



1HXWUDO &LWDWLRQ 1XPEHU > @ (:+& &RPP

&DVH 1R &/

.1 7+(+,*+ &2857 2) -867,&
%86,1(66 \$1' 3523(57< &28576 2) (1*/\$1' \$1' :\$/(6
48((1 6 %(1&+ ',9,6,21
&200(5&,\$/ &2857

5R\DO &RXUWV RI -X
5ROOV %XLOGLQJ)HWWHU /DQH

'DWH 1RYHPEHU

%HIRUH

05 -867,&(\$1'5(: %\$. (5

%HWZHHQ

7+((&8 *5283 3/& _____ \$SSOLFDQW
DQG
+6%& %\$1. 3/& 5HVSRRQGHQWV
+6%& 35,9\$7(%\$1. 8. /,0,7('
+6%& %\$1. 86\$ 1 \$

5LFKDUG /LVVDFN 4& DQG WULXFRWODVXU /LWIRJWKRQ //3
\$SSOLFDQW
6RQLD 7RODQH\ 4& DQG WULXFRWODVXU WWOHE 6WHHQ
//3 IRU5WKRQGHQWV

+HDULQJ GDWH 1RYHPEHU

\$SSURYHG -XGJPHQW

, GLUHFV WVDW SXUVXDQW WR &35 3' \$ SDUD QR RIIL
-XGJPHQW DQG WVDW FRSLHV RI WKLW YHUVLRQ DV KDC

05 -867,&(\$1'5(: %\$. (5

0U -XVWLFH \$QGUHZ %DNHU

,QWURGXFWLRQ

7KLV MXGJPHQW FRQFHUQV GRFXPHQWV WKH μ'LVF
UHVSRQGHQW +6%& FRPSDQLHV WR WKH DSSOLFDQW
XQGHU &35 SXUVXDQW WR DQ RUGHU GDWHG 'H
DV KH ZDV WKHQ VLWWLQJ DV D MXGJH RI WKLV
3RSSOHZHOO - DQG &RFNHULOO - GDWHG)HEUXDU\
7KH GLVFORVXUH ZDV RUGHUHG IRU WKH UHDVRQV V
:DNVPDQ 4& RQ 1RYHPEHU > @ (:+& &RPF

7KH 'LVFORVHG 'RFXPHQWV LQ (&81V KDQGV DUH VXE
WKDW WKH\ *and for the purpose of the proceedings in which [they were]
disclosed'* &35 6LQFH WKLV ZDV SUH DFWLRQ GLV
SUHVHQW SXUSRVHV DUH SURFHHGLQJV WR EH FRPPH
WKH UHVSRQGHQW FRPSDQLHV \$V , GHVFULEH EHOR
FROODWHUDO XVHV RI WKH 'LVFORVHG 'RFXPHQWV L
SURFHHGLQJV

\$W WKH VWDUW RI WKH KHDULQJ , GLUHFHWG XQGHU
UHIHUHQFH WR WKH 'LVFORVHG 'RFXPHQWV KDV QHFH
SHUPLVVLRQ DSSOLFDWLRQ WKH SURKLELWLRQ RQ W
QRWZLWKVWDQGLQJ &35 D , DOVR PDGH FOHD
WKH SURFHGXUH WKDW LI LW ZHUH QHFHVVDU\ WR
'RFXPHQWV LQ RUGHU WR DUJXH WKH SHUPLVVLRQ DS
SDUW RI WKH DUJXPHQW VR DV WR SURWHFW WKH FR

7KH SHUPLVVLRQ DSSOLFDWLRQ ZDV PDGH E\ \$SSOLF
(&8 VRXJKW XQGHU &35 E

L SURVSHFWLYH SHUPLVVLRQ WR XVH WKH 'LVFORV

D EULQJLQJ SURFHHGLQJV LQ WKLV FRXUW DJD
ZDV QRW RQH RI WKH UHVSRQGHQWV WR W
GLVFORVXUH

E REWDLQLQJ OHJDO DGYLFH IURP OHJDO SURIH
H[SHUWV LQ WKH 86 DQG

F SUHSDULQJ DQG EULQJLQJ OHJDO SURFHHGLQ
WKH WKLV UHVSRQGHQW *and any other party
against whom it may be appropriate to bring a claim'*
DQ 86\$

