

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

B E T W E E N :

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

-and-

TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, JAIMEE LYNN GDAK and JAIMAK REAL PROPERTIES INC.

Respondents

APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01 of the *Rules of Civil Procedure*

**RESPONDING MOTION RECORD OF THE RESPONDENTS
TRIGGER WHOLESALE, INC., THE EN CADRE GROUP INC.,
MARK GDAK, AND JAIMAK REAL PROPERTIES INC.
(Returnable March 17, 2021)**

March 11, 2021

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AND TO: SERVICE LIST

SERVICE LIST
(as of December 1, 2020)

(ClearFlow v Trigger – Court File #CV-20–00649154–00CL)

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Court File No.: CV-20-00649154-00CL

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B E T W E E N :

CLEARFLOW COMMERCIAL FINANCE CORP.

Applicant

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APPLICATION UNDER Sections 243(1) and 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C.1985, c. B-3, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and Rule 40.01 of the *Rules of Civil Procedure*

**AFFIDAVIT OF JOLENE MCKENNA
(Sworn March 11, 2021)**

I, Jolene McKenna, of the City of Mississauga, Regional Municipality of Peel, Province of Ontario, MAKE OATH AND SAY:

1. I am a legal assistant to Jason Squire at Lerner LLP, counsel for Mark Gdak, Trigger Wholesale Inc., The En Cadre Group Inc., and Jaimak Real Properties Inc. and, as such, I have knowledge of the matters to which I herein depose.

Trigger Documents Protocol

2. Attached and marked as **Exhibit "A"** to my affidavit is a copy of a document production protocol negotiated by counsel and the Receiver and memorialized by Justice Koehnen by Endorsement dated January 11, 2021. The protocol was intended to deal, in part, with documents and accounting records of Trigger that would be produced to Lerner and to Jaimee Gdak's counsel, Cohen Highley, and to Clearflow (by its counsel Torkin Manes), by the Receiver from Trigger documents in the Receiver's possession and control. One issue, among several, to manage was the

likelihood that the documents in Trigger's possession would include documents over which privilege would be asserted.

Actual Production of Trigger Emails; Further Privilege Review

3. Attached and marked as **Exhibit "B"** to my affidavit is a copy of an email exchange among counsel starting with Mr. Squire's email dated January 29, 2021. As described in that exchange, the Receiver delivered certain hard drives to Lerner, Cohen Highley and Torkin Manes containing Trigger emails. It became apparent that whatever high-level keyword search for privileged documents was performed at the Receiver's office had unfortunately been insufficient or incomplete. Mr. Squire proposed that counsel return to practical discussions about how to complete a productions process while preserving privilege. Mr. Squire asked Mr. Simpson not to pass on the unexpurgated set of documents to his client pending a new arrangement and the searches actually being performed.

4. I am advised by Mr. Squire, and I believe, that a conference call proceeded among counsel on Monday, February 8, 2021, during which these issues and privileged matters were discussed.

5. Attached and marked as **Exhibit "C"** to my affidavit is a copy of an email exchange among counsel commencing with Mr. Simpson's emails of Friday, February 18 and Sunday, February 21, 2021. Mr. Squire's February 22 email confirmed that Lerner would proceed to search the "original" set of Trigger documents sent by the Receiver, to expurgate putatively privileged documents according to the search terms in the original protocol.

6. Attached and marked as **Exhibit "D"** to my affidavit is a copy of Mr. Simpson's exchange with Mr. Squire on February 23, 2021, wherein Mr. Simpson suggested there has been some "stalling;" Mr. Squire responded; Mr. Simpson asked that the new document work be carried out with extreme urgency.

7. Attached and marked as **Exhibit "E"** to my affidavit is a copy of Mr. Squire's update email to counsel of March 1, 2021.

8. Attached and marked as **Exhibit “F”** to my affidavit is a copy of Mr. Squire’s email to counsel of March 3, 2021, advising that the relevant database and Schedule “B” were ready to be distributed. Attached and marked as **Exhibit “G”** to my affidavit is a copy of the email of Rose Plue, a clerk at Lerner’s, to all counsel, advising how to download the completed work, and also describing the step-wise tasks that were performed to ready the database and the Schedule “B”.

Trigger Accounting Records

9. The hard drives delivered by the Receiver in January included emails, but no other documents (other than as attachments), and particularly no accounting records.

10. An email exchange commencing with Mr. Squire’s of January 27, 2021 is attached and marked as **Exhibit “H”** to my affidavit. As sent out in that exchange, the Receiver uploaded the accounting records to a file transfer tool at Lerner’s on February 29, 2021.

11. As noted by Mr. Squire in that same exchange (and in that at Exhibit “B”), the electronic accounting records provided are in a file format particular to the accounting system used by Trigger, called QuickBooks. Neither our client nor Lerner’s has QuickBooks accounting software, and we have not been able to access the accounting records themselves.

12. Attached and marked as **Exhibit “I”** is a copy of the email exchange commencing with Mr. Squire’s of February 26, 2021, also on the QuickBooks issue. Attached and marked as **Exhibit “J”** to my affidavit is a copy of the email exchange of March 10, 2021, noting that the QuickBooks issue has not to date been resolved.

13. Incidentally, as indicated in Exhibits “I” and “J,” the examination of Mark Gdak by the Receiver, as permitted in the Order of Justice McEwan dated October 22, 2020, has not to date proceeded, and is currently scheduled for April 15, 2021.

SWORN BEFORE ME:☐

in person

☒

by video conference

at the City of Mississauga, before me at the
City of Toronto on March 11, 2021 in
accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



JOLENE MCKENNA

A Commissioner for taking Affidavits (or as may be)**Jason Squire**



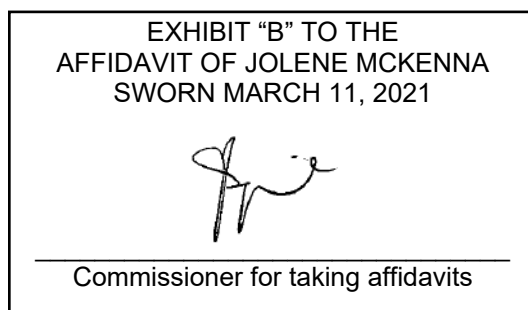
Commissioner for taking affidavits

Document Review Protocol

The Receiver has in its possession certain email communications and other electronically stored documents (the "**Documents**") which were obtained from the computer systems of the Respondents, Trigger Wholesale Inc. ("**Trigger**") and The En Cadre Group Inc. ("**En Cadre**"). The Receiver proposes to disclose the existence of and disseminate copies of the relevant and non-privileged Documents to the parties. This Court Orders that the Receiver shall do so in accordance with the following protocol:

1. The receiver will, with the assistance and advice of its counsel, perform an electronic search for any Trigger or En Cadre - related Documents to identify potential classes of documents that are arguably privileged:
 - (a) solicitor client privilege: search terms to include elements of Brian Kelly's name, email address(es), law firm (Kelly & Co); and Paul Grespan's name, email address(es), law firm (McCarter Grespan);
 - (b) spousal privilege: e-mails between Jaimee Gdak and Mark Gdak in which they are the only parties to the e-mail.
2. The receiver will forward hard drives of the results of its searches:
 - (a) to Lerner's – the presumptively relevant, non-privileged documents, and the presumptively privileged documents;
 - (b) to Cohen Highley – the presumptively relevant, non-privileged documents, and the presumptively privileged documents; and
 - (c) to Torkin Manes – the presumptively relevant, non-privileged documents.
3. Torkin Manes shall not share the 2(c) documents with any client until the earlier of (a) 15 days after Lerner's and Cohen Highley receive the hard drives, or (b) Lerner's and Cohen Highley's written confirmation that the 2(c) documents prepared by the receiver do not appear to contain privileged communications.
4. In the event that Lerner's or Cohen Highley advise that either take the position that any document has been mis-categorized, such document shall be excised from Torkin Manes' set of 2(c) documents (and noted as such by the receiver) and not provided to any client of Torkin Manes unless ultimately agreed or adjudicated to be not privileged.
5. Any document that is agreed or adjudicated to be privileged will be returned to the relevant party or the receiver as appropriate. If a document is produced to Torkin Manes that is ultimately agreed or adjudicated to be privileged, such privilege will not be, or deemed to be, waived; such non-waiver will be retroactive and retrospective.
6. Any document over which there is any disagreement as to privilege will be the subject of a motion.

7. The implementation of, or the participation in, this protocol shall not amount to a waiver, or deemed waiver, of any privilege.



From: Jason Squire
Sent: February 05, 2021 3:05 PM
To: Jeffrey Simpson <jsimpson@torkinmanes.com>
Cc: Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)' <blay@cohenhighley.com>
Subject: RE: *EXT*-RE: documents

Well, Jeff, as sticky an issue as these matters engage, of privilege and otherwise, we have a protocol that the parties agreed to and was endorsed by Justice Koehnen. Through no fault of your client or mine, that protocol cannot be complied with as written. I am willing to entertain further practical discussions, but we have not agreed to you simply releasing documents to your client that we know contain privileged information. Please do not unilaterally do so. I suggest we arrange to speak next week on this and other matters.

