

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

B E T W E E N :

IN THE MATTER OF THE *INSURANCE COMPANIES ACT*, R.S.C. 1991 c. 47, AS
AMENDED, AND *THE MUTUAL PROPERTY AND CASUALTY INSURANCE
COMPANY WITH NON-MUTUAL POLICYHOLDERS CONVERSION REGULATIONS*,
SOR/2015-168

AND IN THE MATTER OF A PLAN CONVERSION OF
ECONOMICAL MUTUAL INSURANCE COMPANY

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Counsel Applicant

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TABLE OF CONTENTS

	PAGE
PART I— OVERVIEW.....	1
PART II— RELEVANT BACKGROUND	2
PART III— ISSUES	2
PART IV— ARGUMENT.....	3
PART V— ORDER REQUESTED.....	5
SCHEDULE “A” LIST OF AUTHORITIES	7
SCHEDULE “B” RELEVANT STATUTES	8

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Counsel Applicant

**FACTUM OF THE APPLICANT,
MCCARTHY TÉTRAULT LLP**

PART I—OVERVIEW

1. It would be in the best interests of the eligible mutual policyholders of Economical Mutual Insurance Company to appoint McCarthy Tétrault LLP as their counsel. Of the counsel applicants applying to represent the eligible mutual policyholders, McCarthy Tétrault has the most experience with demutualization transactions, having acted on three such transactions. Should it be appointed counsel, McCarthy Tétrault would provide the eligible mutual policyholders with the benefit of experienced counsel across numerous practice areas, which only a full service firm can provide.
2. McCarthy Tétrault will assist the eligible mutual policyholders with negotiating a fair and efficient agreement that ensures the demutualization process will reach completion, which is in the interests of all parties.

PART II—RELEVANT BACKGROUND

3. The Affidavit of Garth Girvan sworn August 9, 2016 provides a concise summary of the relevant facts on this motion. The key points are as follows:

- (a) McCarthy Tétrault LLP (“**McCarthy Tétrault**”) has acted as lead counsel for three insurance companies in their demutualization transactions;¹
- (b) McCarthy Tétrault has acted for six of the top eight insurance companies, ranked by total assets, and each of the top six Schedule I banks in Canada in a wide range of transactional and advocacy matters;²
- (c) McCarthy Tétrault has acted on significant corporate restructuring transactions for clients in a wide range of industries;³ and
- (d) The proposed team of five lawyers, including partners in the Business Group, Financial Services Group, and Litigation Group, reflects this breadth and depth of experience.⁴

PART III—ISSUES

4. There is one issue on this motion:

- (a) Should McCarthy Tétrault be appointed as counsel to the eligible mutual policyholders of Economical? The answer is *yes*.

¹ Affidavit of Garth M. Girvan sworn August 9, 2016 at para. 3 (“Girvan Affidavit”), Motion Record of the Applicant, McCarthy Tétrault LLP (“McCarthy MR”), Tab 2.

² Girvan Affidavit at para. 4, McCarthy MR, Tab 2.

³ Girvan Affidavit at para. 7, McCarthy MR, Tab 2.

⁴ Girvan Affidavit at para. 8, McCarthy MR, Tab 2.

PART IV—ARGUMENT

5. The Conversion Regulations govern Economical’s demutualization process. The Conversion Regulations outline the process for demutualization, including the selection of counsel⁵ and the negotiations between Economical, eligible mutual policyholders, and eligible non-mutual policyholders.⁶ Counsel for both groups of policyholders must meet the following criteria:

- (a) They must not have any interest in conflict with the class of policyholders they seek to represent, and must not be an officer, employee, or related party of the converting company;⁷ and
- (b) They must be able to fairly and adequately represent the interests of the class of policyholders in question.⁸

A. McCarthy Tétrault Has No Interest in Conflict with the Eligible Mutual Policyholders

6. As stated in the Affidavit of Garth Girvan, there is no conflict of interest between McCarthy Tétrault and the eligible mutual policyholders it seeks to represent.⁹ Section 8(2) of the *Conversion Regulations* is satisfied.

B. McCarthy Tétrault Will Fairly and Adequately Represent the Interests of the Eligible Mutual Policyholders

7. McCarthy Tétrault possesses extensive experience with demutualization transactions and the insurance/financial services sector more broadly that will enable it to provide effective

⁵ *Mutual Property and Casualty Insurance Company with Non-mutual Policyholders Conversion Regulations*, SOR/2015-168 (the “Conversion Regulations”), s. 8(1).