LL UHWURVSHFWLYH SHUPLVVLRQ IRU WKH SULRU XV

D LQ FHUWDLQ FRPPXQLFDWLRQV ZLWK 8. DQG 8

E LQ FHUWDLQ FRPPXQLFDWLRQV ZLWK 86 DWWF

F E\ SURYLGLQJ D FRS\ RI WKH IRXUWK ZLW
\$OH[RSRXORV RI 6LJQDWXUH /LWLJDWLRQ

VROLFLWRUV WFR Wdek M R ZHOLVWV FULSWI
IRFXVLQJ RQ WKH); PDUNHWV RQ ODUFK

7KDW IRXUWK VWDWHPHQW μ\$OH[RSRXORV ↑ GDWH
DSSOLFDWLRQ DOVR GDWHG ODUFK IRU D IXUWKHU
WKDW ZDV GLVSRVHG RI E\ WKH FRQVHQW RUGHU RI
RI VRPH RI WKH FRQVHQWV RI VRPH RI WKH 'LVFORVH
VD\ VKRXOG EH GUDZQ IURP WKHP 3URYLGLQJ D FRS\
SHUIHFWO\ REYLRXVO\ SURKLELWHG FROODWHUDO XV
WKH KHDULQJ DQG DQ XQUHVHUYHG DQG XQTXDOLIL
DQG OU \$OH[RSRXORV WKDW , DP KDSS\ WR DFFHSW
VXEPLWWHG WKDW DQ\ DFFHSWDQFH RI EUHDFK RU DS
, DFFHSW WKDW VXEPLVVLRQ EHORZ EXW WKDW GRHY
XQTXDOLILHG DGPLVVLRQ DQG DSRORJ\ JLYHQ DW WK

7R WKH H[WHQW WKDW UHWURVSHFWLYH SHUPLVVLRQ
\$SSOLFDWLRQ 1RWLFH *For the Ds G Law b ZDN [of CRX 3/21]*³
*was inadvertent, and [ECU] has taken immediate steps to remedy the position upon
notice to the [respondents]'*

,W LV LQDSSURSULDWH WR VD\ DQ\WKLQJ DERXW WKH
WR EH EURXJKW LI VXEVDWQWLYH SURFHGHGLQJV DUH
UHIH *Under Q/E* HWR WKH 'LVFORVHG 'RFXPHQWV QRZ LQ LW
VHULRXV ZURQJGRLQJ RQ WKH SDUW RI LQGLYLGXDOV
ORVV↑); RUGHUV SODFHG E\ LW +6%& ILUPO\ UHIXW
H[SODLQ RQH RI WKH RUGHUV , PDGH E\ FRQVHQW DW
ZHUH UHODWHG WR); SRVLWLRQV JHQHUDWHG E\ WK
VXFK FOLHQWV EHLQJ SDUW\ WR DQ\ SURFHGHGLQJV X
LQ WKH PDNLQJ DQG JUDQWLQJ RI WKH RULJLQDO SUH
(: +& &RPP DW > @

3URVSHFWLYH 3HUPLVVLRQ

%\ WKH WLPH WKH DSSOLFDWLRQ FDPH RQ IRU DUJXP
WKH SURVSHFWLYH SHUPLVVLRQ VRXJKW KDG EHHQ P
RI SURSRVDOV DQG FRXQWHU SURSRVDOV EHWZHHQ V

L 8VH RI WKH 'LVFORVHG 'RFXPHQWV IRU WKH SXUS
DQG LI VR DGYLVHG MRLQLQJ +6%& +ROGLQJV
SURFHGHGLQJV ZDV DJUHHG +DG LW EHHQ QHFHV
KDYH WDNHQ WKH YLHZ WKDW SHUPLVVLRQ ZDV
FROODWHU *UDD v Xenon Chemicals Ltd v UPL Europe Ltd* > @ (: +&
&K DW > @ > @ > @ > @

LL 8VH RI WKH 'LVFORVHG 'RFXPHQWV IRU WKH SXUS
RU IRUPHU FOLHQWV RI (& DV WR ZKHWHU WKH
FODLPDQWV ZDV FORVH WR EHLQJ DJUHHG)LQD
GXULQJ WKH FRXUVH RI WKH KHDULQJ

LLL (& VWLOO VRXJKW SHUPLVVLRQ ZKLFK ZDV UH
'RFXPHQWV D LQ FRQQHFWRQ ZLWK REWDLQLQ

SRWHQWLDO IRU FODLPV LQ WKH 86 DJDLQVW SDU
+ROGLQJV 3OF DQG E WR REWDLQ 86 OHJDO I
SURFHHGLQJV LQ WKH 86 DJDLQVW WKH WKLUG UH
other third parties, if so advised ,Q UHODWLRQ WR E KRZHYHU
WR SUHVV WKDW DSSOLFDWLRQ DW WKLV VWDJH

7KH DSSDUHQWO\ RSHQ HGGHG UHIHUHQFHV WR SRV
UHVSRQGHQWV RU +6%& +ROGLQJV 3OF ZDV LW VHHP
DW +6%& UHVSRQVLEOH DV (&8 PD\ ZLVK WR VD\ IRU
IRU UHDVRQV , JDYH GXULQJ WKH KHDULQJ , FRQFO
DQ\ SHUPLVVLRQ XQGHU LLL DERYH RU WR DGMRX
GRXEW WKDW (&8 KDG OLEHUW\ WR DSSO\ LI WKHUH
,Q WKDW UHJDUG , KDG LQ PLQG SDUWLFXODUO\ WKD
VR DGYLVHG WR LQFOXGH LQ WKH SURFHHGLQJV KHU
+6%& %DQN 86\$ 1 \$ RU UHOHYDQW LQGLYLGXDOV
WKDW H J DV WR MXULVGLFWLRQ WKDW ZRXOG E
DSSOLFDWLRQ FRXOG EH PDGH , VKRXOG QRW EH V
DSSOLFDWLRQ ZLOO QHFHVVDULO\ KDYH PHULW 7KDV
RQ WKH IDFW DV WKH\ PD\ EH LI DQG ZKHQ DQ\ VXF

