

Court File No. CV-22-00678808-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CANADIAN EQUIPMENT FINANCE AND LEASING INC.

Applicant

and

**THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED,
2618909 ONTARIO LIMITED, BEVERLEY ROCKLIFFE,
and CHANTAL BOCK**

Respondents

**RESPONDING APPLICATION RECORD OF THE
RESPONDENT, BEVERLY ROCKLIFFE**

June 27, 2022

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AFFIDAVIT OF CHRISTOPHER J. CLAPPERTON
(SWORN JUNE 27, 2022)

I, Christopher J. Clapperton, of the Township of Seguin, in the District of Parry Sound, in the Province of Ontario, MAKE OATH AND SAY:

1. I am long-standing legal counsel and attorney for property of the respondent, Beverly Jean Rockliffe also known as Beverlie Jean Rockliffe. I am also the court-appointed litigation guardian for Ms. Rockliffe in this proceeding. As a result of serving in these capacities, I have personal knowledge of the matters contained in this affidavit, except where such matters are stated to be based upon information and belief, and where so stated, I have identified the source of the information and believe it to be true.

2. I swear this affidavit in response to the application of Canadian Equipment Finance and Leasing Inc. (the “**Applicant**”) for, among other things, judgment against certain alleged

guarantors of the obligations of The Hypoint Company Limited (“**Hypoint**”), including Ms. Rockliffe.

3. This affidavit addresses certain matters which are subject to solicitor-client privilege, which privilege is held by Ms. Rockliffe. In swearing this affidavit, I do not waive Ms. Rockliffe’s privilege in respect of any matter, and, on the contrary, I expressly reserve Ms. Rockliffe’s right to solicitor-client privilege over all such matters.

Background

4. Ms. Rockliffe is an 80-year-old, visually impaired, mentally-incapable woman. She is single — divorced from her husband, Wayne Rockliffe, now deceased — and lives at her home in Oakville, Ontario with the assistance of private caregivers.

5. I have served as legal counsel to Ms. Rockliffe for 25 years. I have also served as one of Ms. Rockliffe’s attorneys for property. Since 2007, Ms. Rockliffe has had the same four attorneys for property, namely: me, Ms. Rockliffe’s two sons, Roman and Blayne Rockliffe, and Ms. Rockliffe’s nephew, Leonard Collins.

6. Beginning in or around April 2020, I provided legal advice and services to Ms. Rockliffe regarding certain estate planning matters. As outlined below, it was during this time that I first grew concerned about Ms. Rockliffe’s mental capacity.

7. On May 28, 2020, I met with Ms. Rockliffe at her home to review and discuss matters related to her property and financial position. In addition to me and Ms. Rockliffe, the meeting was also attended by Ms. Rockliffe’s personal assistant, Peter Gerrard, and her two sons, Roman

and Blayne Rockliffe. I recall that we specifically discussed Ms. Rockliffe's mental capacity during that meeting.

8. In early-June 2020 and again in early-July 2020, I had several phone and text conversations with Ms. Rockliffe regarding the matters discussed at the May 28 meeting. During these discussions, it became apparent to me that Ms. Rockliffe's mental capacity had deteriorated dramatically since May 2020 and was continuing to deteriorate. I had concerns as to whether Ms. Rockliffe had capacity to instruct me with respect to her personal planning, whether she had capacity to execute new planning documents, and whether, in general, she had capacity to manage her financial affairs. It was during these discussions that I recommended to Ms. Rockliffe that she submit to a capacity assessment by an expert in the field so that I might ascertain her capacity to instruct counsel, her capacity to execute new planning documents, and her general capacity to manage her financial affairs.

9. While Ms. Rockliffe did not immediately accept my recommendation, she ultimately agreed to undergo a capacity assessment in or around August 2020. The assessment did not take place until November 8, 2020 because of, among other things, several scheduling issues.

10. A well-renown geriatric psychiatrist, Dr. Richard W. Shulman, conducted the assessment. Dr. Shulman specifically evaluated, among other things, Ms. Rockliffe's capacity to instruct legal counsel and manage property. He found that she lacked the capacity to do either. Dr. Shulman's conclusions are set out in his report dated November 16, 2020, attached as **Exhibit "A"**.

11. In assessing Ms. Rockliffe's capacity to instruct legal counsel, Dr. Shulman wrote (at pages 10 and 11 of his report):

In my clinical opinion, Beverlie lacks the cognitive ability to process, retain and understand the relevant information regarding her estate planning and pending litigation. She has an impaired ability to learn, store and retrieve information. She was not able to coherently describe to me the relevant information from her meetings with her lawyers and demonstrates a lack of ability to understand legal advice in regards to estate planning and the pending litigation.¹

In my clinical opinion, Beverlie is not able to recognize that she is affected by the manifestations of a mental health condition causing cognitive and functional decline. Beverlie lacks the ability to rationally apply the relevant information to her circumstances.

In my clinical opinion, Beverlie is not able to instruct counsel regarding estate planning and pending litigation.

12. In assessing Ms. Rockliffe's capacity to manage her property, Dr. Shulman wrote (at page 14 of his report):

Beverlie is not able to recognize that she is affected by the manifestations of a mental health condition which results in impaired executive functioning and impaired working memory and new learning. Therefore, Beverlie is not able to apply the relevant-information regarding her financial affairs to her circumstances and is not able to appreciate the potential consequences of a decision regarding the management of her property.

[...]

In my clinical opinion, Beverley is incapable of managing property because she is not able to understand information that is relevant to making a decision in the management of her property, and she is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision

From a clinical point of view, my recommendation is that the attorneys for property assume management of her property.

This Application

¹ Dr. Shulman is referring to another legal proceeding. This application had not yet been commenced.

13. Based on the documents filed in this application, I understand that this application was commenced on March 23, 2022, and that Ms. Rockliffe was served with the Notice of Application at her home on or around March 29, 2022. Ms. Rockliffe did not understand that she had been sued in a legal proceeding, and took no steps to respond to the application at that time.

14. Ms. Rockliffe's personal assistant, Peter Gerrard, discovered the Notice of Application in Ms. Rockliffe's home on or around March 29, 2022 and forwarded it to me shortly thereafter. At around the same time, I spoke with Mr. Gerrard on the phone about the Notice of Application.