⁶ Conversion Regulations, s. 12(1).

⁷ Conversion Regulations, s. 8(2).

⁸ Conversion Regulations, s. 8(6).

⁹ Girvan Affidavit at para. 10, McCarthy MR, Tab 2.

counsel to the eligible mutual policyholders and ensure a fair, efficient demutualization process for all parties. McCarthy Tétrault acted as lead counsel for the insurance company in three of the first demutualization transactions in Canada: those of Clarica Life Insurance Company, Canada Life Assurance Company, and Industrial-Alliance Life Insurance Company.¹⁰ These demutualization transactions involved similar negotiations to those contemplated under the Conversion Regulations, even though demutualization was not governed by the Conversion Regulations at the time. McCarthy Tétrault successfully navigated these complex negotiations, resulting in regulatory approval for each demutualization.

8. These demutualization transactions occurred prior to the implementation of the *Conversion Regulations*; however, the current regulatory regime does not in any way decrease the relevance of McCarthy Tétrault's experience. The nature of the negotiations involved, including the need to ensure the interests of each policyholder group are fairly represented, has not changed over time. Similarly, although McCarthy Tétrault has acted for the insurance company and not a group of policyholders in past transactions, its understanding of and experience with the demutualization process generally will enable it to fairly and adequately represent the eligible mutual policyholders as required by the *Conversion Regulations*.

9. McCarthy Tétrault is the only legal counsel applying to represent the eligible mutual policyholders with experience in demutualization transactions. While Thornton Grout Finnigan LLP, the other counsel applicant for the eligible mutual policyholders, has experience with commercial negotiations in the context of reorganization and restructuring

¹⁰ Girvan Affidavit at para. 3, McCarthy MR, Tab 2.

proceedings,¹¹ demutualization is a distinct type of corporate transaction. Appointing McCarthy Tétrault as counsel to the eligible mutual policyholders will ensure those policyholders gain the benefit of counsel who have engaged in high-stakes negotiations in the reorganization and restructuring context *as well as* the demutualization context.

10. McCarthy Tétrault is a full service firm, making it well-equipped to assist with any aspect of demutualization. The eligible mutual policyholders will benefit from McCarthy Tétrault's experience not only with demutualization transactions, but also with providing advice to six of the top eight insurance companies in Canada on financial law, corporate law, securities law, and regulatory approvals and compliance.¹² McCarthy Tétrault also regularly acts for insurance companies and other financial institutions in mediation, arbitration, litigation, and major restructurings.¹³ Should any questions related to these areas arise during the demutualization process, the eligible mutual policyholders will benefit from having counsel with extensive experience upon which to draw.

11. No eligible mutual policyholders have objected to McCarthy Tétrault acting as their counsel.

PART V—ORDER REQUESTED

12. McCarthy Tétrault LLP respectfully requests an Order appointing it as counsel to the eligible mutual policyholders.

¹¹ Affidavit of Robert I. Thornton sworn August 11, 2016 at paras. 15-16, Motion Record of the Applicant Thornton Grout Finnigan LLP, Tab 2.

¹² Girvan Affidavit at para. 4, McCarthy MR, Tab 2.

¹³ Girvan Affidavit at para. 4, McCarthy MR, Tab 2.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of September, 2016.



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SCHEDULE "A"
LIST OF AUTHORITIES

Nil.

**SCHEDULE “B”
RELEVANT STATUTES**

***Mutual Property and Casualty Insurance Company with Non-mutual Policyholders
Conversion Regulations, SOR/2015-168***

8 (2) Counsel must not have any interest that is in conflict with that of the class of policyholders they seek to represent and must not be an officer, employee or related party of the converting company.

8 (6) The court must appoint counsel for each of the two classes of policyholders and must notify the converting company of its decision following a hearing at which the court assesses the ability of each applicant to fairly and adequately represent the interests of the class of policyholders in question, including by taking into account their experience in financial law, corporate law, securities law or mediation and arbitration and by having regard to any objections filed under subsection (5).

12 (1) The policyholder committees, with the assistance of the counsel appointed by the court, must enter into negotiations to establish the method of allocating the value of the converting company and to determine whether any benefits will be provided to any persons or classes of persons—other than eligible policyholders—as a result of the conversion.

McCarthy Tétrault LLP
Counsel Applicant

Court File No. CV-16-11425-00CL

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Proceeding commenced at Toronto

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