\$W WKH KHDULQJ WKHUHIRUH , JUDQWHG SURVSHFV
WHUPV WKDW KDG XOWLPDWHO\ EHHQ DJUHHG DQG
WKLV VWDJH VHH > @ (:+& &RPP , UHVHUYH
PDGH DV SDUW RI WKLV MXGJPHQW GHDOLQJ ZLWK WK

5HWURVSHFWLYH 3HUPLVVLRQ

,W ZDV FRPPRQ JURXQG WKDW , KDYH SRZHU WR JUDQ
RI D SULRU XVH RI GRFXPHQWV LQ EUHDFK RI &35
4& IRU (&8 WR GLVSXWH OV 7RODQH\ 4&1V SURSRVL
JHQHUDOLW\ WKDW VXFK SHUPLVVLRQ *Miller v Scorey* O R@O\ UD
:/5 DW *per* 5LPHU -

:KHWKHU SHUPLVVLRQ IRU WKH XVH RI GRFXPHQWV L
ZLOO EH D YHU\ LPSRUWDQW IDFWRU DOWKRXJK LW
QHFHVVDU\ RU VXIILFLHQW ,W FDQQRW EH VXIILFLHQ
IRU FROODWHUDO XVH ZRXOG EH XQGHUPLQHG \$ JRF
WKDW SHUPLVVLRQ ZRXOG KDYH EHHQ JUDQWHG LI V
Miller v Scorey supra DQ *GG v H v Ltd v Cloete* > @ (:&\$ &LY DW >
per &KULVWRSKHU &ODUNH /- ,W FDQQRW VWULFWO\
WR LQYHQW DQ DEVROXWH FRQGLWLRQ QRW IRXQG
VRPHWKLQJ XQXVDO DERXW WKH SDUWLFXODU IDFW
UDUH IRU SHUPLVVLRQ WR EH JUDQWHG UHWURVSHFV
LI LW KDG EHHQ VRXJKW SURVSHFWLYHO\

,Q WKDW ODWWHU UHJDUG RQH VXEPLVVLRQ RI OU /L
HPSKDVLVH WKH LPSRUWDQFH RI WKH UXOH WR JUDQ
DUJXPHQW ZHQW WR UHLQIRUFH WKDW LW ZDV DOZD
FROODWHUDO XVH , GR QRW DJUHH 'HSHQGLQJ RQ V
VDQFWLRQ IRU EUHDFK DV *Miller v Scorey supra* DQ *GG v H v Ltd v Cloete* > @ (:&\$ &LY DW >
EUHDFK FDQ EH PDUNHG LQ RWKHU ZD\ LW PD\ EH I

SURFHHGLQJV %XW , UMHFW WKH LGHD WKDW WKH
GHFODULQJ XQDXWKRULVHG XVH WR KDYH EHHQ D EUH
RI WKH FRVWV JHQHUDWHG E\ WKDW XVH ZKHUH WK
VSHFLILFV RI WKH FDVH PD\ OHQG WKHPVHOYHV WR
ZD\ RI VDQFWLRQ DQG WKDW VKRXOG DOZD\ EH FRQ
,W ZDV DOVR FRPPRQ JURXQG WKDW VLQFH ZKDW LV
DSSOLFDWLRQ VHHNLQJ WKH LPSRVLWLRQ RI VRPH
UHWURVSHFWLYH SHUPLVVLRQ LV SULPDULO\ D PDW
DQG WKH FRXUW

8. 86 \$XWKRULWLHV

\$OO WKH DERYH VDLG LQ WKH SUHVHQW FDVH DV UH
EHHQ WR GDWH ZLWK 8. DQG 86 DXWKRULWLHV DV H
LQ P\ YLHZ SHUPLVVLRQ ZRXOG KDYH EHHQ JUDQW
UHVSRQGHQWV KDYH LQGLFDWHG WKDW WKH\ ZRXOG
UHWURVSHFWLYHO\ LI WKH FRXUW ZHUH PLQGHG WR
RXWFRPH , WKHUHIRUH JUDQW WKDW DVSHFW RI WK
VXEMHFW WR DQ\ GHWDLO DV WR WKH ZRUGLQJ IRU D

86 \$WWRUQH\

(&8¶V XVH RI WKH 'LVFORVHG 'RFXPHQWV LQ REWDLQL
DV IROORZV

L 7KH ILUP RI .HOORJJ +DQVHQ 7RGG)LGHO
+DQVHQ¶ ZHUH LQVWUXFWHG WR DGYLVH (&8 DQ
RI FODLPV LQ WKH 86 DQG LQ 1HZ <RUN LQ SDUW
1 \$ DQG RU LQGLYLGXDOV

LL (GZDUG - 0 /LWVOH RI +XJKHV +XEEDUG 5HHG //
GLG SURYLGH *High Level advice in respect of possible action in the US, and
guidance in respect of dealings with the US authorities*

LLL ,Q ERWK FDVHV XVH RI WKH 'LVFORVHG 'RFXPH
FRQWHQW DQG WKH DQDO\VLV WKHUHRI DQG FRQ
DGYLVHG E\ LWV /RQGRQ OHJDO WHDP ZDV VKDU
LY EHORZ WKH 'LVFORVHG 'RFXPHQWV WKHPVHO

