hyperlink by which Investors'

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[26] First Report at para 222, Receiver Motion Record, tab 2, p. 121.
[27] *Fraser Papers* at paras. 11 and 12, *supra* note 16; *Re U.S. Steel Canada Inc.*, 2014 ONSC 6145 [*U.S. Steel Canada*], Brief of Authorities, tab 3 at para 41.
[28] First Report at para 226(a), Receiver Motion Record, tab 2, p. 123; *U.S. Steel Canada* at para 39, *supra* note 27.

could record their support for CMB's proposed appointment.[29] The extent to which CMB's purported support from Investors was obtained through the Housego Email is unknown, and has not been addressed by CMB as part of its evidentiary record on this motion.

32. Furthermore, CMB has tendered no evidence as to the nature of the Investors which are supposedly supporting its appointment, or that those Investors are unable to fund CMB's fees and disbursements. To the extent CMB is appointed by the Court despite the Receiver's opposition, it is appropriate that Investors be required to "opt in" to CMB's appointment, and that CMB's fees and disbursements be paid by those specific Investors, similarly to what Justice Newbould ordered in *Urbancorp*.[30]

33. CMB, if appointed representative counsel, ought not to accordingly be granted a charge on the entirety of the Property of the Crystal Wealth Group as security for its fees and disbursements, as is requested by CMB in paragraph 1(c) of its notice of motion. CMB has not proposed or sought approval of a fee cap, and has simply advised Investors that "we *expect that the total fees would be less than $100,000, spread across the approximately $170 million in assets reported by the OSC*".[31] CMB's statement in this regard is itself misleading to Investors, given the concerns raised by the OSC concerning the accuracy of the represented net assets under value of the Crystal Wealth Funds, and in particular, the Media Fund.[32]

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[29] First Report at para. 216, Receiver Motion Record, tab 2, pp. 119-120; Receiver Motion Record, Appendix "27" (Housego Email dated May 17, 2017), tab 27, p. 460.
[30] *Urbancorp* at paras. 22 and 28, *supra* note 13.
[31] *Urbancorp* at paras. 22 and 28, *supra* note 13; *Canwest* at para 24, *supra* note 13; *Target* at para. 74, *supra* note 13.
[32] Motion Record of CMB dated June 9, 2017, affidavit of Cynthia Singh sworn June 9, 2017, tab 4, Exhibit K, p. 81; Receiver Motion Record, Appendix "5"(Affidavit of Marcel Tillie sworn April 17, 2017), p. 214, paras. 11 and 40-46.

34. Finally, CMB's correspondence to the Receiver to date has been inflammatory, accusatory, and misleading.[33] CMB's efforts to malign the activities of the Receiver, a Court officer tasked with protecting the Investors, undermines confidence in the Court's process, and deflects the Receiver from its tasks contrary to the fair administration of justice, particularly when all the evidence supports the extreme vigilance and diligence with which the Receiver has been fulfilling its role and advancing the administration of the receivership, and there is no evidence whatsoever to the contrary.[34]

PART IV – CONCLUSION AND ORDER REQUESTED

35. The Receiver accordingly requests that CMB's motion be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: June 29, 2017

per. [signature]

Steven L. Graff (LSUC # 31871V)

Mark van Zandvoort (LSUC # 59120U)

Lawyers for Grant Thornton Limited, in its capacity as Receiver and Manager of the Crystal Wealth Group

[33] First Report at para 226(d), Receiver Motion Record, tab 2, p. 126.
[34] *The Superintendent of Financial Services v. Textbook Student Suites (525 Princess Street) Trustee Corporation,* 2017 ONSC 2694 (Commercial List) (Myers J.), at p. 8, para. 30.

SCHEDULE "A"
LIST OF AUTHORITIES

(a) *Canwest Publishing Inc. (Re)*, 2010 ONSC 1328.

(b) *Re Target Canada Co.*, 2015 ONSC 303.

(c) *Re U.S. Steel Canada Inc.*, 2014 ONSC 6145 .

(d) *Urbancorp Inc. (Re)*, 2016 ONSC 5426.

(e) *Fraser Papers Inc. (Re)*, 2009 CarswellOnt 6169, [2009] O.J. No. 4287, 181 A.C.W.S. (3d) 256.

(f) *The Superintendent of Financial Services v. Textbook Student Suites (525 Princess Street) Trustee Corporation,* 2017 ONSC 2694 (Commercial List) (Myers J.)

SCHEDULE "B"
RELEVANT STATUTES

***Rules of Civil Procedure*, R.R.O. 1990, Reg 1994**

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,
(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
(b) the determination of a question arising in the administration of an estate or trust;
(c) the approval of a sale, purchase, settlement or other transaction;
(d) the approval of an arrangement under the *Variation of Trusts Act*;
(e) the administration of the estate of a deceased person; or
(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served.

Proceeding against representative defendant

12.07 Where numerous persons have the same interest, one or more of them may defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so.

***Securities Act*, R.S.O. 1990, c. S.5**

129 (1) The Commission may apply to the Superior Court of Justice for an order appointing a receiver, receiver and manager, trustee or liquidator of all or any part of the property of any person or company.

(2) No order shall be made under subsection (1) unless the court is satisfied that,

(a) the appointment of a receiver, receiver and manager, trustee or liquidator of all or any part of the property of the person or company is in the best interests of the creditors of the person or company or of persons or companies any of whose property is in the possession or under the control of the person or company or the security holders of or subscribers to the person or company; or

(b) it is appropriate for the due administration of Ontario securities law.

(3) The court may make an order under subsection (1) on an application without notice, but the period of appointment shall not exceed fifteen days.

(4) If an order is made without notice under subsection (3), the Commission may make a motion to the court within fifteen days after the date of the order to continue the order or for the issuance of such other order as the court considers appropriate.

(5) A receiver, receiver and manager, trustee or liquidator of the property of a person or company appointed under this section shall be the receiver, receiver and manager, trustee or

liquidator of all or any part of the property belonging to the person or company or held by the person or company on behalf of or in trust for any other person or company, and, if so directed by the court, the receiver, receiver and manager, trustee or liquidator has the authority to wind up or manage the business and affairs of the person or company and has all powers necessary or incidental to that authority.

(6) If an order is made appointing a receiver, receiver and manager, trustee or liquidator of the property of a person or company under this section, the powers of the directors of the company that the receiver, receiver and manager, trustee or liquidator is authorized to exercise may not be exercised by the directors until the receiver, receiver and manager, trustee or liquidator is discharged by the court.

(7) The fees charged and expenses incurred by a receiver, receiver and manager, trustee or liquidator appointed under this section in relation to the exercise of powers pursuant to the appointment shall be in the discretion of the court.

(8) An order made under this section may be varied or discharged by the court on motion.

***Companies Creditors Arrangement Act*, R.S.C., 1985, c. C-36**

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

> **(a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> **(b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

ONTARIO SECURITIES COMMISSION Applicant **and** **CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED, *ET AL.*** Respondents

Short Title of Proceedings

Court File No. CV-17-11779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at TORONTO

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