15. During that discussion, I learned of the Applicant's claim against Ms. Rockliffe made on the basis of an alleged guarantee. The alleged guarantee was dated June 1, 2020, just a few months before Dr. Shulman found Ms. Rockliffe incapable to manage property. During that call, Mr. Gerrard also asked Ms. Rockliffe if she remembered anything about the alleged guarantee. She told him that she knew nothing and remembered nothing about it.

16. On May 11, 2022, I met with Ms. Rockliffe, Mr. Gerrard, and the other attorneys for property at Ms. Rockliffe's home to discuss the Applicant's claim against Ms. Rockliffe. When asked about the alleged guarantee during that meeting, Ms. Rockliffe told us once again that she knew nothing and remembered nothing about it, and she indicated that she did not understand what exactly we kept asking her about.

17. Personally, I have no knowledge of the alleged guarantee or whether Ms. Rockliffe signed or agreed to it. In reviewing the materials filed in this application, it appears to me that Ms. Rockliffe did not obtain, and was not asked to obtain, a certificate of independent legal advice in respect of the alleged guarantee.

18. On June 6, 2022, I brought a motion to be appointed as litigation guardian for Ms. Rockliffe in this proceeding. On June 14, 2022, the Court appointed me as litigation guardian for Ms. Rockliffe in this proceeding. The Order of Justice Conway dated June 14, 2022 appointing me as litigation guardian is attached as **Exhibit “B”**.

19. I did not retain Fasken Martineau DuMoulin LLP as litigation agent until June 22, 2022. Up until that point, certain stakeholders were working on a potential transaction which would have seen all creditors paid out. That transaction was abandoned on June 22, 2022.

Conclusion

20. Since the meeting held on May 28, 2020, I have noticed a rapid decline in Ms. Rockliffe’s mental capacities. Since that time, an expert in geriatric psychiatry has determined that Ms. Rockliffe is incapable of instructing legal counsel and managing her property.

21. With respect to the issues raised in this application, there are serious factual and legal issues to be determined in connection with the Applicant’s claim against Ms. Rockliffe. Those include, without limitation, whether Ms. Rockliffe executed and agreed to the alleged guarantee, and, if she did, whether Ms. Rockliffe had the mental capacity to enter into an agreement in respect of property at the time the guarantee was allegedly signed. In my view, these issues engage the Court’s *parens patriae* jurisdiction to protect the interests of vulnerable persons and are almost certain to give rise to disputes regarding material facts.

22. Ms. Rockliffe denies any liability under the alleged guarantee or otherwise.

SWORN by Christopher J. Clapperton of the Township of Seguin, in the District of Parry Sound, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on June 27, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

DocuSigned by:

Mitch Stephenson

8A8E4EF09DE34D5

Commissioner for Taking Affidavits
(or as may be)

MITCH STEPHENSON

DocuSigned by:

Chris

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CHRISTOPHER J. CLAPPERTON

This is Exhibit "A" referred to in the Affidavit of Christopher J. Clapperton sworn by Christopher J. Clapperton of the Township of Seguin, in the District of Parry Sound, before me at the City of Toronto, in the Province of Ontario, on June 27, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

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Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON

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November 16, 2020

Christopher J. Clapperton
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Re: Beverlie Rockliffe - Capacity Assessment

Dear Mr. Clapperton,

Thank you for retaining my services to provide a contemporaneous assessment of Beverlie Rockliffe (“**Beverlie**”) for the purposes of having a capacity assessment performed relating to:

1. Capacity to instruct counsel regarding estate planning;
2. Capacity to manage property;
3. Testamentary Capacity;
4. Capacity relating to execution of Power of Attorney for Property;
5. Capacity relating to execution of Power of Attorney for Personal Care;
6. Capacity to manage personal care.

Materials Reviewed

1. Continuing POA for Property dated May 21, 2020;
2. POA for Personal Care dated September 6, 2007;
3. Primary Will dated May 21, 2020;
4. Secondary Will dated May 21, 2020;
5. Family tree and list of assets;
6. e mail letters of instructions dated July 28, 2020 and November 6, 2020.

Expert Qualifications

I trained in Medicine at McGill University (1989) and completed residencies in Psychiatry (1994) and Clinical Pharmacology (1996) with a simultaneous fellowship in Geriatric Psychiatry (1996) all at the University of Toronto. I am a Psychiatrist certified by the Royal College of Physicians and Surgeons of Canada (RCPSC) (1994). I also have accreditation from the RCPSC in Clinical

Pharmacology (1996). I was board certified by the American Board of Psychiatry and Neurology (1994) and with added qualifications in Geriatric Psychiatry (1995). I was in the first cohort who passed the inaugural 2013 RCPSC certification exam in Geriatric Psychiatry establishing Geriatric Psychiatry as a subspecialty in Canada. I am licensed (61184) to practice medicine in the province of Ontario.

From 1996 to 1998, I worked at the Sunnybrook Health Sciences Centre in Geriatric Psychiatry and the Psychopharmacology Research Program. I remain an Assistant Professor of the University of Toronto, Faculty of Medicine, Department of Psychiatry, in the Division of Geriatric Psychiatry. In 1998 I joined the Mississauga General Hospital which then merged with the Queensway Hospital to form the Trillium Health Centre where I was the founding and only Medical Director for Seniors Mental Health Services. In 2001, I opened the Geriatric Psychiatry Outpatient-Outreach Clinic at the Queensway site which currently follows approximately 1700 active patients and has a staff of 12 clinicians and 2 other Psychiatrists. In 2002 I opened the Seniors Mental Health Inpatient Unit (SMHU) at the Trillium Health Centre-Mississauga Site (8 beds, subsequently expanded to 11 beds). I have been the only Geriatric Psychiatrist to manage each and every admitted patient (approximately 145 annually) to the SMHU. In 2013, Trillium Health Centre merged with the Credit Valley Hospital to form the Trillium Health Partners (THP). I was the inaugural Medical Director for Seniors Mental Health Services at THP from 2013 to 2020. I remain currently active in my clinical and academic roles at THP. Additionally, I am the first and only consultant Geriatric Psychiatrist to the Special Behavioural Support Units at Sheridan Villa Long Term Care (LTC) (2010-present) and Cooksville Care Centre LTC (2019-present) for patients with advanced dementia suffering from severe behavioural and psychological symptoms of dementia.