LY ,Q DQWLFLSDWLRQ WKDW SHUPLVVLRQ IRU WKH
JUDQWHG D VLQJOH 86% VWLFN FRQWDLQLQJ D V
ZDV SURYLGHG WR .HOORJJ +DQVHQ LQ :DVKLQJW
VKDOO UHTXLUH WR EH FRQILUPHG DQG EROVWH
PDGH RI WKDW 86% VWLFN LQ 1HZ <RUN DQG WKD
DW .HOORJJ +DQVHQ¶V RIILFH SHQGLQJ DQ\ SHUP

, DP FOHDU WKDW LQ UHODWLRQ WR ERWK .HOORJJ
XQDXWKRULVHG FROODWHUDO XVH %XW WKHUH DUH

)LUVWO\ LQ UHODWLRQ WR 0U /LWWOH RQO\ , VHH C
DGYLVLQJ (&8 DV WR LWV GHDOLQJV ZLWK 86 DXWKRU
ZRXOG WKHUHIRUH ZLVK WR JUDQW SHUPLVVLRQ IRU
EHFDXVH SHUPLVVLRQ LV QRW WR EH JUDQWHG IRU W
FDQQRW EH VHSUDUDWHG

6HFRQGO\ 0V 7RODQH\ 4& VXEPLWWHG WKDW WKH FR
RI SHUPLVVLRQ UHWURVSHFWLYHO\ ZLWKRXW PXFK P
DWWRUQH\V DGYLFH ,Q WKH SDUWLFXODU FLUFXPVV
WKDW WKH FRXUW FRXOG QRW RUGHU (&8 V SULYLOH
PDWWHU RI FDVH PDQDJHPHQW LQ WKH DSSOLFDWLRQ
VXEPLVVLRQ LV VRXQG KRZHYHU (&8 WDNHV WKH U
UHWURVSHFWLYHO\ WKDW WKH FRXUW PD\ QRW ILQG
H[FHSWLRQDO JUDQW RI SHUPLVVLRQ LV MXVWLILHG Z
WR ZDLYH SULYLOHJH LI WKDW ZRXOG EH QHFHVVDU
LW PLJKW ILQG LW FDQQRW SHUVXDGH WKH FRXUW W
LQYROYH WKH GUDZLQJ RI DQ DGYHUVH LQIHUHQFH IU
VSHFXODWLRQ DV WR WKH FRQWHQW RI SULYLOHJH
LQFLGHQFH RI WKH EXUGHQ RI SHUVXDVLRQ RQ WKH
WKLW FDVH , GR IHHO DEOH WR MXGJH WKH PHULWV R

7KLUGO\ WKHUH LV D VXEWOHW\ FUHDWHG E\ WKH ID
WR *Wks* IRU ZKLFK WKHUH LV WR EH RU KDV EHHQ XVH
LQ WKH FXUUHQW VSHFLILF FRQWH[W RI DQ (QJOLV
VROLFLWRUV LQ WKH OLWLJDWLRQ IURP RWKHU H[W
DQG WKH DGYLFH REWDLQHG WR LQYROYH D EUHDFK I
SXUSRVH WKRXJK WKH VHOI VDPH DGYLFH XSRQ PD
DGYLVHU FRXOG KDYH EHHQ VRXJKW OHJLWLPDWHO
SHUPLVVLRQ IRU WKH SXUSRVH RI WKH SURFHHGLQJ

7KDW WKLUG VXEWOHW\ KDV SHUVXDGHG PH RQ EDOD
FDVH WR JUDQW UHWURVSHFWLYH SHUPLVVLRQ VXE
WKH RUGHU IRU WKH SDVW XVH RI WKH 'LVFORVHG 'R
+DQVHQ DQG 0U /LWWOH 7KHUH ZLOO KRZHYHU EH
DUH QHFHVVDU\ LQ P\ MXGJPHQW WR PDUN WKH IDF
ZLWKRXW SHUPLVVLRQ EHFDXVH RI (&8 V SXUSRVH
EHHQ JUDQWHG 7KHUH PXVW EH QR SURVSHFW RI (&8
ZKLFK LWV SXUSRVH ZD *Vineta* ~~WSDW~~ ~~7KDW~~ ~~WJH~~ ~~QVHV~~
/LWWOH V H[LVWLQJ UHWDLQHUV EH WHUPLQDWHG DG
XSRQ DSSOLFDWLRQ PDGH WKH\ QRW EH LQVWUXFW
PDWWHU RI WKHVH SURFHHGLQJV DQG WKHLU DGYLF
VWDJH LQFOXGLQJ WR DQ\ RWKHU 86 DWWRUQH\ (V
LQVWUXFW WR DGYLVH RU DFW , H[SODLQ P\ UHDRV

7KH WHQRU RI 0U \$OH[RSRXORV HYLGHQFH H[SODLQ
DQG 0U /LWWOH OHDYLQJ DVLGH WKH UHJXODWRU\ D
(&8 V SXUSRVH LQ VHHNLQJ WKHLU DGYLFH ZDV IRU
DGYLVHG SUHSDUH DQG FRPPHQFH 86 SURFHHGLQJ
+6%& %DQN 86\$ 1 \$ DQG RU 86 GRPLFLOHG LQGLYLC