I have good availability in the early part of next week. I am happy to host a conference or zoom call.

Jason Squire
 Lerner LLP
 Office (including voicemail): 416.601.2369
 Mobile (no voicemail): 416.432.7046



Lerner proudly celebrates Black History Month.

From: Jeffrey Simpson [<mailto:jsimpson@torkinmanes.com>]
Sent: February 04, 2021 11:13 AM
To: Jason Squire <jsquire@lerner.ca>
Cc: Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)' <blay@cohenhighley.com>
Subject: *EXT*-RE: documents

All: We received the email below from Mr. Squire on Friday afternoon. Clearflow is not in a position to comment on these issues except to say that under its security, Clearflow has a right to possession of the books and records of Trigger, which we have requested from the receiver. Absent the fraudulent conduct on the part of one or both of the Gdaks, Clearflow would, in the ordinary course have complete access to Trigger's books and records, including all emails contained on the company computer. It seems odd that Clearflow's access to those books and records is more restricted than it would be if the fraudulent conduct had not occurred.

In any event, we understand that the receiver made significant efforts to accommodate the request of Mark and Jaimee to exclude privileged documents from the documents to be delivered to Clearflow and that all emails exclusively between Mark and Jaimee were not included on the hard drives provided to counsel. If that process was not entirely successful, it should be a simple matter for counsel for the Gdaks to point out a few examples of same to satisfy the receiver and Clearflow that the hard drives contain privileged communications.

We propose a practical solution to this issue: I will release the hard drive to Clearflow "as is", and at the same time, the Gdaks' lawyers will identify specifically the documents contained on the hard drive in my possession that they claim are privileged, with a justification for the claim of privilege. Any truly-privileged documents would then not be producible in the litigation. Alternatively, but less preferable from our perspective as it involves additional work, delay and legal costs, we could agree that any specific emails or other documents that are truly privileged will not be released to Clearflow by our firm.

To be clear, if documents in the possession of Trigger as of the date of receivership are truly privileged, confirmed by some form of independent verification, then Clearflow has no intention of utilizing those documents improperly. That being said, Clearflow cannot accept the Gdaks "gatewaying" or parsing Trigger's books and records and making the final determination, unilaterally, of what gets released to Clearflow and what doesn't. This is not to cast aspersions at counsel; rather, it is recognition that reasonable people can disagree, and, as we all know, the determination of whether a document is privileged or not can be the source of considerable disagreement between honest and capable counsel.

Jeffrey Simpson

Tel: 416-777-5413
 Fax: 1-888-587-9143

Torkin Manes LLP

Barristers & Solicitors

This email message, and any attachments, is intended only for the named recipient(s) above and may contain content that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, please notify the sender and delete this email message. Thank you.

From: Jason Squire <jsquire@lerner.ca>
Sent: January 29, 2021 4:30 PM
To: Jeffrey Simpson <jsimpson@torkinmanes.com>

Cc: Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lernalers.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)' <blay@cohenhighley.com>

Subject: documents

This is an external email.

Jeff:

I wanted to send you a quick note before I have to shut down for the week (our office is moving and we may experience server interruptions). So apologies this is not as compendious as you may expect from us.

There have been a number of issues about the Trigger document production Ben and we have received from GT:

-GT did not separate the search into apparently non-privileged and apparently privileged silos. GT gave us copies of an "original" set of emails, and then a set that had been expurgated (the latter set is what I presume Torkin Manes received). That is, Ben and I do not have a set of "just privileged" docs, filtered out by GT.

-the searches/filtering that GT did for privilege (ie for the expurgated set) apparently was methodologically incomplete/imperfect. A cursory inspection by Ben's office and mine reveal that there appear to be a large number of emails that are on their face privileged that were not expurgated (and, therefore, you have in your possession). We don't know why this has occurred, and I don't know that we have to figure it out – I'm advised that it may be because searches/filtering were done in Outlook, rather than in a document management/litigation support environment.

-we were to get emails and accounting records according to the protocol. At first instance, GT only gave us emails (but that limitation was hard to tell because we got .pst files that had to be loaded into our system before we could observe the absence of accounting records). When we pointed out that we did not get accounting records, GT immediately arranged to get those to us – we have today apparently received them, but they are so far in Quickbooks' proprietary format, which we have yet to be able to access. We are looking for a software solution, but it may be we have to ask GT to send them again in some other format.

-as implied, we are trying to figure out solutions to the core issue of getting Ben's and our clients to be able to access each type of record, and to advise you in a timely way of privilege claims. It appears we may have to ourselves (Lernalers and Cohen Highley) to perform new filters/searches on the "original" sets of emails to remove (and index) privileged materials – unless you want the receiver to take it back and start the process over again in accordance with the protocol. We are also trying to figure out how our clients can be in a position to actually review accounting records.

-we are going to have to work out a plan for all this, including delaying or resetting when Torkin Manes can forward its document set (if at all) to your client. That set includes many privileged documents, and it is impractical for us to go through that partially expurgated set to try to figure this out.

As I say, stay tuned, we will have to attend to this again next week. Thanks for your patience.

Jason Squire

Lernalers LLP

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Lerners is Moving! Effective February 1, 2021, our new office address in Toronto is 225 King Street West, Suite 1500, M5V 3M2.

You may unsubscribe from certain types of e-mail messages sent by our firm including promotional e-mails and newsletters. To unsubscribe, forward this email message to unsubscribe@lerners.ca.

WARNING:

From time to time, our spam filters eliminate legitimate email from clients. If your email contains important instructions, please ensure that we acknowledge receipt of those instructions.

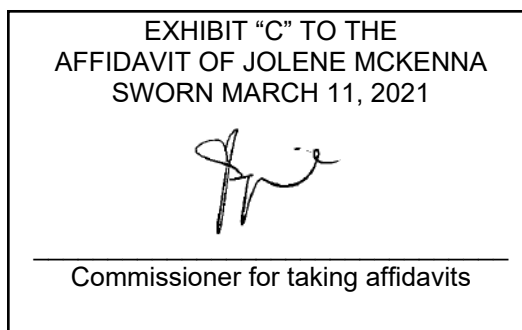
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From: Jason Squire

Sent: February 22, 2021 4:52 PM

To: Benjamin G. Blay <blay@cohenhighley.com>; 'Jeffrey Simpson' <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Jeff:

As to the Trigger "productions" and Justice Koehnen's protocol, I believe there has been a further miscommunication and/or misunderstanding. I have suggested, including during our recent conference call, that Lerner and Cohen Highley (but, practically, really Lerner) would review the "original" Trigger data set we were given by the Receiver for privilege and create a Schedule B for privileged material – and then we would send you for ClearFlow the expurgated set and the Schedule B. You advised at first that you had an objection to so proceeding, but during our conference call you told us that you would take the matter up with your client. I have been waiting to hear from you again with your instructions on the principle.

I infer from your email last night that you have those instructions. I will instruct my IT/document management people to adapt the language of the protocol to current circumstances and proceed. Roger/Jake, does the Receiver have any objection to proceeding in this manner? Are we agreed that the protocol of Justice Koehnen has been overtaken by events, and that the parties can manage the production and privilege issues without further court order?

These things, and the computer project Ben is overseeing, will of course take time; Ben is right that it has not been our intention (nor I am sure the Receiver's) that our timetable be compromised. I don't disagree another case conference could be in order; but I am also happy to discuss scheduling among counsel.

Jeff, thanks for the detailed advice on instructions on the fee assessor principles. Dom and I (with Ben's input) will turn to assembling an order, which may surface any latent issues I am sure we can work out (including, if advisable, at a case conference), but I have not so far identified any problems.

Jason Squire

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LERNE



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From: Benjamin G. Blay [<mailto:blay@cohenhighley.com>]

Sent: February 22, 2021 12:01 PM

To: 'Jeffrey Simpson' <jsimpson@torkinmanes.com>; Jason Squire <jsquire@lerners.ca>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerners.ca>

Subject: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Jeff,

I'm still giving thought to the proposal on the fee assessor. I will write to you under separate cover as that correspondence will be without prejudice.

With respect to the remaining issues identified in your e-mail, like you, I expected the forensic images would be available by now. Evidently, I underestimated how long DEI would need. I have been in contact with DEI. Steve advises that they have been processing data 24/7. Apparently, the Mac (Jaimee's) set them back a bit, but the cell phones are done and Mr. Gdak's laptop is nearly completed. As you may divine from this, I have not had any access to the forensic images yet. I expect the same is true of Jason and Dom. For better or worse, DEI indicates that it will still be a few more days to complete the processing. Given how long it has taken to process the data, and not having seen it, I can only assume that 48 hours will not be long enough to review it before producing to the Applicant. For that matter, I am not sure I understand the reason for such an abbreviated timeline when – unless I am missing something – these productions are not tied to the issues before the court on March 17th.