In my academic work, in addition to teaching to medical students and residents in Geriatric Medicine and Psychiatry, I was the lead Geriatric Psychiatrist for the development of the Mental Health First Aid (MHFA) Seniors Course in conjunction with the Mental Health Commission of Canada. MHFA Seniors is an adaptation of the basic MHFA course for mental health problems and crises specifically regarding seniors to improve mental health literacy, to reduce stigma and to improve comfort in assisting a senior with a mental health problem or crisis (and their caregiver) to receive professional help. MHFA Seniors was launched in September 2017. I am the inventor of the Sour Seven Delirium Questionnaire for Caregivers, available for use freely on the Internet to assist laypersons to help detect delirium in seniors.

In addition to my clinical and academic work, I have worked as a consultant to private legal counsel as well as the Coroner's Office of Toronto, the College of Physicians and Surgeons of Ontario, and to the Canadian Medical Protective Association in matters related to standards of care in psychiatry, psychopharmacology, and geriatric psychiatry. Regarding my experience in capacity evaluation, I have worked as an expert to private legal counsel in regards to independent medical/legal assessments regarding capacity to assign power of attorney, capacity to manage property and personal care; capacity to marry, to reconcile, and to separate; capacity to provide instructions and to provide evidence. I also perform both retrospective and contemporaneous assessments of testamentary capacity and capacity to provide inter vivos gifts. I have been accredited as an expert witness in contemporaneous and retrospective assessments by the Ontario Superior Court of Justice in *John Gironda et al. v. Vito Gironda et al.*, (2013 ONSC), *Foley v McIntyre* (2014 ONSC) and *Chuvalo v. Chuvalo* (2018 ONSC).

Regarding my academic work in capacity evaluation, in 2010 I lectured to and was published by the Law Society of Upper Canada on the medical-legal approach to estate planning and decision making for older clients. In 2013 I received a Professional Development Grant from the Royal College of Physicians and Surgeons of Canada to pursue my interest in capacity evaluation. I have been an invited lecturer to the Mississauga Halton Regional Ethics program as well as to the Mississauga Hospital Department of Family Medicine on “Ethical Principles & Challenges for Capacity Evaluations in the Elderly.” In 2015, I was an invited panelist to the 18th Annual Estates and Trusts Summit and have published in *Health Law in Canada*. I am a regular guest blogger for *allaboutestates.ca*. I have been an invited discussant to the Estate Planning and Litigation Forum (2016) and to the York University Osgoode Hall Law School Continuing Professional Development Conferences on Advising the Elderly Client (2016) and Managing Consent and Capacity Issues in Wills and Estates Practice (2019).

Background

I understand from your letters of instructions Beverlie is single (divorced from her husband Wayne Rockliffe...now deceased) and lives alone in Oakville in her home on the lake. Beverlie has two adult sons, Roman and Blayne. They are both married and have minor children. Both daughters-in-law are involved in Beverlie’s business operations. You have acted for Beverlie as her lawyer for more than 20 years since 1997.

Beverlie owns her home on Front Street in Oakville; a cottage property on Lake Muskoka; and two high rise rental apartment buildings in downtown Oakville. The fair market value of Beverlie’s holdings are in the area of \$40 – \$50 million...but there are substantial mortgages registered against each of the apartment buildings, her home and her cottage.

Beverlie has largely financed her lifestyle through refinancing her two apartment buildings every four or five years. The buildings are now very heavily leveraged...she might be able to get another \$1 million or so out of them, but the bank will not advance her further funds due to the debt equity ratios that she must maintain. Given her present liquidity, she will likely run out of liquid funds in the next year or two. You have suggested for example that the cottage needs to be sold, and at least one, if not both, of the apartment buildings in order to extinguish much of Beverlie’s debt, provide her with the liquidity that she needs to fund her lifestyle, and allow her to remain in the home that she cherishes.

Beverlie will have a capital gains tax bill on death on the cottage property and the two apartment buildings, which will be in the millions of dollars. Beverlie’s estate will not have the liquidity to pay the tax liability...so, most of the estate assets will have to be sold to pay the tax liability. There will not be sufficient equity in the apartment buildings to leverage them to the extent needed to pay the resulting capital gains taxes...so the buildings will have to be sold which will impact the prior testamentary wishes.

Since the end of May 2020, you have visited Beverlie in person, and spoken to her on the phone, on a number of occasions. You have noticed a very rapid decline, particularly since mid to late summer, and even more so the past six to eight weeks, in both her physical and mental capacity/abilities.

You explained that you had a meeting at Beverlie's home at the end of May 2020, attended by you, Beverlie, Peter Gerrard (Beverlie's personal assistant), her two sons (Roman and Blayne). The purpose of the meeting was to review Beverlie's precarious and declining financial position (as her liquidity and income appeared to indicate that she would largely deplete her then cash resources by the spring or summer of 2021), consider whether her house and cottage might be sold and Beverlie move into a residence of some sort on one floor, and prepare a plan/budget to provide for Beverlie's care and comfort going forward.

Subsequently you recommended that Beverlie agree to submit to a capacity assessment by an expert in the field so that it was clear to all as to Beverlie's decision-making capacity regarding estate planning.

Over the course of this past summer, you state that you have observed Beverlie's physical and cognitive capacities markedly deteriorate. Furthermore, Beverlie has declined dealing with any of these estate planning and personal issues. Beverlie has indicated to you that she is afraid that her sons would force her to move from the home that she loves, and that she would lose control of her financial affairs.

You explained that Beverlie is involved in medical malpractice litigation in Boston (related to Beverlie's eyesight), for which the trial of the issues is to proceed in February 2021. Beverlie is convinced that her legal counsel has assured her that she will be awarded (or the matter will settle for) USD \$50 million in connection with the litigation. You wrote to me that Beverlie believes, incorrectly, that these funds are a sure thing and will resolve all of her financial problems.

You explained to me that Peter, Roman, Beverlie and you have spoken with Beverlie's counsel (Nick Cappiello) about the nature and likely outcome of the litigation. Mr. Cappiello has been clear that, at this point, Beverlie should not factor any windfall from the litigation into either her financial or estate plan. At present, at best, Mr. Cappiello has advised that Beverlie may see an award of between USD\$800k – USD \$1.5million before his contingency fees. Mr. Cappiello advises that anything more that Beverlie recovers should be seen as a windfall, but cannot be counted on. Mr. Cappiello's opinion as expressed to you, Roman and Peter for over a year has not changed...and he has put his opinion in writing to Beverlie some time ago. Peter, Beverlie and you had a conference call with Mr. Cappiello as recently as several weeks ago. Mr. Cappiello again provided the same opinion...and Beverlie simply dismissed his opinion and called him a liar.