7KDW LV UHLQIRUFHG E\ WKH SURVSHFWLYH SHUPLVV
IRU LW 7KH SHUPLVVLRQ VRXJKW H[WHQG HG WR DQC
RI 86 SURFHHLQJV QRW MXVW WKHLU DYDLODELQW
SHUPLVVLRQ HFKRLQJ D IXQGDPHQWDO PLVFRQFHS
DSSHUV WR KDYH EHHQ DFWLQJ ZDV WKDW ZKLOVW
DGYLFH XSRQ WKH EDVLV RI D EULHI GHULYHG LQ S
FRXOG QRW SUHSDUH RU FRPPHQFH SURFHHLQJV ZL
RI WKRVH GRFXPHQW

7KXV LW LV DGPLWWHGO\ FROODWHUDO XVH WR PD
purpose RI DFWXDO RU FRQWHPSODWHG SURFHHLQJV
OU \$OH[RSRXORV DSSUHFLDWHG WKDW WKURXJKRXW
PDNLQJ XVH RI KLV RU KLV FOLHQW V NQRZOHGJH RI
RU RI DQDO\VLV WKHUHRI RU VKDULQJ ZLWK RWKHUV
EH GUDZQ IURP WKDW RIFRQWHQW FORVHQ WRFXPHQWV 2
DVWRQLVQLQJ WKDW VR H[SHULHQFHG D OLWLJDWLRO
RI XQGHUVWDQGLQJ RI WKH LPSRUW RI WKH SURKLEL
VWDWHG DW WKH KLJKHVW OHYHO D.V clarity & right
– that the implied undertaking applies not merely to the documents themselves but also
to information derived from those documents whether it be embodied in a copy or stored
in the mind ' Crest Homes plc v Marks > @ \$ & DW /R \$ % 2 OLYHU

, DP QRW LQYLWHG E\ OV 7RODQH\ 4& WR FRQVLGHU
RWKHU WKDQ KRQHVW KRZHYHU DQG , GR QRW LQ ID
RU PLJKW EH EHLQJ GLVKRQHVW VR WKDW KH KDG
FROODWHUDO XVH DQG ZDV QRZ O\LQJ WR DYRLG VXF
FDVH \$V LW LV , MXGJH WKH FDVH RQ P\ DFFHSWD
XQLQWHQWLRQDO RQ OU \$OH[RSRXORV S DUW DQG W

7KH EUHDFK ZDV KRZHYHU QHJOLJHQW WR D KLJK GH
RI VWDUWV IRU WKH UHWURVSHFWLYH UHTXHVW IRU S
, H[SODLQHG DERYH 7KH IDFW LV WKDW RQH RI WKH
86 /LNHZLVH FHUWDLQ RI WKH +6%& LQGLYLGXDOV
FRQWHPSODWH SURFHHLQJ 7KH FDVH KDV WKDW LQ
LQ SULQFLSOH (&8 PLJKW EULQJ D FODLP DJDLQVW +
LQGLYLGXDOV DQG LQ WKH OLJKW RI WKDW ZKHUH (&
LQ P\ MXGJPHQW D TXHVWLRQ (&8 YLD OU \$OH[RSRX
WKH SXUSRVH RI WDNLQJ ILQDO GHFLVLRQV RQ ZKDW
WR QDPH LQ WKH SURFHHLQJV WR EH EURXJKW KHU
LQFOXGH WKH WDNLQJ RI DGYLFH IURP 86 DW WRUQH\
LQ REWDLQLQJ DGYLFH DV WR 86 ODZ ZHUH WKXV FR
, I 6LJQDWXUH KDG D VXEVWDQWLDQ 1HZ <RUN RIILFH
QRW EH D EUHDFK RI WKH UXOH DJDLQVW FROODWHUD
LQWR WKH FDVH RQ DQ DSSURSULDWHO\ H[SODLQHG
FDQQRW EH GLIIHUHQW EHFDXVH 6LJQDWXUH LQ IDFW
LQ 1HZ <RUN

2Q OU \$OH[RSRXORV GHVFULSWLRQ RI WKH DGYLFH
QRWZLWKVWDQGLQJ OV 7RODQH\ 4& V FULWLFLVP RI
ZDLYHU RI SULYLOHJH LW VHHPV WR PH OLNHO\ WKDV

KDYH GRQH LI (&8 KDG OLPLWHG LWVHOI WR D SURSH
PDGH FOHDU RQ LQVWUXFWLRQV

L 7KH XSVKRW DV UHJDUGV +6%& %DQN 86\$ 1 \$
LQWHQWLRQ WR SURFHGG LQ WKH 86 +6%& %DQN
GHIHQGDQW LQ WKH SURFHGGHQV KHUH 7KDW Z
\$OH[RSRXORV HYLGHQFH DQ\ZD\ DQG H[SODLQH
SURVSHFWLYH SHUPLVVLRQ DSSOLFDWLRQ EH DGI