I will leave the issue of the Trigger e-mails to Trigger's counsel.

I don't think anyone is intent on jamming anyone else on this and I also realize that there are only so many days between today and March 17. I am open to suggestions.

Regards,

Ben Blay | Cohen Highley LLP | 519-914-0550

From: Jeffrey Simpson <jsimpson@torkinmanes.com>

Sent: Sunday, February 21, 2021 7:08 PM

To: Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Nicola Magisano (<dmagisano@lerner.ca> <dmagisano@lerner.ca>)

Subject: RE: Draft language for fee assessor order

All: I did not receive a response to my email below. We were told two weeks ago that it would be "a couple of weeks" for Clearflow to receive access to the Trigger computer hard drive as well as the personal computer hard drive, on the terms we have discussed. We understand that the Receiver has recently been provided with an invoice for the services of the litigation document expert and has indicated that payment will be made once the engagement has been completed. For unknown reasons, the work to be completed by the document expert has not been completed. This situation is unacceptable.

The Order of Justice Koehnen providing for the protocol regarding the treatment of the Trigger computers was issued on January 13, 2021, a full month ago.

As you are aware, the deadline for Clearflow's materials is Feb. 26/21, or this Friday, and it is clearly not appropriate for the Gdaks to have access to, and in Mrs. Gdak's case, to have made use of, the contents of the Trigger computers in her Affidavit, while Clearflow is prevented from having access to that same information.

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We want to make it clear that Clearflow is entirely prepared to consent to an appropriate Order regarding the payment of the Gdaks' legal fees and their living expenses and has gone so far as to circulate the language of a proposed consent order.

Jeffrey Simpson

Tel: 416-777-5413
Fax: 1-888-587-9143

Torkin Manes LLP

Barristers & Solicitors

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Sent: February 18, 2021 1:24 PM

To: Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Nicola Magisano (<dmagisano@lerner.ca> <dmagisano@lerner.ca>)

Subject: Draft language for fee assessor order

All: picking up on our discussions of a couple weeks ago, below is the language I propose for the fee assessor order, to finally wrap up the issue of CH and Lerner's legal fees and the living costs of the Gdaks. If this language, or something similar to it after your comments is the direction we are going in, we do need to arrive on maybe three names for fee assessors whom we would contact to see if they would take on the job. I invite your suggestions.

Also, can one of you let me know where we are in the process of dealing with the Trigger computers and the personal computers? I don't think we need to get into who is doing what – I had understood that we were in agreement with the procedure and Clearflow was fine with the costs as they were related to me. If that's not the case, let me know, but what I really want to know is whether you can tell me when we will get the material?

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THIS COURT FURTHER ORDERS THAT XX is hereby appointed as Fee Assessor for the purpose of reviewing the legal fees proposed to be charged, or actually charged, by the lawyers representing the Mareva Respondents during the Mareva Period in connection with the matters at issue in this proceeding. Within seven (7) days of the date of this Order, Counsel for the Mareva Respondents shall submit for approval all of their then-currently-outstanding and unpaid accounts for legal fees rendered to the Mareva Respondents in connection with the matters raised in this Application. Thereafter, counsel may submit to the Fee Assessor, from time to time, their accounts for services rendered to the Mareva Respondents in connection with the matters raised in this Application. The Fee Assessor shall review said accounts for proportionality and reasonableness in the overall context of this proceeding, and shall take into account the importance of the issues for both the Mareva Respondents and the Applicant, the specific time spent on particular tasks, whether the services indicated in the submitted accounts were rendered to the Mareva Respondents and not companies operated by them, and the experience and expertise of the lawyers involved; however the Fee Assessor shall not penalize or reduce the fees charged by counsel for Mark Gdak for the sole reason that two partners from the same law firm are working on this matter, which is recognized by the parties. The Fee Assessor shall provide his/her approval or rejection of the proposed charges of counsel for the Mareva Respondents within a 14-day period of receipt of same.

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Jeffrey Simpson

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Fax: 1-888-587-9143

jsimpson@torkinmanes.com

[VCard](#)

Torkin Manes LLP

Barristers & Solicitors

Ranked the #1 Ontario Regional Law Firm by Canadian Lawyer

151 Yonge Street, Suite 1500

Toronto ON M5C 2W7

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Coronavirus/Covid-19 Advisory (last updated 2020-11-03): Cohen Highley is committed to ensuring the health and safety of its employees, clients and community, and we are responding to the challenges that Covid-19 presents to all of us. While our offices remain fully operational, access is restricted, and you should confirm with us before attending at any office of Cohen Highley LLP. Though our offices remain open, we are asking all of our clients and trade partners to consider alternatives to physical attendance at our offices. Any person attending at a Cohen Highley office is required to complete the Office Attendance Screening questionnaire, which can be found here: <http://cohenhighley.com/covid-screening/> If you have any questions, please do not hesitate to contact our team at 519-672-9330.

Lerners is Moving! Effective February 1, 2021, our new office address in Toronto is 225 King Street West, Suite 1500, M5V 3M2.

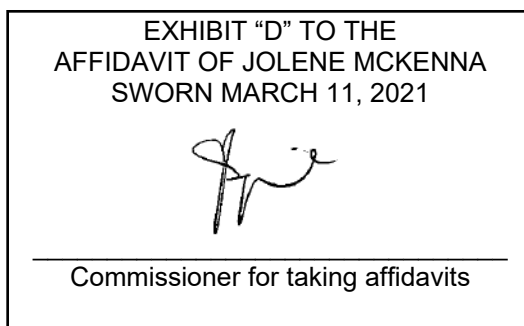
You may unsubscribe from certain types of e-mail messages sent by our firm including promotional e-mails and newsletters. To unsubscribe, forward this email message to unsubscribe@lerners.ca.

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Please consider the environment before printing this email.



From: Jeffrey Simpson [<mailto:jsimpson@torkinmanes.com>]
Sent: February 23, 2021 4:42 PM
To: Jeffrey Simpson <jsimpson@torkinmanes.com>; Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; Smith, Douglas O. <DSmith@blg.com>
Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

...and if it needs to be said, please treat this as a matter of extreme urgency. I don't want to bring this before the Judge any more than any of you want me to, but my client will run out of patience and I will receive those instructions if we can't get this done ASAP. So please....

Jeffrey Simpson
 Tel: 416-777-5413
 Fax: 1-888-587-9143

Torkin Manes LLP
 Barristers & Solicitors

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From: Jeffrey Simpson <jsimpson@torkinmanes.com>

Sent: February 23, 2021 4:34 PM

To: Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; Smith, Douglas O. <DSmith@blg.com>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Jason: just let me know how long this is going to take. Even viewing things from the most positive for your client and assuming you were waiting to hear from me, surely you must have some idea how long this process will take, at least approximately.

Jeffrey Simpson

Tel: 416-777-5413

Fax: 1-888-587-9143

Torkin Manes LLP

Barristers & Solicitors

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Sent: February 23, 2021 4:27 PM

To: Jeffrey Simpson <jsimpson@torkinmanes.com>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; Smith, Douglas O. <DSmith@blg.com>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

This is an external email.

Jeff, no-one is stalling; and I won't think through what you may be implying, or to otherwise comment on your email. Your position has been clarified, and I told you we are working on it.

Jason Squire

Lerners LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

Jason Squire | Lerners LLP | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lerner.ca | 225 King Street West, Suite 1500 - Toronto - Ontario - M5V 3M2

LERNE



Lerners proudly celebrates Black History Month.

From: Jeffrey Simpson [<mailto:jsimpson@torkinmanes.com>]

Sent: February 23, 2021 4:12 PM

To: Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; Smith,

Douglas O. <DSmith@blg.com>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Gentlemen: quit stalling. We want the Trigger computer contents, and we want them immediately. We were quite clear that we have agreed that “\Lerners and Cohen Highley (but, practically, really Lerners) would review the “original” Trigger data set we were given by the Receiver for privilege and create a Schedule B for privileged material – and then we would send you for ClearFlow the expurgated set and the Schedule B.” If there has been a misunderstanding on your part, let it end now.

Please deliver the information and the schedule B this week, early next week at the latest. Any longer and we will be convening a case conference regardless of whether the information is conveyed and when. We will specifically take the position that Mark Gdak is deliberately frustrating the right of Clearflow to Trigger books and records pursuant to the security agreement and we will ask for the court to sanction him, including an Order for costs of any case conference we are forced to bring, and the costs of having to chase down this documentation, which we have a right to. A request for a finding of contempt of court against Mark Gdak of the terms of the receivership order will not be off the table.

If I have failed to convey how seriously Clearflow takes this delay, then please let me dispel any such misapprehension at this time.