You explained that Beverlie's son Roman is a successful entrepreneur, and Beverlie has financially backed a number of Roman's projects some of which Beverlie appears to have taken an equity interest in. You explained in order to clarify her financial interest that Beverlie had asked you to obtain from Mike Weir, an Oakville lawyer who had acted for Beverlie and Roman on various real estate and other projects, particulars of the various projects where Beverlie had a direct or indirect interest. This information has not yet been provided. Nonetheless, you explained that it is believed that Beverlie provided Roman \$2 million to invest in a marijuana related business called The Hypoint Company for which 50% of the shares issued were put in

Beverlie's name. You also explained that you believe Roman has sought further funds from Beverlie this past year to enter into a commercial/industrial cleaning business.

Beverlie's attorneys for property had been her two sons, you and her nephew, Leonard Collins, to act by majority rule, with you having to be one of the majority. Roman, without your knowledge, had a new POA for property prepared by the lawyer, Mike Weir, who has acted for Beverlie and Roman on real estate transactions, and the POA appointed Roman alone. Beverlie since revoked the POA on her own, and she recently had you prepare a new POA for property with the same named individuals as before (i.e. her children, you and her nephew).

Beverlie's two sons and a close family friend, Catherine Cieply, are named as her attorneys for personal care, to act by majority rule with Beverlie having to be one of the majority.

Beverlie has always had her sons, you and her nephew appointed as estate trustees of her estate (mirroring what she has provided for in her POA for property).

You explained that recently Beverlie indicated that she may wish to amend her Powers of Attorney documents and Wills. You also explained that in addition to the litigation in the US that Beverlie is involved in another lawsuit in Canada and for these reasons you require the assessment requested of me.

List of Assets Provided

Properties

- House 235 Front St. value about \$4M;
- Cottage 1095 Tondern Island Beaumaris (Muskoka) Value about \$3M;
- Two Watercraft – Seadoo and Tige boat Value about \$35,000;
- Rockliffe Manor 265 Reynolds St (45 unit apartment) Value about \$12M;
- Rockliffe Terrace 150 Allan St (55 Unit apartment) Value about \$18M;

Development/Investment properties

- 214 William St (Roman and Sarah and Paul Whitehead);
- 338 Robinson (Roman and Tom and Chantal Bock);
- Highpoint Company Limited (cannabis producer/distributor) (Roman and a few other investors) \$2,000,000 invested, Dividend due by December 2020.

Personal Banking at Bank of Montreal

- Chequing account for personal \$350,000;
- Savings account for personal \$1,000;
- Secondary Chequing account \$57,600;
- US dollar chequing for when in Florida \$19,000;
- RRIF retirement income fund \$100,000;
- TFSA tax free savings account \$69,500.
-

Business Chequing for each building

- Manor \$155,000
- Terrace \$89,800

Mortgages owed

- 235 Front \$775,000 Kay Family and \$1,860,000 Equitable Bank;
- 1095 Tondern Island \$2,300,000 Kay Family;
- Manor \$10,343,000 First National;
- Terrace \$12,625,000 First National.

Assessment

My contemporaneous capacity assessment of Beverlie was conducted at her home on November 8, 2020 from 9:05 AM to 10:35 AM. The assessment took place in her kitchen alone, with no other person present. We both wore face masks as a consequence of the Covid-19 pandemic. Her personal assistant Peter Gerrard was in the home, and I asked him to join the assessment with Beverlie's permission for the last 15 minutes to provide some collaborative history.

I explained to Beverlie the purpose of the assessment was at Chris Clapperton's request to assess her decision-making capacity regarding estate planning including capacity to instruct counsel, to manage property, to make a Will, to appoint powers of attorney and to manage personal care. I explained the outcome of the assessment was to provide an expert clinical opinion to her lawyer Chris Clapperton which she understood and she agreed to participate.

I commenced by asking Beverlie an open ended question enquiring about what she wanted her lawyer to do for her. Beverlie explained that she has property and jewelry and she wants to decide who it is to go to. She explained that she has a house and a Muskoka cottage property. These are to be given to her sons and additionally she owns rental apartment buildings that also are to go to her sons. In any event, she stated that she believes she has an existing Will, although later she said she is not certain, but does not wish to instruct her lawyer Chris Clapperton to make a new Will as she said her sons will inherit all of her properties. She then said that her estate is a "mess - I'll be glad not to be them, there will be a hell of a lot of fighting, and they will need Peter to sort it out." When asked to elaborate, she replied she will not discuss it. She then explained that Roman owes her money for expenditures he placed on her AMEX card and that if he did not pay it back the amount owing would have to come off of his inheritance from her estate. She stated that Roman needed to pay the outstanding amount by the end of the month or she would instruct Peter to cut him off from the AMEX.

Beverlie said Chris Clapperton has been her lawyer for 2 to 3 years. She stated that she met Chris in Palm Beach Florida then corrected herself and said that she met him Muskoka and then stated she could not remember how she met him. He then stated that she has nothing for him to do for her now.

Rather, she said she met with another lawyer named Mike Weir whom she said she handed a list of jewellery and that he will take care of who the jewellery goes to. She said Mike's assistant, Paula, has the list of jewellery and who it will be going to. She said Mike Weir has been her lawyer for years and has done work for her in real estate. She later said that her Wills are registered with Mike Weir.

Beverly stated that she is financially secure and has “zero financial stress.” She stated that her personal business assistant, Peter, manages her personal finances. She admits she cannot see sufficiently to manage her financial affairs independently. Peter explains to her what she needs to pay and she signs the cheques. Peter comes to the house approximately once a week. Peter does not provide any personal care for her.

She explained that her family is involved in managing her apartment buildings. Blayne’s wife Nicki works as her property manager and Roman’s wife Aly also manages some of her money she said.

Beverlie stated that her expenses include two cleaning ladies come to the home three times a week and a married couple who act as her driver as she is prohibited from driving because of her impaired vision. She owns two cars, a Bentley and then struggled to identify what the second type of car was and required Peter later to confirm.