LL (&8 LV QRW LQ D SRVLWLRQ WR SURFHGG DJDLQV
ZKLFKHYHU 86 DWRUQH\ PLJKW EH LQVWUXFW
,Q WKDW UHJDUG WKHUH ZDV D SRWHQWDOO\ PL
VL[WK ZLWQHVV VWDWPHQW \$OH[RSRXORV H
WKH DSSOLFDWLRQ WKH 86 ZLWKRXV
UHYLHZLQJ WKH 'LVFORVHG 'RFXPHQWV , DFFHSW
WKDW ZDV LQWHQGHG WR UHUUHQ\ WR FODLP
KLV DSRORJ\ RQ EHKDOI RI 0U \$OH[RSRXORV WKD
FOHDU

, DP FRQVFLRXV WKDW VLQFH (&8 LQ IDFW VRXJKW W
WR FRQVLGHULQJ EULQJLQJ SURFHGGHQV LQ WKH 86
PD\ EH WKDW QR 86 ODZ DGylfH ZRXOG KDYH EHHQ VF
LQ WKH DEVHGFH RI 0U \$OH[RSRXORV VNHZHG XQC
FRQVFLRXV WKDW SULYLOHJH LQ UHVSFW RI WKH D
FDQQRW MXGJH ILQDOO\ WKDW LQGHHG LW ZHQW QR
IRU D SURSHU SXUSRVH)LQDOO\ , DP FRQVFLRXV
SURVSHFWLYH SHUPLVVLRQ DW WKLV VWDJH SHUPLV
VR ORQJ DV WKH SXUSRVH ZDV RU H[WHQGHG WR WKH

2Q WKH RWKHU KDQG LW VHHPV WR PH KLJKO\ OLNH
SODLQO\ LW VKRXOG KDYH EHHQ JLYHQ (&8 V SXUSRV
EH GRQH HYHQ ZLWKRXW SHUPLVVLRQ ZRXOG QDWXUD
QRW KDYH EHHQ JUDQWHG DV VRXJKW WKH XSVKRW
VRPHWKLQJ YHU\ OLNH WKH DGylfH DFWXDOO\ REWDL
RU ZLWK VRPH RUGHU JUDQWLQJ SHUPLVVLRQ LI DQG

,Q WKDW UDWKHU XQLTXH VHW RI FLUFXPVWDQFHV
EHFDXVH , FDQQRW EH FOHDU ZKHWKHU WKH DGylfH
KDYH EHHQ SHUPLVVLEOH EXW LQ P\ MXGJPHQW WK
UHODWLRQ WR WKH 86 ODZ DGylfH REWDLQHG RQ ED
VRXJKW WR HOHYDWH WR D JHQHUDO SURSRVLWLRQ
DERYH)XUWKHUPRUH WKH JUDQW RI SHUPLVVLR
HQVXUH WKDW WKH 86 ODZ DGylfH ZDV
REWDLQHG GRHV QRW KDYH DQ\ SHUPLVWHQW HIIHFW
DGYDQWDJH IRU (&8 LQ WKH 86 LI KHUHDIWHU DQ\ F

7KRVH FRQGLWLRQV ZLOO EH WKH IROORZLQJ DV W
FRXQVHO DIWHU WKLV MXGJPHQW KDV EHHQ KDQGHG

L 0U \$OH[RSRXORV PXVW UHFRQILUP RQ RDWK L H
DV WR D WKH QDWXUH DQG H[WHQW RI WKH 86 O

SULYLOHJH RYHU WKH FRQWHQW RI WKDW DGYLE
XVH PDGH RI WKH 'LVFORVHG 'RFXPHQWV LQ VHH
PXVW UHFRQILUP DQG DV UHJDUGV \$OH[RSRXO
HYLGHQFH DV WR (&8¶V SUHVHQW LQWHQWLRQV L
LWV DELOLW\ WR FRPPHQFH DQ\ VXFK SURFHGH
DWWRUQH\ V LJKW RI WKH 'LVFORVHG 'RFXPHQWV

LL 7KH 86% VWLFN SURYLGHG WR .HOORJJ +DQVHQ P
\$OH[RSRXORV¶ DIILGDYLW PXVW FRQILUP UHFHLS
IURP .HOORJJ +DQVHQ FRQILUPLQJ ZKDW ZDV GRO
WKHLU SRVVHVLRQ DOWHUQDWLYHO\ 0U \$OH[RS
VXFK VZRUQ HYLGHQFH KDV EHHQ IRUWKFRPLQJ

LLL .HOORJJ +DQVHQ¶V DQG 0U /LWWOH¶V UHWDLQHUV
RI WKHVH SURFHGHQJV PXVW EH WHUPLQDWHG V
WKH SURYLVLRQ RI VZRUQ HYLGHQFH XQGHU LL
DJDLQ E\ RU RQ EHKDOI RI (&8 LQ FRQQHFWLRQ Z
SHUPLVLRQ RI WKLV FRXUW DV WR ZKLFK WKHU
SURYLGHG WR (&8 WR GDWH PXVW QRW EH VKDUH
DOUHDG\ EHHQ VKDUHG DJDLQ H[FHSW LI SHUPLV
WR DSSO\