Jeffrey Simpson

Tel: 416-777-5413

Fax: 1-888-587-9143

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Barristers & Solicitors

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From: Jason Squire <jsquire@lerners.ca>

Sent: February 22, 2021 4:52 PM

To: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerners.ca>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

This is an external email.

Jeff:

As to the Trigger “productions” and Justice Koehnen’s protocol, I believe there has been a further miscommunication and/or misunderstanding. I have suggested, including during our recent conference call, that Lerners and Cohen Highley (but, practically, really Lerners) would review the “original” Trigger data set we were given by the Receiver for privilege and create a Schedule B for privileged material – and then we would send you for ClearFlow the expurgated set and the Schedule B. You advised at first that you had an objection to so proceeding, but during our conference call you told us that you would take the matter up with your client. I have been waiting to hear from you again with your instructions on the principle.

I infer from your email last night that you have those instructions. I will instruct my IT/document management people to adapt the language of the protocol to current circumstances and proceed. Roger/Jake, does the Receiver have any objection to proceeding in this manner? Are we agreed that the protocol of Justice Koehnen has been overtaken by events, and that the parties can manage the production and privilege issues without further court order?

These things, and the computer project Ben is overseeing, will of course take time; Ben is right that it has not been our intention (nor I am sure the Receiver's) that our timetable be compromised. I don't disagree another case conference could be in order; but I am also happy to discuss scheduling among counsel.

Jeff, thanks for the detailed advice on instructions on the fee assessor principles. Dom and I (with Ben's input) will turn to assembling an order, which may surface any latent issues I am sure we can work out (including, if advisable, at a case conference), but I have not so far identified any problems.

Jason Squire

Lerners LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

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LERNE



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From: Benjamin G. Blay [<mailto:blay@cohenhighley.com>]

Sent: February 22, 2021 12:01 PM

To: 'Jeffrey Simpson' <jsimpson@torkinmanes.com>; Jason Squire <jsquire@lerners.ca>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerners.ca>

Subject: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Jeff,

I'm still giving thought to the proposal on the fee assessor. I will write to you under separate cover as that correspondence will be without prejudice.

With respect to the remaining issues identified in your e-mail, like you, I expected the forensic images would be available by now. Evidently, I underestimated how long DEI would need. I have been in contact with DEI. Steve advises that they have been processing data 24/7. Apparently, the Mac (Jaimee's) set them back a bit, but the cell phones are done and Mr. Gdak's laptop is nearly completed. As you may divine from this, I have not had any access to the forensic images yet. I expect the same is true of Jason and Dom. For better or worse, DEI indicates that it will still be a few more days to complete the processing. Given how long it has taken to process the data, and not having seen it, I can only assume that 48 hours will not be long enough to review it before producing to the Applicant. For that matter, I am not sure I understand the reason for such an abbreviated timeline when – unless I am missing something – these productions are not tied to the issues before the court on March 17th.

I will leave the issue of the Trigger e-mails to Trigger's counsel.

I don't think anyone is intent on jamming anyone else on this and I also realize that there are only so many days between today and March 17. I am open to suggestions.

Regards,

Ben Blay | Cohen Highley LLP | 519-914-0550

From: Jeffrey Simpson <jsimpson@torkinmanes.com>

Sent: Sunday, February 21, 2021 7:08 PM

To: Jason Squire <jsquire@lernalers.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Nicola Magisano (<dmagisano@lernalers.ca> <dmagisano@lernalers.ca>)

Subject: RE: Draft language for fee assessor order

All: I did not receive a response to my email below. We were told two weeks ago that it would be "a couple of weeks" for Clearflow to receive access to the Trigger computer hard drive as well as the personal computer hard drive, on the terms we have discussed. We understand that the Receiver has recently been provided with an invoice for the services of the litigation document expert and has indicated that payment will be made once the engagement has been completed. For unknown reasons, the work to be completed by the document expert has not been completed. This situation is unacceptable.

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Jeffrey Simpson

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Fax: 1-888-587-9143

jsimpson@torkinmanes.com

[VCard](#)

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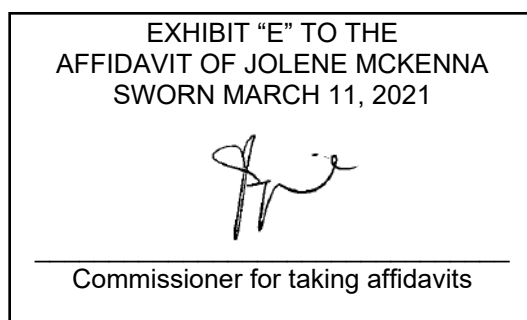
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From: Jason Squire
Sent: March 01, 2021 9:55 AM
To: Jeffrey Simpson <jsimpson@torkinmanes.com>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; Smith, Douglas O. <DSmith@blg.com>
Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

An update:

I have been through a couple of rounds with Lerner's DCT (document collections team – they are expert with data extraction, Relativity etc) to make sure the searches in the protocol have been adapted and run correctly re the Schedule B – and that a high-level, spreadsheet level review (by me) appears to make sense. That will be done today; I intend to send the draft Schedule B to Ben today and talk through the process with him, expecting to sign-off today. Then, the "original" database has to have those apparent Schedule B documents extracted – that takes meaningful "machine time". In theory it could be done late tomorrow, but more likely it will be in a form for file transfer or on a hard drive for Jeff on Wednesday.

[NB Once Ben signs off, I could send the Schedule B to Jeff (ie for what it's worth, the Schedule B doesn't have to wait for the machine time on the putatively producible database).]

To be clear, I am not reviewing the documents themselves – there is not time to do so on your request that this be urgent – the net database will have approx. 40,000 documents. So the terms of the protocol that documents later

discovered to be privileged will be later returned are meaningful. Again, hoping to minimize those related risks by making sure apparent communications involving lawyers are caught in the schedule B.

Incidentally, the way this is being done is that the schedule B is likely (a little) overinclusive. Again, I do not want to spend up-front time delving into document families that ultimately do not matter to anyone, but if Jeff sees some category of documents that he thinks couldn't be privileged, I will pull those, look at them, and expect to confirm that Jeff is right, they should be produced. I'm not doing that exercise for now, living the maxim that perfection is the enemy of the good. We are relying on our collective good faith here.

When I send materials, you will see exactly the steps that have been performed.

Jason Squire
Lerners LLP
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Mobile (no voicemail): 416.432.7046

Jason Squire | **Lerners LLP** | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lerners.ca | 225 King Street West, Suite 1500 - Toronto - Ontario - M5V 3M2



From: Jason Squire
Sent: February 25, 2021 8:42 PM
To: 'Jeffrey Simpson' <jsimpson@torkinmanes.com>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerners.ca>; Smith, Douglas O. <DSmith@blg.com>
Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Jeff – you won't hold me to it, but I expect to be ready with this myself tomorrow – Ben will have to see it, and then on to you.

Jason Squire
Lerners LLP
Office (including voicemail): 416.601.2369
Mobile (no voicemail): 416.432.7046

From: Jeffrey Simpson [<mailto:jsimpson@torkinmanes.com>]
Sent: February 23, 2021 4:42 PM
To: Jeffrey Simpson <jsimpson@torkinmanes.com>; Jason Squire <jsquire@lerners.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerners.ca>; Smith, Douglas O. <DSmith@blg.com>
Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

...and if it needs to be said, please treat this as a matter of extreme urgency. I don't want to bring this before the Judge any more than any of you want me to, but my client will run out of patience and I will receive those instructions if we can't get this done ASAP. So please....

Jeffrey Simpson

Tel: 416-777-5413
Fax: 1-888-587-9143

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From: Jeffrey Simpson <jsimpson@torkinmanes.com>

Sent: February 23, 2021 4:34 PM

To: Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; Smith, Douglas O. <DSmith@blg.com>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Jason: just let me know how long this is going to take. Even viewing things from the most positive for your client and assuming you were waiting to hear from me, surely you must have some idea how long this process will take, at least approximately.

Jeffrey Simpson

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From: Jason Squire <jsquire@lerner.ca>

Sent: February 23, 2021 4:27 PM

To: Jeffrey Simpson <jsimpson@torkinmanes.com>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; Smith, Douglas O. <DSmith@blg.com>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

This is an external email.

Jeff, no-one is stalling; and I won't think through what you may be implying, or to otherwise comment on your email. Your position has been clarified, and I told you we are working on it.

Jason Squire

Lerner LLP

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Mobile (no voicemail): 416.432.7046

Jason Squire | Lerner LLP | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lerner.ca | 225 King Street West, Suite 1500 - Toronto - Ontario - M5V 3M2



Lerners proudly celebrates Black History Month.