Beverlie stated that she does not think she has a power of attorney for property. If she were to appoint anyone, it would likely be her daughter in law Nicki. She says that she would trust her with her money. She stated that Blayne is a high school teacher and would not know how to manage her finances. She stated that she no longer trusts Roman with her money. For example, she stated that Roman owed her \$50,000 for a property he sold and had to be reminded by Peter to pay her. She does not think that Chris Clapperton is an attorney for property. She answered that she would have to ask Peter to confirm this. She then stated that her sons do not get along and they would not be able to act together to manage her property. She would consider appointing her nephew Leonard Collins.

Beverlie explained that she is anticipating being awarded \$50 million US in a court case that is scheduled for February 2021. She sued Tufts medicine in Boston, Massachusetts for malpractice related to an error in diagnosis of giant cell arteritis that resulted in her losing vision in her left eye. She stated that she had sued for \$250 million and decided on willing to accept a \$50 settlement. She says she will not settle for less than \$50 million and states that her American lawyer says it’s a realistic outcome and that she is very confident to receive that sum although she agrees it’s not yet certain.

Beverlie described her assets as the following. Her home at 235 Front Street in Oakville is worth approximately \$5 million she says. She knows it has a mortgage but does not know the amount. She says Peter knows. She described the cottage in Muskoka being worth approximately \$4 million again think she does not know the amount of the mortgage, but that Peter knows. Regarding her apartment buildings she described the building located at 265 Reynolds Street is a 45 unit apartment worth approximately \$60 million. She agrees that there is a mortgage on the property but she does not know the amount. She says the building on 150 Allan Street has 55 units and she believes the value is approximately \$75 million. She agrees that there is a mortgage on the property but she does not know the amount. She cannot remember when she made the mortgages on these properties. Additionally she stated that she has a six-plex owned with Thomas Bock that is being sold for approximately \$1 million for which she will receive 50%. She also stated that she has a \$2 million investment in a cannabis property with Thomas Bock and maybe Roman.

Beverlie was adamant that she is under no financial stress and has no need to sell any properties and that she could buy a mortgage more if she needed to. She denies she was provided any information to liquidate any property by anybody.

Beverlie stated she does not believe she has a power of attorney for personal care. If she were to appoint one she would choose her daughter in law Nicki with her son Blayne together. She would not choose Roman and Aly. She would possibly consider her sister Joan but no friends. She then later said she would consider appointing her friend Catherine Cieply.

Beverlie says that her health is very good except for her eyesight and that she takes eye drops but does not require any oral medications. She recently has a problem with a Baker's cyst behind her knee effecting her mobility. She denies that she has any memory problems. She admits to drinking one glass of wine per night and denies any marijuana use or any other substance use. She does though agree she was prescribed CBD oil for arthritis.

At the end of the interview I asked Beverlie if her business assistant Peter could join us and she agreed. Peter explained that his role is to assist with bookkeeping to keep track of her expenses in her real estate and her personal banking. He typically comes to her home once or twice a week. He is not trained as an accountant or bookkeeper. He is a retired teacher. Beverlie hired him 14 years ago when he replied to her advertisement for a bookkeeping personal assistant. Peter says he is a limited power of attorney for banking to permit making deposits and that he can do her banking while she is out of the country. Peter confirmed that he is not involved in Beverlie's personal care. She does not receive any home care services. She does have two cleaning ladies. He confirmed that she signs the checks that he prepares for her. He confirmed that there is a dispute with the Roman owing for past expenditures on the AMEX card. He confirmed that her second car is a Range Rover. Peter agreed that Beverlie is forgetful and that memory concerns are evident and that she occasionally repeats herself and that she minimizes this believing it's secondary only to her impaired vision.

During the interview, a black cat entered the kitchen and was distracting me. Beverlie instructed me to remove the cat which required her to direct me explicitly how to direct the cat through two sets of doors to go out into the yard which took a couple of minutes. Perhaps 15 minutes later, a black cat reappeared. I asked Beverlie how the cat got back in. She had no recall whatsoever of previously instructing me to remove the cat and only after I reminded her was she able to explain to me that this was likely a second black cat.

On mental status examination, Beverlie was alert and attentive. Her affect was calm and she was cooperative for the most part. However she declined at the end of the interview to agree to a second follow-up interview. She understood all the questions posed to her. She responded to the topic of the questions asked. Thought rate appeared within normal limits but she does clearly have word finding errors at times. Her answers tend to be vague and lacking detail and clarity. Her mood did not appear overtly depressed. She subjectively denied any mental health symptoms. She did not demonstrate any signs of psychosis; no delusions or hallucinations.

Cognitive screening was done with the MoCAⁱ for which Beverlie scored 16 out of 30. She lost:

- one point on the trail making part B;
- one point on the cube copy;

- one point on the clock draw;
- three points on concentration tested by subtracting serial sevens from 100;
- one point on the word list generation;
- two points on abstraction;
- five points on delayed recall for which she recalled the words only with multiple-choice cueing and not any with category cueing.

The MoCA is a clinical tool to screen for mild cognitive impairment (MCI) and can be used to screen for dementia also. The MoCA cognitive domains assessed include visuospatial skills, executive functions, memory, attention, concentration, calculation, language, abstraction, memory, and orientation. It is a paper-and-pencil assessment requiring approximately 10 minutes to administer, and is scored out of 30 points. Beverlie scored 16/30. Typically a score below 26 is considered a positive screen for MCI. Scores of 10 to 20 could be typically seen in cases with mild to moderate dementia and scores below 10 suggest moderate to advance dementia.

I did not substitute with the blind version as Beverlie stated that she could see sufficiently the items on the test paper.

Beverlie showed errors on the trail making part B test, cube copy test, and clock draw test. The trail making B test, cube copy test and clock draw test comprise the executive function portion of the MoCA and are free of language bias. The trails making test part B is generally quite sensitive to executive functioning since the test measures attention, visual screening ability and processing speed, and is a good measure of overall cognitive functioning.ⁱⁱ

Impaired ability to complete the trails making test part B has been demonstrated to describe declining executive and mental flexibility—in the context of visual attention, scanning, and tracking demands—and has been found to correlate to diminished financial capacity performance in particular for more complex decision-making.ⁱⁱⁱ

Clock-drawing is a simple and effective test for which reviews of the research literature support its use as a reliable screening tool for cognitive dysfunction, particularly for dementia^{iv} and inability to complete the clock-drawing test has been correlated with impaired frontal lobe function.^v

Introduction to Capacity Assessments

There is no set test to determine capacity which can be applied in all situations. Capacity is task or decision specific in that a person's capacity to make a decision in one area or task is distinct and separate, and therefore cannot be extrapolated from their capacity to perform another task. There are different criteria for capacity depending on the task at hand. The legal test to determine capacity varies depending on the action to be undertaken by the person. Legal capacity is also time and situation/context specific. The relevant time period is the time at which the decision in issue is made. The ability to assess and/or determine capacity will vary both on a situational basis and on a case-by-case basis. Capacity is complex and involves an intermingling of both legal tests and medical assessments. Ultimately, capacity evaluation is an assessment of "decisional" capacity, in that it is the decision-making process that is at issue, not the actual final decision. Evaluation of capacity is more challenging in those with cognitive impairment.

