

COURT FILE NUMBER: 1501-00955

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS: LUTHERAN CHURCH – CANADA, THE ALBERTA – BRITISH COLUMBIA DISTRICT, ENCHARIS COMMUNITY HOUSING AND SERVICES, ENCHARIS MANAGEMENT AND SUPPORT SERVICES, AND LUTHERAN CHURCH – CANADA, THE ALBERTA – BRITISH COLUMBIA DISTRICT INVESTMENTS LTD.

CLERK OF THE COURT  
FILED  
MAR - 1 2016  
CALGARY, ALBERTA

DOCUMENT: AFFIDAVIT

ADDRESS FOR SERVICE Sugden, McFee & Roos LLP  
AND CONTACT Barristers & Solicitors  
INFORMATION OF PARTY #700 – 375 Water Street  
FILING THIS DOCUMENT Vancouver, B.C. V6B 5C6

Attention: Errin A. Poyner

Telephone: 604-687-7700

Fax: 604-687-5596

File No. K-5820(1)

**AFFIDAVIT OF COURTNEY CLARK**

Sworn on February 26, 2016

I, COURTNEY CLARK, of Vancouver, British Columbia, SWEAR AND SAY THAT:

1. I am a legal assistant with the law firm of Sugden, McFee & Roos LLP, and solicitors for Elvira Kroeger and Randy Kellen herein, and as such have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be based on information and belief and where so stated I verily believe the same to be true.

2. Attached hereto and marked as **Exhibit "A"** to my affidavit is a true copy of a letter dated October 21, 2015 from Errin Poyner of Sugden, McFee & Roos LLP addressed to Jeffrey Oliver of Gowling LaFleur Henderson LLP.
  
3. Attached hereto and marked as **Exhibit "B"** to my affidavit is a true copy of a letter dated October 15, 2015 from Errin Poyner of Sugden, McFee & Roos LLP addressed to Chris Simard of Bennett Jones LLP and Doug Nishimura of Field LLP.

**SWORN BEFORE ME** at the )  
 City of Vancouver, in the )  
 Province of British Columbia, this )  
 26<sup>th</sup> day of February, 2016. )

  
 \_\_\_\_\_  
**COURTNEY CLARK**

\_\_\_\_\_ )  
 Errin A. Poyner )  
 A Commissioner for taking )  
 Affidavits within the Province of )  
 British Columbia. )

**ERRIN A. POYNER**  
**SUGDEN, McFEE & ROOS LLP**  
*Barristers & Solicitors*  
 700 - 375 Water Street  
 Vancouver, B.C. V6B 5C6  
 604-687-7700

**SUGDEN, McFEE & ROOS LLP**  
BARRISTERS & SOLICITORS

RICHARD R. SUGDEN, Q.C.(2009)

E. DAVID CROSSIN, Q.C.\*  
ALBERT M. ROOS, Q.C.\*  
ERRIN A. POYNER  
MICHAEL D. SHIRREFF  
EMILIE E.A. LEDUC  
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TELEPHONE 604-687-7700  
FAX 604-687-5596

File No.: K-5280(1)

Email: epoyner@smrlaw.ca

October 21, 2015

VIA EMAIL

Gowling LaFleur Henderson LLP  
1600 – 421 7<sup>th</sup> Avenue,  
Calgary, AB T2P 4K9

Attention: Jeffrey Oliver

Dear Sirs:

Re: In the Matter of a Plan of Compromise or Arrangement of Lutheran Church – Canada,  
The Alberta British Columbia District (“ABC District”), et al

This is Exhibit “ A ” referred to in the  
Affidavit of COURTNEY  
sworn before me at Vancouver  
this 26 day of February, 2016

A Commissioner for taking Affidavits  
within British Columbia

I have been retained by Mr. Randy Kellen and Ms. Elvira Kroeger to pursue recovery on behalf of individuals residing in both British Columbia and Alberta in respect of losses suffered in relation to the ABC District’s Church Extension Fund (“CEF”), and ABC District Investments Ltd (“DIL”). Both Mrs. Kroeger and Mr. Kellen are depositors in both the CEF and the DIL.

I understand that the Applicants in the above-noted CCAA proceeding will be tendering a plan(s) of arrangement on or about October 23, 2015.

My clients are concerned that certain issues identified in the First Report of the Monitor dated February 17, 2015 (the “Report”) as requiring further review have not been adequately reviewed, or alternatively have been reviewed but the Monitor’s findings have not been disclosed to the creditors, including the CEF Depositors and the DIL Depositors.