From: Jeffrey Simpson [<mailto:jsimpson@torkinmanes.com>]

Sent: February 23, 2021 4:12 PM

To: Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>; Smith, Douglas O. <DSmith@blg.com>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Gentlemen: quit stalling. We want the Trigger computer contents, and we want them immediately. We were quite clear that we have agreed that “\Lerners and Cohen Highley (but, practically, really Lerners) would review the “original” Trigger data set we were given by the Receiver for privilege and create a Schedule B for privileged material – and then we would send you for ClearFlow the expurgated set and the Schedule B.” If there has been a misunderstanding on your part, let it end now.

Please deliver the information and the schedule B this week, early next week at the latest. Any longer and we will be convening a case conference regardless of whether the information is conveyed and when. We will specifically take the position that Mark Gdak is deliberately frustrating the right of Clearflow to Trigger books and records pursuant to the security agreement and we will ask for the court to sanction him, including an Order for costs of any case conference we are forced to bring, and the costs of having to chase down this documentation, which we have a right to. A request for a finding of contempt of court against Mark Gdak of the terms of the receivership order will not be off the table.

If I have failed to convey how seriously Clearflow takes this delay, then please let me dispel any such misapprehension at this time.

Jeffrey Simpson

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From: Jason Squire <jsquire@lerner.ca>

Sent: February 22, 2021 4:52 PM

To: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerner.ca>

Subject: RE: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

This is an external email.

Jeff:

As to the Trigger “productions” and Justice Koehnen’s protocol, I believe there has been a further miscommunication and/or misunderstanding. I have suggested, including during our recent conference call, that Lerners and Cohen Highley (but, practically, really Lerners) would review the “original” Trigger data set we were given by the Receiver for privilege and create a Schedule B for privileged material – and then we would send you for ClearFlow the expurgated set and the Schedule B. You advised at first that you had an objection to so proceeding, but during our conference call you told us

that you would take the matter up with your client. I have been waiting to hear from you again with your instructions on the principle.

I infer from your email last night that you have those instructions. I will instruct my IT/document management people to adapt the language of the protocol to current circumstances and proceed. Roger/Jake, does the Receiver have any objection to proceeding in this manner? Are we agreed that the protocol of Justice Koehnen has been overtaken by events, and that the parties can manage the production and privilege issues without further court order?

These things, and the computer project Ben is overseeing, will of course take time; Ben is right that it has not been our intention (nor I am sure the Receiver's) that our timetable be compromised. I don't disagree another case conference could be in order; but I am also happy to discuss scheduling among counsel.

Jeff, thanks for the detailed advice on instructions on the fee assessor principles. Dom and I (with Ben's input) will turn to assembling an order, which may surface any latent issues I am sure we can work out (including, if advisable, at a case conference), but I have not so far identified any problems.

Jason Squire

Lerners LLP

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From: Benjamin G. Blay [<mailto:blay@cohenhighley.com>]

Sent: February 22, 2021 12:01 PM

To: 'Jeffrey Simpson' <simpson@torkinmanes.com>; Jason Squire <jsquire@lerners.ca>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Magisano <dmagisano@lerners.ca>

Subject: *EXT*-RE: Draft language for fee assessor order [CHLAW-DMS.FID815787]

Jeff,

I'm still giving thought to the proposal on the fee assessor. I will write to you under separate cover as that correspondence will be without prejudice.

With respect to the remaining issues identified in your e-mail, like you, I expected the forensic images would be available by now. Evidently, I underestimated how long DEI would need. I have been in contact with DEI. Steve advises that they have been processing data 24/7. Apparently, the Mac (Jaimee's) set them back a bit, but the cell phones are done and Mr. Gdak's laptop is nearly completed. As you may divine from this, I have not had any access to the forensic images yet. I expect the same is true of Jason and Dom. For better or worse, DEI indicates that it will still be a few more days to complete the processing. Given how long it has taken to process the data, and not having seen it, I can only assume that 48 hours will not be long enough to review it before producing to the Applicant. For that matter, I am not sure I understand the reason for such an abbreviated timeline when – unless I am missing something – these productions are not tied to the issues before the court on March 17th.

I will leave the issue of the Trigger e-mails to Trigger's counsel.

I don't think anyone is intent on jamming anyone else on this and I also realize that there are only so many days between today and March 17. I am open to suggestions.

Regards,

Ben Blay | Cohen Highley LLP | 519-914-0550

From: Jeffrey Simpson <jsimpson@torkinmanes.com>

Sent: Sunday, February 21, 2021 7:08 PM

To: Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Nicola Magisano (<dmagisano@lerner.ca>)

Subject: RE: Draft language for fee assessor order

All: I did not receive a response to my email below. We were told two weeks ago that it would be "a couple of weeks" for Clearflow to receive access to the Trigger computer hard drive as well as the personal computer hard drive, on the terms we have discussed. We understand that the Receiver has recently been provided with an invoice for the services of the litigation document expert and has indicated that payment will be made once the engagement has been completed. For unknown reasons, the work to be completed by the document expert has not been completed. This situation is unacceptable.

The Order of Justice Koehnen providing for the protocol regarding the treatment of the Trigger computers was issued on January 13, 2021, a full month ago.

As you are aware, the deadline for Clearflow's materials is Feb. 26/21, or this Friday, and it is clearly not appropriate for the Gdaks to have access to, and in Mrs. Gdak's case, to have made use of, the contents of the Trigger computers in her Affidavit, while Clearflow is prevented from having access to that same information.

In the circumstances, we have no choice but to advise that we will be contacting the Court Office tomorrow to arrange for an urgent case conference at the earliest possible date to request (a) a deadline of 48 hours for delivery of the access to all of the computers in question, together with the Schedule "B" indicating the documents over which privilege is claimed and the reason therefore; and (b) an appropriate extension of the Feb. 26 date for the delivery of Clearflow's materials, on the basis that we will require an appropriate amount of time to review the content of the computer hard drives in question before filing materials.

In addition, we have not received a response to our proposal regarding the Gdaks' legal fees and living expenses. For clarity, we see this issue as the Gdaks to raise and their motion to bring. Clearflow will not be moving for this relief; rather, our proposal is intended as an alternative suggestion to the framework Dom had circulated some time ago, and to provide the basis on which Clearflow is prepared to consent to such order.

We want to make it clear that Clearflow is entirely prepared to consent to an appropriate Order regarding the payment of the Gdaks' legal fees and their living expenses and has gone so far as to circulate the language of a proposed consent order.

Jeffrey Simpson

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Fax: 1-888-587-9143

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From: Jeffrey Simpson <jsimpson@torkinmanes.com>

Sent: February 18, 2021 1:24 PM

To: Jason Squire <jsquire@lerner.ca>; Benjamin G. Blay <blay@cohenhighley.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Domenico Nicola Magisano (<dmagisano@lerner.ca> <dmagisano@lerner.ca>)

Subject: Draft language for fee assessor order

All: picking up on our discussions of a couple weeks ago, below is the language I propose for the fee assessor order, to finally wrap up the issue of CH and Lerner's legal fees and the living costs of the Gdaks. If this language, or something similar to it after your comments is the direction we are going in, we do need to arrive on maybe three names for fee assessors whom we would contact to see if they would take on the job. I invite your suggestions.

Also, can one of you let me know where we are in the process of dealing with the Trigger computers and the personal computers? I don't think we need to get into who is doing what – I had understood that we were in agreement with the procedure and Clearflow was fine with the costs as they were related to me. If that's not the case, let me know, but what I really want to know is whether you can tell me when we will get the material?

ALLOWABLE LEGAL COSTS OF THE MAREVA RESPONDENTS

THIS COURT ORDERS THAT the reasonable legal fees and disbursements (the “**Allowable Legal Costs**”) incurred by the Respondents Mark Gdak and Jaimee Gdak (the “**Mareva Respondents**”) incurred during the Mareva Period (as defined below) in connection with this matter shall be paid in full by the Receiver out of realizations of the assets under its control to the lawyers representing Mark Gdak and Jaimee Gdak respectively, after review and approval of those fees and disbursements by XX (the “**Fee Assessor**”). For purposes of this Order, the “**Mareva Period**” shall be the period starting on October 13, 2020 and terminating at such date as the Mareva Injunction initially issued pursuant to the Order of this Court dated October 13, 2020 and continued pursuant to the Order of this Court dated October 22, 2020, is terminated. Without limiting the generality of the foregoing, the Allowable Legal Costs shall include the reasonable fees and disbursements incurred by the Mareva Respondents in connection with all motions to be argued in this matter on March 17, 2021,

APPOINTMENT AND DUTIES OF THE FEE ASSESSOR

THIS COURT FURTHER ORDERS THAT XX is hereby appointed as Fee Assessor for the purpose of reviewing the legal fees proposed to be charged, or actually charged, by the lawyers representing the Mareva Respondents during the Mareva Period in connection with the matters at issue in this proceeding. Within seven (7) days of the date of this Order, Counsel for the Mareva Respondents shall submit for approval all of their then-currently-outstanding and unpaid accounts for legal fees rendered to the Mareva Respondents in connection with the matters raised in this Application. Thereafter, counsel may submit to the Fee Assessor, from time to time, their accounts for services rendered to the Mareva Respondents in connection with the matters raised in this Application. The Fee Assessor shall review said accounts for proportionality and reasonableness in the overall context of this proceeding, and shall take into account the importance of the issues for both the Mareva Respondents and the Applicant, the specific time spent on particular tasks, whether the services indicated in the submitted accounts were rendered to the Mareva Respondents and not companies operated by them, and the experience and expertise of the lawyers involved; however the Fee Assessor shall not penalize or reduce the fees charged by counsel for Mark Gdak for the sole reason that two partners from the same law firm are working on this matter, which is recognized by the parties. The Fee Assessor shall provide his/her approval or rejection of the proposed charges of counsel for the Mareva Respondents within a 14-day period of receipt of same.