Decision-making capacity is independent of diagnosis and cannot be determined by cognitive tests that do not shed light on the capacity criteria.

Capacity to Instruct Legal Counsel

Lengyel v TD Home and Auto Insurance^{vi} (paragraph 16) provides a summary of the Court's view towards evaluation of capacity to instruct counsel:

"Therefore, in reading Rule 1.03 together with sections 6 and 45 of the SDA, a party to litigation is "under disability" where they are unable to understand information that is relevant to making decisions concerning issues in the proceeding or are unable to appreciate the reasonably foreseeable consequences of making or not making decisions in the proceeding. Simply put, in order to have capacity for the purposes of litigation a person must meet both the "understand" and "appreciate" components of the test."

Additionally, in *Twain v North Bay (City)*^{vii} the Court found that the test for incapacity to instruct counsel included:

(paragraph 4): ... "whether the plaintiff is mentally incapable of appreciating his rights, the legal advice given to him by counsel and has the ability to instruct counsel in order to advance his legal entitlement, if any," and

(in paragraph 11) provides instruction for a duly qualified physician selected to assess capacity to instruct legal counsel is to assess: "whether he has a mental incapacity to understand, follow legal advice and instruct legal counsel as to the management and promotion of his legal rights in these actions."

The legal test I have applied is whether Beverlie is unable to understand information that is relevant to making decisions, or is unable to appreciate the reasonably foreseeable consequences of making or not making decisions pertaining to estate planning and the pending litigation; and whether Beverlie has a mental incapacity to understand, follow legal advice and instruct legal counsel as to the management and promotion of her legal rights.

Stated more simply, the means of determining capacity to instruct counsel can be described as requiring the following:^{viii}

1. The ability to understand what the person has asked the lawyer to do for them and why;
2. The ability to understand and process the information, advice and options the lawyer presents to them; and
3. The ability to appreciate the pros, cons and potential consequences of the various options.

In my clinical opinion, Beverlie lacks the cognitive ability to process, retain and understand the relevant information regarding her estate planning and pending litigation. She has an impaired ability to learn, store and retrieve information. She was not able to coherently describe to me the

relevant information from her meetings with her lawyers and demonstrates a lack of ability to understand legal advice in regards to estate planning and the pending litigation.

In my clinical opinion, Beverlie is not able to recognize that she is affected by the manifestations of a mental health condition causing cognitive and functional decline. Beverlie lacks the ability to rationally apply the relevant information to her circumstances.

In my clinical opinion, Beverlie is not able to instruct counsel regarding estate planning and pending litigation.

Testamentary Capacity

The determination of testamentary capacity is a highly specialized task based on a structured medical-legal, rather than clinical assessment.^{ix x xi xii} There are no validated clinical tools or rating scales to assess testamentary capacity.

The present standard for testamentary capacity is vague about the cognitive skills required. Often, the proper understanding necessary for testamentary capacity is described as one that is commensurate with the complexity of the transaction, but that is similarly ambiguous because it conveys only that the requisite knowledge varies with the situational facts.

There are no psychological tests that directly measure testamentary capacity. Brief screening instruments that are commonly utilized such as the MoCA do not alone provide sufficient information about the areas of cognitive dysfunction that may cause testamentary incapacity. A diagnosis by itself, tells the Court nothing about an individual's testamentary capacity and drawing conclusions based simply on diagnosis should be avoided when possible.^{xiii}

Testamentary capacity is proven instead through an ability to manipulate information rationally and connect beliefs and values to a testamentary disposition. Testamentary capacity is determinate upon both the ability to understand relevant facts and an appreciation of the reasonably foreseeable consequences of taking specific actions regarding the formation of a will.^{xiv}

Banks v. Goodfellow (1870)^{xv} is recognized as the leading authority on the criteria for testamentary capacity which are the following:

[a] shall understand the nature of the Act and its effects;

[b] shall understand the extent of the property of which he is disposing;

[c] shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object,

[d] that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.

Additionally, it is not sufficient simply to show that a testator had the capacity to communicate his or her testamentary wishes. Those wishes must be shown to be the product of a "sound and disposing mind" where one is one "able to comprehend, of its own initiative and volition, the essential elements of will making, property, objects, just claims to consideration, revocation of existing dispositions, and the like."^{xvi}

Shall understand the nature of the Act and its effects:

This means that the individual making a will understands that a document that directs the distribution of his or her property after death is being created. This does not mean that the testator must understand case law regarding inheritance on the same level as a lawyer, but the testator must have a general idea of what he is doing. From a clinical perspective, to understand the nature of the act of will-making and its effects merely requires to comprehend the concepts involved and have an ability to appreciate the nature of the situation and its likely consequences for the individual.^{xvii} The ability to understand the nature of the act of will-making and its effects requires semantic knowledge which refers to a portion of long-term memory that processes ideas and concepts that are not drawn from personal experience but rather are common knowledge and basic facts acquired over a lifetime such as with regards to terms such as death, property, and inheritance.^{xviii}

In my clinical opinion, although Beverlie retains the semantic knowledge to understand the nature of the act of making a Will, Beverlie has a lack of adequate understanding of the existing Wills completed earlier this year in May 2020 and is unable to understand the effects and consequences of making a new Will.