Those issues include:

- (a) the potential liability of the ABC District’s current and former officers and directors to the DIL Depositors for breach of fiduciary duty in relation to actions taken on behalf of Concentra Trust, as set out in para. 37.1 of the Report;
- (b) the potential liability of ABC District and DIL and their respective officers and directors arising out of compliance requirements of the *Loan and Trust Corporations*

*Act of Alberta and the Securities Act of Alberta*, as set out in para. 37.2 of the Report;  
and

- (c) the total amount of CEF Redemptions and DIL Redemptions which may be challenged as fraudulent preferences pursuant to s. 95 of the *Bankruptcy and Insolvency Act* as set out in para. 54 of the Report; and
- (d) Whether any persons involved in the drafting of the plan(s) of arrangement on behalf of the Applicants (or persons related to those persons) have been identified as having redeemed their own deposits to the CEF or the DIL between the issuance of the ABC District's Auditor's January 31, 2012 Audit Report containing a disclaimer of opinion as to the possible impairment of the ECHS loans receivable, to the filing date.

Further, it appears that another corporation controlled by the ABC District, Shepherd's Village Ministries Ltd., may have received substantial funds from ABC District (either directly or indirectly) which originated in the CEF and/or the DIL and which should be accounted for in these proceedings. To date, the Monitor has not disclosed this information to the creditors.

In order to make an educated decision about the forthcoming plan(s) of arrangement, the CEF Depositors and the DIL Depositors must be informed about these issues. Accordingly, would you please advise as to whether the Monitor will be disclosing additional information about the matters referred to herein to the CEF Depositors and the DIL Depositors in advance of any vote upon the forthcoming plan(s) of arrangement.

I look forward to hearing from you.

Yours truly,

**SUGDEN, McFEE & ROOS LLP**

PER:

**ERRIN A. POYNER**

EAP/cc

cc: Mr. Chris Simard  
Mr. Doug Mishimura

# SUGDEN, McFEE & ROOS LLP

BARRISTERS & SOLICITORS

RICHARD R. SUGDEN, Q.C.(2009)

E. DAVID CROSSIN, Q.C.\*  
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\*DENOTES LAW CORPORATION

This is Exhibit "B" filed to in the  
Affidavit of Courtnay Clark  
sworn before me at Vancouver  
this 26 day of February, 2016

File No.: K-5280(1)

Email: epoyner@smrlaw.ca

October 15, 2015

VIA EMAIL

Bennett Jones LLP  
4500 Bankers Hall East  
855 2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7

DIL Creditors Committee  
Field LLP  
#400 - 604 - 1<sup>st</sup> Street SW  
Calgary, AB T2P 1M7

Attention: Chris D. Simard

Attention: Doug Mishimura

A Commissioner for taking Affidavits  
with British Columbia

Dear Sirs:

**Re: Lutheran Church of Canada – Alberta and British Columbia District (the "ABC District")**

Further to my recent telephone conversation with Mr. Simard, I confirm that I have been retained by Mr. Randy Kellen and Ms. Elvira Kroeger to pursue recovery on behalf of individuals residing in both British Columbia and Alberta in respect of losses suffered in relation to the ABC District's Church Extension Fund ("CEF"), and ABC District Investments Ltd ("DIL"). Both Mrs. Kroeger and Mr. Kellen are depositors in both the CEF and the DIL.

I understand that from speaking with Ms. Sandra Jory that the Applicants in the current CCAA will be tendering a plan of arrangement on or about October 23, 2015. Any litigation commenced by my clients will be a complement to (rather than an alternative to) any recovery that the Depositors may make under an accepted plan of arrangement, or alternatively in bankruptcy proceedings.

However, in order to achieve that goal, it is imperative that any releases which may be entered into between the Applicants and the CEF and DIL Depositors in the event that a plan of arrangement is approved preserve the CEF and DIL Depositors' rights to pursue claims against persons other than the Applicants who may be jointly and severally liable for their losses along with the Applicants. As you are no doubt aware, a traditional release of the Applicants will have the effect of also releasing any tortfeasor who is jointly and severally liable to the Depositors along with the Applicants. A Covenant Not to Sue, however, will preserve the Depositors' rights to claim against those who may be jointly and severally liable along with the Applicants.

Accordingly, at the invitation of Ms. Jory, and with the greatest of respect for your role as counsel to the CEF and DIL Depositors, I have taken the liberty of drafting some suggested wording of a Covenant Not to Sue (as opposed to a Release), which you may wish to consider as a means of protecting the Depositors' rights as set out above. The Covent Not to Sue has been drafted to respect the mandatory terms of the *Companies Creditors Arrangement Act*, while ensuring that the Depositors' are preserved to the greatest extent possible.

In sending this along I recognize that you and your respective clients have most certainly already turned your minds to this issue. However, given that neither of my clients are members of either of the Depositors' Committees, and given what would appear to be a significant gap between the Applicants' assets and their debts to the Depositors, I felt it important to highlight the importance of preserving the Depositors' post-CCAA rights of recovery.

Thank you very much for the opportunity to contribute to this discussion.

Yours truly,

**SUGDEN, McFEE & ROOS LLP**

PER:

**ERRIN A. POYNER**

EAP/cc

Enclosures

cc: Ms. Sandra Jory