THIS COURT ORDERS THAT the Fee Assessor shall be at liberty to deliver, from time to time, invoices for its services rendered to the Receiver, with copies to all parties to this Application. The total fees and disbursements of the Fee Assessor shall be limited to the sum of XX. Both the Allowable Legal Costs and the reasonable fees and disbursements of the Fee Assessor shall be paid by the Receiver out of realizations of the assets under management of the Receiver, at such time as funds are available do pay same, in the sole discretion of the Receiver, and shall be secured by a charge over those assets (respectively, the “**Fee Assessor’s Charge**” and the “**Allowable Legal Costs Charge**”). The Fee Assessor’s Charge shall rank second in priority only to the Receiver’s Charge created by the Orders of this Court dated October 13, 2020 and October 22, 2020 and the Allowable Legal Costs Charge shall rank immediately after the Fee Assessor’s Charge in priority in respect of the assets under the control of the Receiver.

THIS COURT ORDERS THAT the decisions of the Fee Assessor shall be final and binding on the parties to this Application and the parties shall only have a right of appeal of decisions made by the Fee Assessor to this Court in the event that the impugned decision(s) of the Fee Assessor demonstrates is/are based on an error of law or other similar error in principle.

FEE ASSESSOR PROTECTIONS AND ALLOWABLE LEGAL COSTS CHARGE

THIS COURT ORDERS THAT the Fee Assessor shall incur no liability or obligations as a result of its appointment herein save and except for the duties imposed on it herein, and the Fee Assessor shall have the same protection afforded to a Receiver pursuant to s. 14.06 of the *Bankruptcy and Insolvency Act*. No proceedings may be commenced against the Fee Assessor in respect of any matter arising from the fulfillment of its duties hereunder without leave of the Court or the written consent of the Fee Assessor. The Fee Assessor shall have no liability whatsoever arising from the fulfillment of its duties hereunder, except to the extent that such liability arises from the gross negligence or bad faith of the Fee Assessor, or a breach of its duties hereunder.

LIVING EXPENSES OF THE MAREVA DEFENDANTS

THIS COURT ORDERS THAT the Mareva Respondents shall be entitled to payment of their reasonable living expenses (the “**Living Expenses**”) limited to the amount of \$6,000 per month for each month total (or \$3,000 per month each) that the Mareva Injunction imposed by the Court Orders of October 13, 2020 and October 22, 2020 is in effect, pro-rated for any partial month in which the Mareva Injunction may be in effect. The Receiver is hereby authorized and directed to pay the Living Expenses, less any such payments previously made, to counsel for the Mareva Respondents out of proceeds of realization of the assets under the control of the Receiver on such terms as may be agreed to between the relevant parties.

Jeffrey Simpson

Tel: 416-777-5413

Fax: 1-888-587-9143

jsimpson@torkinmanes.com

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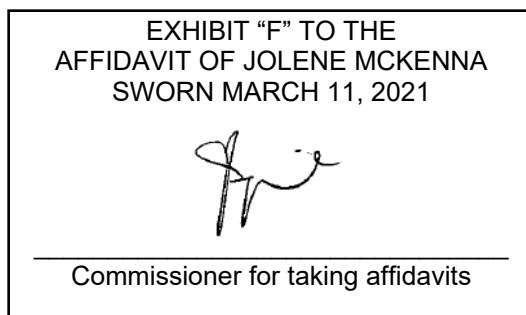
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From: Jason Squire
Sent: March 03, 2021 3:41 PM
To: Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; 'Benjamin G. Blay' <blay@cohenhighley.com>' <blay@cohenhighley.com>; 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>; Rose Plue <rplue@lernalers.ca>
Subject: FW: Gdak Revised Schedule B List

Counsel and Mr. Weibe:

Below is the step-wise description of the adaptation and implementation of Justice Koehnen's protocol, as it has been modified as Lernalers has taken over the vetting of privileged documents in the Trigger documents we were produced by the Receiver.

Also attached is the schedule B that process has generated, describing the putatively privileged documents that we have expurgated from the "original" set.

I should repeat that, in the interest of time, neither I nor Mr. Blay have reviewed the documents themselves; which is why I am sharing the process by which we have created the attached Schedule B and the document set. It may be that any party may discover a document that is privileged, but has not been caught by these searches. In that event, the provisions of the protocol deal with the identification and return of privileged materials, or determination by the court. Again, and as set out in the protocol, no party has waived privileged over anything.

The set of expurgated Trigger documents will be ready shortly, and made available by file transfer. Let me (and Rose Plue, our clerk, copied) know if you would prefer to have your set instead loaded on a usb key.

Regards,

Jason Squire

Lerners LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

Jason Squire | **Lerners LLP** | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lerners.ca | 225 King Street West, Suite 1500 - Toronto - Ontario - M5V 3M2



From: Rose Plue

Sent: March 03, 2021 3:23 PM

To: Jason Squire <jsquire@lerners.ca>

Cc: Robert X. Jasioneck <rjasioneck@lerners.ca>

Subject: Gdak Revised Schedule B List

Attached is an excel spreadsheet that sets out the Schedule B documentation in the collection of the Gdak documentation. Our Litigation Support Analyst, Robert Jasioneck with the assistance of our law clerk, Rose Plue conducted the following searches on the entire collection of over 46,800 documents:

The following searches were conducted in the From, To, CC and BCC fields:

Solicitor/Client Privilege -

1. brianrichardkelly@gmail.com
2. kellylaw.com
3. bkelly
4. Brian
5. grespan
6. McCarter
7. mgbwlaw.com
9. jsquire@lerners.ca
10. jsquire@lerner.ca (lerners without the s)
11. Lerners

12. dmagisano

Solicitor/Client - dtsearch – this is an index search which goes through the extracted text (non-metadata information):

13. kellylaw.com

14. bkelly

15. Kelly&Co

16. Brian Kelly

17. Paul Grespan

18. grespan

19. McCarter

20. mgbw.com

21. McCarter Grespan

22. Lerner

Spousal Privilege between the two parties:

23. Jaimee@triggerwholesale

24. Mark@triggerwholesale

25. jaimee.gdak@gmail.com

26. mwgdak@gmail.com

No searches were conducted for “kelly” because there were multiple entities in the data set with the last name “kelly” – for example Darren Kelly.

Jason Squire reviewed the first Schedule B index and removed the following documentation:

1. Any documentation between RLB and Trigger; and
2. Any documentation that was not solicitor/client privilege.

These documents were removed from the first Schedule B.

A second Schedule B index was prepared and was sent to Jason Squire.

Jason reviewed the second Schedule B and gave instructions to remove any documents located in the From, To, CC and BCC fields that contained clearflowfinance.com. These documents were removed from Schedule B. A third and final Schedule B was prepared and attached to this email.

Litigation Support is now in the process of preparing the load files for the non-privileged documents.

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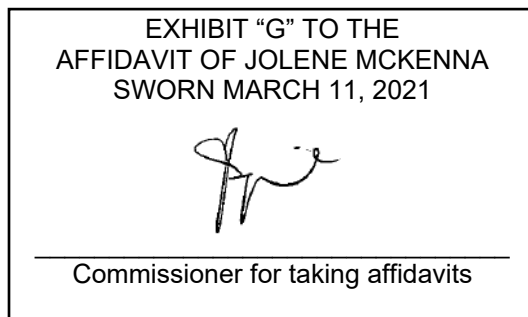
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From: Rose Plue

Sent: March 04, 2021 4:37 PM

To: 'jsimpson@torkinmanes.com' <jsimpson@torkinmanes.com>; 'blay@cohenhighley.com' <blay@cohenhighley.com>; 'RJaipargas@blg.com' <RJaipargas@blg.com>; 'Jake.Wiebe@ca.gt.com' <Jake.Wiebe@ca.gt.com>

Cc: Domenico Magisano <dmagisano@lernalers.ca>; Jason Squire <jsquire@lernalers.ca>; Robert X. JasioneK <rjasioneK@lernalers.ca>

Subject: Gdak et al ats Clearflow

Counsel and Mr. Weibe:

We have now uploaded the non-Schedule B documentation in Lernalers Workshare Connect folder. To access the documentation, please click https://lernalers.workshare.com/#folders/R9WgH3st2_JPVtzY.