Understanding the extent of the property of which he was disposing:

To understand the extent of the property of which one is disposing requires long-term autobiographical memory related to assets. It requires the ability to know estimates of value of assets, and comprehension of the approximate overall value attached to one's estate.^{xix}

This does not imply that the testator must be able to provide a detailed accounting of each and every element of his or her property. Rather, a more or less accurate estimate of finances and property will suffice and it is perfectly appropriate for documents to be consulted or for the attorney assisting in the creation of a will to prompt the testator regarding these matters.^{xx} The requirement to know the extent of one's estate does not mean knowing its value down to the last penny.^{xxi} Furthermore, evidence is not necessarily required of a testator's actual understanding, but rather of a capacity to understand these matters. Capacity can be acquired via suitable explanation.^{xxii}

In my clinical opinion, Beverlie knows what kind of property she has but it is clear that Beverlie lacks an understanding of its approximate value. Beverlie is dependent on assistance to understand the value of her assets. However, she demonstrates a lack of ability to learn and retain the relevant information. As she is not managing her property independently, she is potentially vulnerable to acquiescing to incorrect information regarding the value of her property that she may not be able to independently verify that may influence her decision-making. Beverlie's cognitive assessments reveals impaired executive functioning in addition to impaired learning

and understanding. Impaired executive functioning results in impaired ability to appraise and evaluate information

In my clinical opinion, Beverlie lacks the ability to understand the extent of the property of which she is disposing.

Comprehending and appreciating the claims of those who might expect to benefit from the will, both those to be included and excluded.

The testator must be sufficiently clear in his understanding and memory to know the person(s) who are the natural objects of his/her Estate. The testator should be able to recall the content and direction of a prior will(s) or expressed wishes and then provide a clear, consistent rationale for any significant changes. The testator should be able to link their beliefs and values and the nature of their personal relationships to the proposed disposition. If the testator has the capacity to identify, evaluate, and discriminate between respective claims, then the end result should be a clear, consistent rationale for the distribution of assets.^{xxiii}

Testators should be able to demonstrate an awareness of the complex issues that can arise in conjunction with executing a will, including issues with respect to potential beneficiaries. They should also be able to provide reasons for the testamentary intentions demonstrated or any changes to them.^{xxiv} The testator should demonstrate an appreciation of the nature of any significant conflict and/or complexity in the context of the testator's life situation. The testator requires being capable of communicating a clear, consistent rationale for the distribution of their property, especially if there has been a significant departure from previously expressed wishes or prior wills.

In my clinical opinion, Beverlie lacks an ability to understand her previous testamentary decisions and previous financial arrangements with her sons and is therefore not able to comprehend and appreciate the claims of her sons regarding the how they might expect to benefit from her Wills, to what degree her property would be divided between them and any other potential beneficiaries.

That no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made:

Although Beverlie does not demonstrate any delusional beliefs that would impact testamentary decision-making, she does not demonstrate a sufficiently sound and disposing mind.

In my clinical opinion, Beverlie does not have testamentary capacity.

Capacity to Manage Property

Incapacity to manage property is defined in the SDA Section 6 as:

A person is incapable of managing property if the person is not able to understand information that is relevant to making a decision in the management of his or her property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

In my clinical opinion, Beverlie is not able to learn and understand new information adequately to manage the complexity of her financial affairs.

Beverlie is not able to recognize that she is affected by the manifestations of a mental health condition which results in impaired executive functioning and impaired working memory and new learning. Therefore, Beverlie is not able to apply the relevant information regarding her financial affairs to her circumstances and is not able to appreciate the potential consequences of a decision regarding the management of her property.

I note my understanding is that mental capacity exists if the person is able to carry out decisions with the help of others. The ability to act independently on decisions is not an absolute required factor to be considered in assessing capacity.^{xxv} Beverlie is being assisted by her personal assistant, Peter. However, Peter's assistance for payment of basic expenses is neither sufficient nor appropriate for the extent of estate planning which Beverlie requires. She is not able to understand and appreciate the role of her attorneys for property.

In my clinical opinion, Beverley is incapable of managing property because she is not able to understand information that is relevant to making a decision in the management of her property, and she is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

From a clinical point of view, my recommendation is that the attorneys for property assume management of her property.

1. Capacity Relating to Execution of Power Of Attorney for Property

Capacity to execute a continuing Power of Attorney for Property (CPOAP) is confirmed by the Substitute Decisions Act (SDA) in c.30, s.8 (1) if the person:

1. knows what kind of property he or she has and its approximate value;
2. is aware of obligations owed to his or her dependents;
3. knows that the attorney will be able to do on the person's behalf anything in respect of property that the person could do if capable, except make a will, subject to the conditions and restrictions set out in the power of attorney;
4. knows that the attorney must account for his or her dealings with the person's property;
5. knows that he or she may, if capable, revoke the continuing power of attorney;
6. appreciates that unless the attorney manages the property prudently its value may decline;
7. appreciates the possibility that the attorney could misuse the authority given to him or her.

In my clinical opinion:

1. Beverlie demonstrated that she lacks a sufficient knowledge of what kind of property/assets she has and its approximate value.
2. Beverlie is aware that she has no dependents but says that she provides financial assistance to her two sons.
3. Beverlie does not know that the attorney will be able to do on her behalf anything in respect of property that she could do if capable, except make a will, subject to the conditions and restrictions set out in the CPOAP.
4. Beverlie does not know that the attorney must account for his or her dealings with her property.
5. Beverlie does not know that she may, if capable, revoke the continuing CPOAP.
6. Beverlie is not able to appreciate that unless the attorney manages the property prudently its value may decline.
7. Beverlie is not able to appreciate that the attorney could misuse the authority given to him or her.

In my clinical opinion, Beverlie is not capable to revoke and execute a CPOAP.

2. Capacity Relating to Execution of Power Of Attorney for Personal Care,

The SDA (47 (1)) establishes the basic criteria for determination of capacity to give POA for Personal Care if the person:

- a) *has the ability to understand whether the proposed attorney has a genuine concern for the person's welfare; and*
- b) *appreciates that the person may need to have the proposed attorney make decisions for the person.*

Beverlie lacks an understanding of her current power of attorney for personal care. Although she believes her family and friend Catherine have a genuine concern for her welfare, she is not able to consistently report in the interview who she would consider as potential attorneys for personal care. She also showed a lack of appreciation that she may need to have the proposed attorney make decisions on her behalf.

In my clinical opinion, Beverlie is not capable to revoke and execute a power of attorney for personal care.

Capacity to Make Personal Care Decisions

Capacity to manage personal care is defined in the SDA Section 45 in six domains: health care, nutrition, shelter, clothing, hygiene and safety. Incapacity *for* personal care is defined as:

A person is incapable of personal care if the person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonable foreseeable consequences of a decision or lack of decision.

