

ENDORSEMENT OF JUSTICE BLAIR

SEPTEMBER 14, 1998

Although s.161(1) of the OBCA contemplates that an investigation order may be sought without notice, it also says "or upon such notice as the court may require". Having regard to the fact that the statute also provides that *if* the matter is heard without notice it shall be heard in camera (s.161(5)), I should think that the court must be very well satisfied the case is an appropriate one for a "without notice" hearing before proceeding on that basis. There is a strong presumption that matters are generally to be dealt with in open court. I am not satisfied on the materials that this is proper case for an *ex parte* hearing. While there is certainly evidence upon which Mr. Millard might well be suspicious - suspicions heightened, no doubt, by the late breaking nature of the information he is receiving, and by the fact the respondents fired their last lawyer abruptly - I do not see the kind of evidence of immediate danger of dissipating and disappearing funds of the sort that would justify what is in effect a *mareva* type of order.

Accordingly, the matter is adjourned to tomorrow, September 15, 1998 at 2:30 p.m. to enable Applicant to give notice to the respondents North George Capital Management Ltd, Lionaird Capital Corp., Roderick Alton and Michael Magee and to Mr. Ferris of Miller Thompson [sic] in whose hands materials are apparently still being held. Notice to Mr. Ferris may be given by telephone and fax. Notice to the Respondents North George and Lionaird shall be given by delivering a copy of the motion materials, and of this endorsement, to their Peterborough offices as set out in the draft Order at Tab 2 hereof and leaving same with an adult person there and upon the Resp. Alton by leaving a copy of the above noted materials at his Peterborough address as per the draft order. Mr. Ferris is to be requested to attempt to notify both Mr. Alton and Mr. Magee, in spite of his advice to Mr. Millard's counsel that he is no longer retained. Notification through Mr. Ferris is the only means Mr. Millard or his counsel are aware of for contacting Mr. Magee.

Adjourned in terms of foregoing to tomorrow Sept. 15/98 at 2:30 p.m.

- R.S. Blair, J.