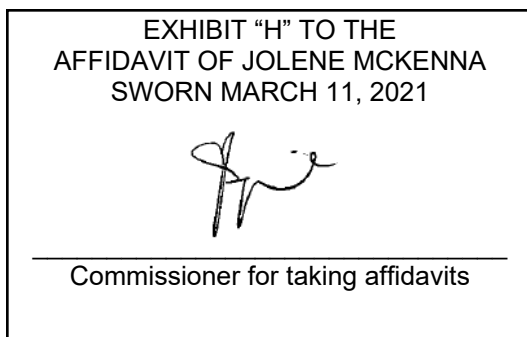
Attached is an instruction sheet setting out the procedure to download the documentation from folder.

If you encounter any difficulty, please contact our Litigation Support Analyst, Robert JasioneK who is copied on this email.

Regards,

Rose Plue

Law Clerk



From: Jason Squire
Sent: January 29, 2021 4:42 PM
To: 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Rose Plue <rplue@lernalers.ca>; Jaipargas, Roger <RJaipargas@blg.com>
Cc: Domenico Magisano <dmagisano@lernalers.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)
 <blay@cohenhighley.com>
Subject: RE: *EXT*-RE: Trigger data

Here is the advice from our document management pro, Rob Jasioneck:

I checked with accounting and we do not have QuickBooks at the firm.

The receiver will have to extract/export documents on their end from the software. We require Excel, Word or PDF documents in a zip container. There is a QuickBooks support page which may be of assistance:

<https://quickbooks.intuit.com/learn-support/>

A general search term that may be useful is "exporting data". I can also communicate with the receiver to assist if necessary.

Jake, do you want to connect someone from GT to Rose and Rob from Lerner's early next week to work through this?

Jason Squire

Lerner's LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

Jason Squire | **Lerner's LLP** | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lerner.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5



From: Jason Squire

Sent: January 29, 2021 2:44 PM

To: 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Rose Plue <rplue@lerner.ca>; Jaipargas, Roger <RJaipargas@blg.com>

Cc: Domenico Magisano <dmagisano@lerner.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)' <blay@cohenhighley.com>

Subject: RE: *EXT*-RE: Trigger data

I'm told yes and no.

The files were uploaded, but they are in Quickbooks' apparently proprietary format. Our document/IT group is checking to see if we have software to access and use the data. However, it may be that we have to ask GT to put the data into Excel or Word docs or some other format. Stay tuned.

Jason Squire

Lerner's LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

Jason Squire | **Lerner's LLP** | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lerner.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5



From: Wiebe, Jake <Jake.Wiebe@ca.gt.com>

Sent: January 29, 2021 2:22 PM

To: Rose Plue <rplue@lerner.ca>; Jason Squire <jsquire@lerner.ca>; Jaipargas, Roger <RJaipargas@blg.com>

Cc: Domenico Magisano <dmagisano@lerner.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)' <blay@cohenhighley.com>

Subject: RE: *EXT*-RE: Trigger data

Were you able to access the uploaded data?

The username is **Admin** and the pw is **Surgeon776**.

Jake Wiebe, CPA, CA, CIRP, LIT
Senior Vice President

Grant Thornton Limited

11th Floor | 200 King Street West | Box 11 | Toronto | ON | M5H 3T4

T +1 416 360 3069 | F +1 416 360 4949

E Jake.Wiebe@ca.gt.com | W www.GrantThornton.ca

From: Rose Plue <rplue@lerner.ca>

Sent: Friday, January 29, 2021 9:49 AM

To: Jason Squire <jsquire@lerner.ca>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>; Jaipargas, Roger <RJaipargas@blg.com>

Cc: Domenico Magisano <dmagisano@lerner.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)' <blay@cohenhighley.com>

Subject: RE: *EXT*-RE: Trigger data

CAUTION: EXTERNAL EMAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

Hi Jake:

I have set up a folder in Workshare Connect entitled Gdak re: Trigger Docs for you to upload your documents. Please click here to access: <https://lerner.workshare.com/#folders/CAckUalhvbSXeNf>

I have attached an instruction sheet that outlines the procedure for uploading documents into our Workshare.

Regards,

Rose Plue

Law Clerk

Rose Plue | **Lerners LLP** | Commercial Litigation Clerk | phone 416.867.3076 ext. 2309 | direct fax 416.601.4198 | rplue@lerner.ca
 | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5

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 LAWYERS



From: Jason Squire

Sent: January 29, 2021 9:29 AM

To: 'Wiebe, Jake' <Jake.Wiebe@ca.gt.com>; Jaipargas, Roger <RJaipargas@blg.com>

Cc: Domenico Magisano <dmagisano@lerner.ca>; Rose Plue <rplue@lerner.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)' <blay@cohenhighley.com>

Subject: RE: *EXT*-RE: Trigger data

Jake: Rose Plue, a clerk at Lerners, will be making arrangements to set up a Filesanywhere/Workshare link so that your team can send us the accounting materials (which may be too large for email).

Jason Squire

Lerners LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

From: Wiebe, Jake <Jake.Wiebe@ca.gt.com>
Sent: January 27, 2021 1:43 PM
To: Jason Squire <jsquire@lerner.ca>; Jaipargas, Roger <RJaipargas@blg.com>
Cc: Domenico Magisano <dmagisano@lerner.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)'
 <blay@cohenhighley.com>
Subject: *EXT*-RE: Trigger data

In outlook we ran searches for Mark Gdak, Jaimee Gdak, Brian Kelly and Paul Grespan's. Emails that were only between Mark and/or Jaimee and counsel were removed as well as emails between Mark and Jaimee. Emails which were copied to anyone else were not removed.

Sorry about accounting records. There were to have been included on the hard drives. Backups are being made now and will be emailed to each of you by tomorrow.

Jake Wiebe, CPA, CA, CIRP, LIT
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 E Jake.Wiebe@ca.gt.com | W www.GrantThornton.ca

From: Jason Squire <jsquire@lerner.ca>
Sent: Wednesday, January 27, 2021 11:18 AM
To: Jaipargas, Roger <RJaipargas@blg.com>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>
Cc: Domenico Magisano <dmagisano@lerner.ca>; 'Benjamin G. Blay' (blay@cohenhighley.com)'
 <blay@cohenhighley.com>
Subject: Trigger data

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Roger and Jake:

As you know, we received two hard drives from GT a week ago Friday. Our document management team at Lerner has loaded those files into our document system (Relativity). There appear to be two issues that I think we should discuss, and perhaps connect the people at GT with our document management team:

1. According to the protocol, GT was going to create two data sets: one with presumptively privileged material "filtered" out, which was to be produced to Jeff Simpson, and ultimately to ClearFlow (if we raise no objection); and the presumptively privileged material, so we (and Cohen Highley) could see what data was filtered out of the first set. In fact, it appears that we got one set with all the emails, and a second set with some filtering having been applied. Although the two data sets GT sent are of different sizes (as they would be), BOTH SETS CONTAIN SIGNIFICANT AMOUNTS OF PRESUMPTIVELY PRIVILEGED MATERIAL, including material that would have/should have been addressed by the searches described in the protocol. I have discussed with Ben, and he has noticed the same issue. We need to know what filtering GT applied, and why it seems that filtering did not appear to take.

2. We had been asking for Trigger emails and accounting information, and the protocol was drafted to cover each. However, it appears that the data we received from GT on the hard drives only contains emails. What about the accounting data?

Can we arrange a call to discuss? I envision potentially a further call between our respective document management professionals.

Jason Squire
 Lerner LLP
 Office (including voicemail): 416.601.2369
 Mobile (no voicemail): 416.432.7046

Jason Squire | **Lerner LLP** | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lerner.ca | 130 Adelaide Street West, Suite 2400 - Toronto - Ontario - M5H 3P5



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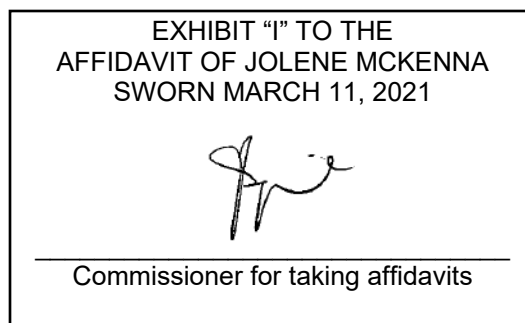
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From: Wiebe, Jake [<mailto:Jake.Wiebe@ca.gt.com>]

Sent: March 01, 2021 5:56 PM

To: Jason Squire <jsquire@lerner.ca>; Smith, Douglas O. <DSmith@blg.com>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; Domenico Magisano <dmagisano@lerner.ca>

Subject: RE: *EXT*-Trigger

We have inquired with Quickbooks. There is no way to extend a license. The Quickbooks software must be loaded on a computer and an active license is required to access the data which is stored in a cloud server. It is possible that Mark has Quickbooks on the laptop still in his possession. If so then Trigger's license is likely set up on it. Alternatively, Lerner could obtain the software with a license and we would grant access to the Trigger data. You could also provide us with a listing of reports you would like to review we can export those to excel or PDF and send them to you.