LY (&8 PXVW EHDU LWV RZQ FRVWV LQ DQ\ HYHQW D
RQ WKH LQGHPQLW\ EDVLV RI WKH REWDLQLQJ RI
/LWWOH WR GDWH RI WKLV DSSOLFDWLRQ DQG
FRQGLWLRQV \$V UHJDUGV WKH UHVSRRGHQWV¶ F
KDV KDSSHQHG LQ WKLV FDVH LV IDU RXWVLGH W
DFWLRQ GLVFORVXUH REWDLQHGH XQGHU WKH SUL
LWVHOI VWLOO DQ H[FHSWLRQDO UHPHG\ DQG QR

FX Week

6DYH WKDW DJDLQ , DP QRW DVNHG WR DQG GR QRW
UHDOO\ QRWKLQJ WKDW FDQ EH VDLG WR VRIWHQ WK
PHULWHGH ~~FX Week~~ WHSHLVRGH

,W VWDUWV ZLWK DQG LV XQGHUSLQQHG WKURXJKRX
WKDW VKRZLQJ VRPHRQH \$OH[RSRXORV ZRXOG F
'RFXPHQWV %XW LW GRHV QRW VWRS WKHUH

\$OH[RSRXORV LV GDWHG 0DUFK D 7KXUVGD\
DSSOLFDWLRQ LVVXHGH WKDW GD\ IRU D IXUWKHU RUG
ZLVKLQJ WR DUJXH WKDW WKHUH KDG EHHQ LQFRPSC
DSSOLFDWLRQ ZDV VHUYHG E\ (&8 WKH IROORZLQJ DIV
DQG KDUG FRS\ GHOLYHU\ WR WKH UHVSRRGHQWV¶ VF
GD\ \$OWKRXXJK LW LV VDLG WKDW (&8 KRSHG WR REV
WKDW DQ\ VWHS ZDV DFWXDOO\ WDNHQ EHIRUH 0RQGD
OLVWHG DQG HYHQ WKHQ WKH GDWH VXJJHVWHG E\
GXH FRXUVH WKH DSSOLFDWLRQ ZDV LQ IDFW OLVWH
ZDV WKHQ GLVSRVHG RI E\ FRQVHQW RQ 0DUFK VR

,Q WKH PHDQWLPH KRZHYHU ZLWKRXW QRWLFH WR I
WLS ~~FRS~~ ^{Week} RII DERXW WKH DSSOLFDWLRQ ~~FRS~~ ^{Week}, WRGRUODQRW
LQ TXHVWLRQ ZDV JLYHQ DQ\ GHWDLO EXW VKH ZDV
EH YHU\ LQWHUHVWHG WR UHDO \$OH[RSRXORV , GL
VR , PDNH QR ILQDO UXOLQJ EXW LW LV QRW HDV\ WF
RI &35

7KRXJK 0U \$OH[RSRXORV GLG QRW EHOLHYH &35
KDYH WKRXJKW DW OHDVW LQLWLDOO\ WKDW LW ZD
^{Week} MRXUQDOLVW VLP SO\ WR EH JLYHQ D FRS\ RI \$OH
ZR XOG QHHG WR PDNH DQ DSSOLFDWLRQ DW FRXUW
LQWHUSUHWHG WKLV DV DQ LQYLWDWLRQ VLP SO\ WR
&RXUW RIILFH VWDII IRU VLJKW RI \$OH[RSRXORV %X
DQ\WKLQJ

7KH MRXUQDOLVW GLG DWWHQG WKH 5ROOV %XLOGLQ
RI ZKRP DOWKRXJK WKHUH LV D VXJJHVWLRQ WKDW I
DQ DEVHQFH RI &RPPHUFDO &RXUW VWDII WKDW GD\
&RPH ZKDW PD\ VKH GLG QRW PDNH DQ\ SURSHU D
RWKHUZLVH ,W LV QRW DSSDUHQW WR PH WKDW VKH

+DYLQJ QRW REWDLQH V LJKW RI \$OH[RSRXORV DW
RIILFH ZKLFK LV QH DU WR WKH 5ROOV %XLOGLQJ S
7KHUH DW 0U \$OH[RSRXORV\ GLUHFWRQ VKH ZDV
\$OH[RSRXORV KDV RIIHUG QR UHDO H[SODQDWRQ
LQH[SOLFDEOH JLYHQ WKDW HDUOLHU WKDW GD\ LW
FRXUW\V SHUPLVVLRQ DQG KH ZDV QRW WROG SHUPL

,Q KLV HYLGHQFH IRU WKH SUHVHQW DSSOLFDWLRQ
MRXUQDOLVW WR EH DEOH WR UHDO \$OH[RSRXORV W
DSSOLFDWLRQ %XW VKH KDG QR QHHG IRU WKDW HY
KHDULQJ ZLWKLQ WKH QH[W ZRUNLQJ GD\ RU WZR ZK
KHDULQJ LI LQ GXH FRXUVH WKHUH ZDV RQH FRXOG
VDLG GXULQJ LW LQ RSHQ FRXUW \$W WKH KHDULQJ
RI WKH GHWDLO LQ \$OH[RSRXORV GHVFULELQJ WKH
'RFXPHQW WKH FRXUW FRXOG EH H[SHFWHG WR VLV
2Q DQ\ YLHZ WKH FRXUW VKRXOG KDYH EHHQ LQ D
SURYLVLRQ RI \$OH[RSRXORV WR WKH SUHVW LQ DGY
ULJKW DQG DELOLW\ RI WKH FRXUW WR PDQDJH WKH
SUHVHUYH WKH FRQILGHQWLDOLW\ RI WKH FRQWHQW