In my clinical opinion, Beverlie is not able to recognize that she is affected by the manifestations of a mental health condition which results in impaired executive functioning and impaired working memory and new learning. Therefore, Beverlie is not able to apply the relevant information regarding her health care to her circumstances. Therefore, Beverlie lacks the ability to adequately understand information that is relevant to making decisions concerning her healthcare; and he is not able to appreciate the reasonable foreseeable consequences of a decision or lack of decision.

In my clinical opinion, Beverlie is able to understand information that is relevant to making a decision concerning her nutrition and is able to appreciate the reasonable foreseeable consequences of a decision or lack of decision for her own nutrition.

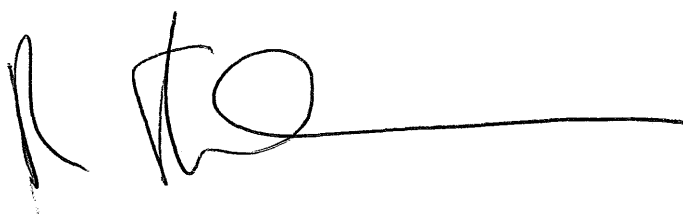
In my clinical opinion, Beverlie lacks the ability to recognize her limitations to manage property and personal care. Therefore, Beverlie lacks the ability to understand information that is relevant to making a decision concerning her shelter. Beverlie is not able to appreciate the reasonable foreseeable consequences of a decision or lack of decision regarding her shelter.

In my clinical opinion, Beverlie is able to understand information that is relevant to making a decision concerning her clothing and is able to appreciate the reasonable foreseeable consequences of a decision or lack of decision for her own clothing.

In my clinical opinion, Beverlie is able to understand information that is relevant to making a decision concerning her hygiene and is able to appreciate the reasonable foreseeable consequences of a decision or lack of decision for her own hygiene.

In my clinical opinion, Beverlie is able to understand information that is relevant to making a decision concerning her safety, and is able to appreciate the reasonable foreseeable consequences of a decision or lack of decision for her safety.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Shulman', followed by a long horizontal line extending to the right.

Richard Shulman, MDCM, FRCPC, Geriatric Psychiatry

References

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^{xxiv} Kelly Purser *Assessing Testamentary Capacity In The 21st Century: Is Banks V Goodfellow Still Relevant?* *UNSW Law Journal* Volume 38(3) 2015 854-879.

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This is Exhibit “B” referred to in the Affidavit of Christopher J. Clapperton sworn by Christopher J. Clapperton of the Township of Seguin, in the District of Parry Sound, before me at the City of Toronto, in the Province of Ontario, on June 27, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

DocuSigned by:

Mitch Stephenson

8A6E4EF09DF34D5...

Commissioner for Taking Affidavits (or as may be)

MITCH STEPHENSON

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE
 MADAME JUSTICE B. CONWAY

) TUESDAY, JUNE 14, 2022
)

BETWEEN:

CANADIAN EQUIPMENT FINANCE AND LEASING INC.

Applicant

-and-

THE HYPOINT COMPANY LIMITED, 2618905 ONTARIO LIMITED,
 2618909 ONTARIO LIMITED, BEVERLEY ROCKLIFFE
 and CHANTAL BOCK

Respondents

ORDER

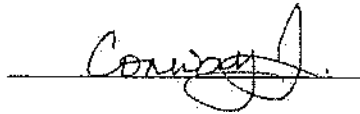
THIS MOTION, made by Christopher J. Clapperton (“Christopher”), in his capacity as attorney for property under a Continuing Power of Attorney for Property granted by Beverly Jean Rockliffe (also known as Beverlie Jean Rockliffe) (“Beverly”) on May 12, 2020, seeking the appointment of Christopher as litigation guardian for Beverly, was heard this day via videoconference.

ON READING the Moving Party’s Motion Record, on hearing submissions from counsel for Christopher, on being advised of the consent of Roman Rockliffe, Blayne Rockliffe and Leonard Donald Collins to Christopher being appointed as litigation guardian for Beverly, and on being advised that all parties to the within proceeding have been properly served as appears from the Affidavit of Service of Andrew Munro, filed,

1. THIS COURT ORDERS that Christopher shall be appointed litigation guardian for Beverly in the within proceeding bearing court file no.: CV-22 – 00678808-00CL;

-2-

2. AND THIS COURT ORDERS THAT the compensation for the litigation guardian in the fee schedule set out in Christopher's affidavit, filed on this motion, is approved and that the compensation of the litigation guardian shall be paid out of Beverly's assets;
3. AND THIS COURT ORDERS THAT the compensation for the litigation guardian's legal counsel Andrew C. Munro contained in his fee schedule set out in Christopher's affidavit, filed on this motion, is approved, and that the compensation of the litigation guardian's legal counsel on this motion, and the within Application, shall be paid out of Beverly's assets on a full indemnity basis;
4. AND THIS COURT ORDERS THAT if Christopher is ordered to pay costs in his capacity as litigation guardian, those costs so ordered shall be paid out of Beverly's assets;
5. AND THIS COURT ORDERS THAT any solicitor /client privilege and confidentiality be waived as between Christopher as litigation guardian and Beverly over any and all legal files and records in relation to the litigation that the litigation guardian is appointed for;
6. AND THIS COURT ORDERS THAT the costs of this motion are reserved to the Judge hearing the return of this Application.

A handwritten signature, likely "Christopher", is written over a horizontal line.

Canadian Equipment Finance and Leasing Inc. and

Beverly Rockliffe et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

ORDER

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Lawyer for C.J. Clapperton

CANADIAN EQUIPMENT FINANCE AND LEASING INC.
Applicant

-and-

THE HYPOINT COMPANY LIMITED et al.
Respondents

Court File No. CV-22-00678808-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF CHRISTOPHER J. CLAPPERTON
(SWORN JUNE 27, 2022)**

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CANADIAN EQUIPMENT FINANCE AND LEASING INC.
Applicant

-and-

THE HYPOINT COMPANY LIMITED et al.

Respondents

Court File No. CV-22-00678808-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**PROCEEDING COMMENCED AT
TORONTO**

**RESPONDING APPLICATION RECORD OF THE
RESPONDENT, BEVERLY ROCKLIFFE**

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