Jake Wiebe, CPA, CA, CIRP, LIT

Senior Vice President

Grant Thornton Limited

11th Floor | 200 King Street West | Box 11 | Toronto | ON | M5H 3T4

T +1 416 360 3069 | F +1 416 360 4949

E Jake.Wiebe@ca.gt.com | W www.GrantThornton.ca

From: Jason Squire <jsquire@lerner.ca>

Sent: Friday, February 26, 2021 3:33 PM

To: Smith, Douglas O. <DSmith@blg.com>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; Domenico Magisano <dmagisano@lernalers.ca>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>

Subject: RE: *EXT*-Trigger

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Doug:

Mr. Gdak and I are both available that day.

One thing we need to resolve before I expect your examination is likely to be fruitful. As you recall, the receiver has produced Trigger accounting records, but so far only in Quickbooks' proprietary format. Lernalers does not have Quickbooks, and so we and our client cannot make use of those records – though he is keen to review them for purpose of making full answer and defence and to engage properly on the receiver's intended examination.

Is there a way Trigger's (or GT's?) Quickbooks licence can be extended to Mr. Gdak and Lernalers, with whatever restrictions are appropriate?

Jason Squire

Lernalers LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

Jason Squire | **Lernalers LLP** | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lernalers.ca | 225 King Street West, Suite 1500 - Toronto - Ontario - M5V 3M2

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From: Smith, Douglas O. [<mailto:DSmith@blg.com>]

Sent: February 26, 2021 10:04 AM

To: Jason Squire <jsquire@lernalers.ca>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>

Subject: *EXT*-Trigger

Dear Jason,

The Receiver has elected to conduct an examination of Mark Gdak pursuant to paragraph 8 of the order of The Honourable Justice McEwen dated October 22, 2020 (the **"Receivership Order"**) and would like to schedule such examination for March 15, 2021. A formal Notice of Examination will follow, but would you please advise of the availability of yourself and your client to attend the examination?

My best regards,



Douglas O. Smith

Lawyer - Disputes

T 416.367.6015 | DSmith@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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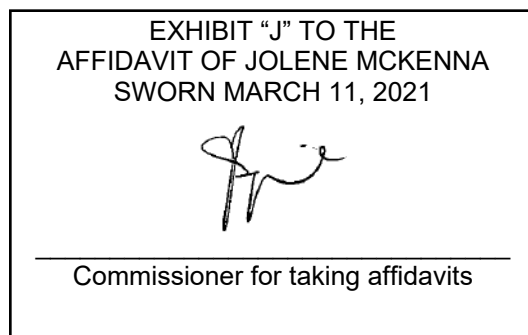
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From: Wiebe, Jake [<mailto:Jake.Wiebe@ca.gt.com>]

Sent: March 10, 2021 5:17 PM

To: Jason Squire <jsquire@lerner.ca>; 'Smith, Douglas O.' <DSmith@blg.com>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; Domenico Magisano <dmagisano@lerner.ca>

Subject: RE: *EXT*-Trigger

We have not received a response to our attached email on the Quickbooks matter.

Jake Wiebe, CPA, CA, CIRP, LIT

Senior Vice President

Grant Thornton Limited

11th Floor | 200 King Street West | Box 11 | Toronto | ON | M5H 3T4

T +1 416 360 3069 | F +1 416 360 4949

E Jake.Wiebe@ca.gt.com | W www.GrantThornton.ca

From: Jason Squire <jsquire@lerner.ca>

Sent: Wednesday, March 10, 2021 3:46 PM

To: 'Smith, Douglas O.' <DSmith@blg.com>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger

<RJaipargas@blg.com>; Domenico Magisano <dmagisano@lernalers.ca>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>

Subject: RE: *EXT*-Trigger

CAUTION: EXTERNAL EMAIL. DO NOT CLICK ON LINKS OR OPEN ATTACHMENTS YOU DO NOT TRUST

I presume you mean April 15?

I would have said no to April 6; I am ok for the 15th – I will check with MG.

Folks, we need to solve how my client and Lernalers (and I presume ClearFlow?) can be in a position to review accounting records – recall that we cannot view/use them in the format so far provided by the receiver.

Jason Squire

Lernalers LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

Jason Squire | Lernalers LLP | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lernalers.ca | 225 King Street West, Suite 1500 - Toronto - Ontario - M5V 3M2



From: Smith, Douglas O. [<mailto:DSmith@blg.com>]

Sent: March 10, 2021 3:17 PM

To: Jason Squire <jsquire@lernalers.ca>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <simpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; Domenico Magisano <dmagisano@lernalers.ca>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>

Subject: RE: *EXT*-Trigger

Sorry Jason. Me again. Not April 6 – Can you advise on your availability for the 15. Sorry for the confusion.



Douglas O. Smith

Lawyer - Disputes

T 416.367.6015 | DSmith@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Smith, Douglas O.

Sent: March-10-21 3:13 PM

To: Jason Squire <jsquire@lernalers.ca>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; Domenico Magisano <dmagisano@lernalers.ca>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>
Subject: RE: *EXT*-Trigger

Hi Jason,

With apologies to you and Mr. Gdak, I have to reschedule his examination currently set for March 15 due to a scheduling conflict. Could you please let me know if April 6 would work for the two of you?

My best regards,



Douglas O. Smith

Lawyer - Disputes

T 416.367.6015 | DSmith@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Jason Squire <jsquire@lernalers.ca>

Sent: February-26-21 3:33 PM

To: Smith, Douglas O. <DSmith@blg.com>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; Domenico Magisano <dmagisano@lernalers.ca>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>

Subject: RE: *EXT*-Trigger

[External / Externe]

Doug:

Mr. Gdak and I are both available that day.

One thing we need to resolve before I expect your examination is likely to be fruitful. As you recall, the receiver has produced Trigger accounting records, but so far only in Quickbooks' proprietary format. Lernalers does not have Quickbooks, and so we and our client cannot make use of those records – though he is keen to review them for purpose of making full answer and defence and to engage properly on the receiver's intended examination.

Is there a way Trigger's (or GT's?) Quickbooks licence can be extended to Mr. Gdak and Lernalers, with whatever restrictions are appropriate?

Jason Squire

Lernalers LLP

Office (including voicemail): 416.601.2369

Mobile (no voicemail): 416.432.7046

Jason Squire | Lerner LLP | Partner | phone 416.601.2369 | direct fax 416.867.2404 | jsquire@lerner.ca | 225 King Street West, Suite 1500 - Toronto - Ontario - M5V 3M2

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Lerners proudly celebrates Black History Month.

From: Smith, Douglas O. [<mailto:DSmith@blg.com>]

Sent: February 26, 2021 10:04 AM

To: Jason Squire <jsquire@lerner.ca>

Cc: Benjamin G. Blay <blay@cohenhighley.com>; Jeffrey Simpson <jsimpson@torkinmanes.com>; Jaipargas, Roger <RJaipargas@blg.com>; Wiebe, Jake <Jake.Wiebe@ca.gt.com>

Subject: *EXT*-Trigger

Dear Jason,

The Receiver has elected to conduct an examination of Mark Gdak pursuant to paragraph 8 of the order of The Honourable Justice McEwen dated October 22, 2020 (the “**Receivership Order**”) and would like to schedule such examination for March 15, 2021. A formal Notice of Examination will follow, but would you please advise of the availability of yourself and your client to attend the examination?

My best regards,



Douglas O. Smith

Lawyer - Disputes

T 416.367.6015 | DSmith@blg.com

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CLEARFLOW COMMERCIAL
FINANCE CORP.
Applicant

and

TRIGGER WHOLESale, INC., et al
Defendant

Court File No.: CV-20-00649154-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST**

Proceeding commenced at Toronto.

**AFFIDAVIT OF JOLENE MCKENNA
(Sworn March 11, 2021)**

LERNERS LLP

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Trigger Wholesale Inc., The En Cadre Group
Inc., Jaimak Real Properties Inc.,
and Mark Gdak

CLEARFLOW COMMERCIAL FINANCE CORP.
Applicant and

TRIGGER WHOLESale, INC., et al
Defendant

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**RESPONDING MOTION RECORD OF THE
RESPONDENTS TRIGGER WHOLESale,
INC., THE EN CADRE GROUP INC., MARK
GDAK, AND JAIMAK REAL PROPERTIES
INC.**

(Returnable March 17, 2020)

LERNERS LLP

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