:KHQ VKH FROOHFWHG WKH FRS\ RI \$OH[RSRXORV IU
WKDW KH PDGH ~~FRS~~ ^{Week} WKRXOG H[QIRUWK DW DQ\ VWRU\ UH
WKH KHDULQJ RI WKH 0DUFK DSSOLFDWLRQ 0U \$C
REWDLQH RU VRXJKW DQ\ ZULWWHQ XQGHUWNLQ
HYLGHQFH WKDW WKH MRXUQDOLVW H[SUHVVHG DQ\
WRRN WKH FRS\ VWDWHPHQW DQG LW LV QRW VXJJHV
QRW FRPSO\ ZLWK KLV FRQGLWLRQ , GR QRW KDYH D
:KDWHYHU SDVVHG EHWZHHQ KHU DQG 0U \$OH[RSRX
KDQGHG RY ~~FRS~~ ^{Week} LQDODFW SURPLQH QW VWRU\ LQ LWV RQ

0DUFK DOPRVW HQWLUHO\ GHULYHG IURP LW DQG LG
'RFXPHQWV

0U \$OH[RSRXORV EHHQ DUZV UHORI WKDW GD\ 0DUFK
WR SURWHVW DW ZKDW ZDV RQ KLV RZQ DFFRXQW D
WKH MRXUQDOLVW HYHQ LI LW VWLOO GLG QRW RFFX
+H PDGH QR HIIRUW WR KDYH WKH DUWLFOH WDNHQ G
KDG KDSSHQHG +H GLG QRW WHOO WKH FRXUW (&8
Week ¶ V KDVWH SURYLGHG D UHVSQRVLYH FRPPHQW II
SXEOLFDWLRQ FX Week ZHUH KLS HDVHG WKHQ WR DGC
SXEOLFDWLRQ RI WKH VWRUW FX Week RQH OR KD G FRODUFC
FDUULHG WKH DUWLFOH DV LWV PDLQ IURQW SDJH VS

FX Week ZHUH ILQDOO\ DVNHG WR WDNH WKH DUWLFOH
GURSSHG IRU 0U \$OH[RSRXORV LQ WKH FRXUVH RI FR
WKDW &35 PD\ KDYH EHHQ EUHDFKHG , VD\
\$OH[RSRXORV ¶ ODQJXDJH LQ KLV ZLWQHVV HYLGHQFH
IRU GRXEW RYHU ZKHWKHU WKHUH ZDV D EUHDFK , Q
RI VRPH RI KLV FRUUVSRQGHQFH DV OV 7RODQH\ 4
\$OH[RSRXORV UHDOO\ WRRN RQ FX Week ZHUH KLS HDVHG WKHQ WR DGC
XQDUJXDEO\ DQG VHULRXVO\ VR XQWLO WKH KHDULQ

\$OO LQ DOO WKH SURYLVLRQ Rdek LERSKIM \$OVHRZSRV
VHULRXV EUHDFK QHLWKHU VHQVLEO\ H[SOLFDEOH Q
ZKDWHYHU WKDW WKH FRXUW ZRXOG KDYH JUDQWH
SURVSHFWLYHO\ , GR QRW WKLQN D VROLFLWRU ZLW
DJDLQVW FROODWHUDO XVH RU ZKR WRRN D FXUVRU
&35 FRXOG UHDVRQDEO\ KDYH DGylVHG RWKHU
UHWURVSHFWLYH SHUPLVLRQ DQG , UHIXVH (&8 ¶ V DS

&RVWV

, KDYH DOUHDG\ LGHQWLILHG SDUW RI P\ YLHZ DV W
ZKLFK UHWURVSHFWLYH SHUPLVLRQ LV WR EH JUDC
.HOORJJ +DQVHQ DQG 0U /LWVOH ,W ZLOO FRPH DV
DERXW Week HSLVRGH WKDW (&8 PXVW EHDU LWV RZQ F
FRVWV RQ DQ LQGHPQLW\ EDLVV LQ UHODWLRQ WR LV
DSSOLFDWLRQ

\$V UHJDUGV WKH DSSOLFDWLRQ IRU SURVSHFWLYH SH
LW ZDV FRQWHVWHG)XUWKHUPRUH RQH UHDVRQ ZK
ZDV WKDW (&8 KDG DOUHDG\ REWDLQHG E\ XQDXWKR
WKH ZD\ RI DGylFH DV WR 86 ODZ DV LW PLJKW SURS
GRXEW WKDW LW ZRXOG EH SUDFWLFDEOH WR VHSDU
DSSOLFDWLRQ LQ D ZD\ WKDW ZRXOG DOORZ GLIIHUH

7KH MXVW RUGHU LQ DOO WKH FLUFXPVWDQFHV LQ
UHVSQRQGHQWV ¶ FRVWV RI WKH SUHVHQW DSSOLFDW
DJUHHG