



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/&
DQG
+6%& %\$1. 3/&
+6%& 35,9\$7( %\$1. 8. /,0,7('
+6%& %\$1. 86\$ 1 \$
SSOLFQW
5HVSRRGHQWV

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

+HDULQJ GDWH 1RYHPEHU

\$SSURYHG -XGJPHQW

, GLUHFV WKDW SXUVXDQW WR &35 3' \$ SDUD QR RIIL
-XGJPHQW DQG WKDW 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 (&8) V 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[SHUVV LQ WKH 86 DQG

F SUHSDULQJ DQG EULQJLQJ OHJDO SURFHHGLQ  
WKH WKLVG UHVSRQGHQW *and any other party  
against whom it may be appropriate to bring a claim'*  
DQN 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 ZDHOLO WV E V 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 3URYLGGLQJ 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 *with the Ds G Law b ZDN [of CRX 3121N]*<sup>3</sup>  
*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 *with 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 X OH Chemicals Ltd v UPL Europe Ltd* > @ (: +&  
&K DW > @ > @ > @ > @

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

LLL (&8 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 7KDW  
RQ WKH IDFWV 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 RQO\ 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  
HPSKDLVH 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 /LWWOH RI +XJKHV +XEEDUG 5HHG //  
GLG SURYLGH *Right 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 DQWFLSDWLRQ 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  
DGYLVVLRQ (&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 FLUFXPV  
WKDW WKH FRXUW FRXOG QRW RUGHU (&8 V SULYLOH  
PDWWHU RI FDVH PDQDJPHQW 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 SHUVXDVLQJ 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 ~~Vin~~ ~~Pa~~ ~~W~~ ~~S~~ ~~D~~ ~~W~~ ~~7~~ ~~K~~ ~~D~~ ~~O~~ ~~R~~ ~~U~~ ~~J~~ ~~H~~ ~~F~~ ~~D~~ ~~Q~~ ~~V~~ ~~H~~ ~~Q~~  
/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 LQGLYLQ

7KDW LV UHLQIRUFHG E\ WKH SURVSHFWLYH SHUPLVV  
IRU LW 7KH SHUPLVVLRQ VRXJKW H[WHQG HG WR DQC  
RI 86 SURFHHLGLQJV 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 SURFHHLGLQJV ZL  
RI WKRVH GRFXPHQWV

7KXV LW LV DGPLWWHGO\ FROODWHUDO XVH WR PD  
*purpose* RI DFWXDO RU FRQWHPSODWHG SURFHHLGLQJV  
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 WR FXPHQWV 2  
DVWRQLVQLQJ WKDW VR H[SHULHQFHG D OLWLJDWLRO  
RI XQGHUVWDQGLQJ RI WKH LPSRUW RI WKH SURKLEL  
VWDWHG DW WKH KLJKHVW OHYHO\ *This is a clear 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¶ SDUW 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 SURFHHLGLQJ 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 SURFHHLGLQJV 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 SURFHGGHQJLV 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 LQVWUXFWH  
,Q WKDW UHJDUG WKHUH ZDV D SRWHQWLDQ\ PL  
VL[WK ZLWQHVV VWDWPHQW \$OH[RSRXORV H  
WKH DSSOLFDWLRQ RFRPHQV (&8Q WKH 86 ZLWKRXV  
UHYLHZLQJ WKH 'LVFORVHG 'RFXPHQWV , DFFHSW  
WKDW ZDV LQWHQGHG WR UHUU RQO\ WR FODLP  
KLV DSRORJ\ RQ EHKDOI RI 0U \$OH[RSRXORV WKD  
FOHDU

, DP FRQVFLRXV WKDW VLQFH (&8 LQ IDFW VRXJKW W  
WR FRQVLGHULQJ EULQJLQJ SURFHGGHQJLV LQ WKH 86  
PD\ EH WKDW QR 86 ODZ DGylfH ZRXOG KDYH EHHQ VF  
LQ WKH DEVHGFH RI 0U \$OH[RSRXORV H VNHZHG XQC  
FRQVFLRXV WKDW SULYLOHJH LQ UHVSHFW RI WKH D  
FDQQRW MXGJH ILQDOO\ WKDW LQGHHG LW ZHQW QR  
IRU D SURSHU SXUSRVH )LQDOO\ , DP FRQVFLRXV  
SURVSHFWLYH SHUPLVVLRQ DW WKLV VWDJH SHUPLVV  
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 H 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 ~~purpose~~ HIRUP ZKRXV 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 UHWDLQHU  
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 REWDLQH 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  
PHULWHG ~~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 LVVXHG 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\$H Week RII DERXW WKH DSSOLFDWLRQ Week, WRGRUOD QRW  
LQ TXHVWLRQ ZDV JLYHQ DQ\ GHWDLO EXW VKH ZDV  
EH YHU\ LQWHUHVWHG WR UHDG \$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\$O\ WR EH JLYHQ D FRS\ RI \$OH  
ZR\$OG QHHG WR PDNH DQ DSSOLFDWLRQ DW FRXUW  
LQWHUSUHWHG WKLV DV DQ LQYLWDWLRQ VLP\$O\ WR  
&RXUW RIILFH VWDII IRU VLJKW RI \$OH[RSRXORV %X  
DQ\WKLQJ

7KH MRXUQDOLVW GLG DWWHQG WKH 5ROOV %XLOGLQ  
RI ZKRP DOWKR\$JK 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 REWDLQHG VLJKW RI \$OH[RSRXORV DW  
RIILFH ZKLFK LV QHDU WR WKH 5ROOV %XLOGLQJ S  
7KHUH DW 0U \$OH[RSRXORV\ GLUHFWRQ VKH ZDV  
\$OH[RSRXORV KDV RIIHUHG 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 UHDG \$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 FROOHFW WKRXOG H[QIRUWK DW DQ\ VWRU\ UH  
WKH KHDULQJ RI WKH 0DUFK DSSOLFDWLRQ 0U \$C  
REWDLQHG RU VRXJKW DQ\ ZULWWHQ XQGHUWNLQ  
HYLGHQFH WKDW WKH MRXUQDOLVW H[SUHVVHG DQ\  
WRRN WKH FRS\ VWDWHPHQW DQG LW LV QRW VXJJHV  
QRW FRP\$O\ ZLWK KLV FRQGLWLRQ , GR QRW KDYH D  
:KDWHYHU SDVVHG EHWZHHQ KHU DQG 0U \$OH[RSRX  
KDQGHG RYH Week LQDIDFWSURPLQHQW 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 ZKLS Q 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 ZKLS Q  
XQDUJXDEO\ DQG VHULRXVO\ VR XQWLO WKH KHDULO

\$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 SHUPLVVLRQ DQG , UHIXVH (&8 ¶ V DS

&RVWV

, KDYH DOUHDG\ LGHQWLILHG SDUW RI P\ YLHZ DV W  
ZKLFK UHWURVSHFWLYH SHUPLVVLRQ 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\ EDVLV 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