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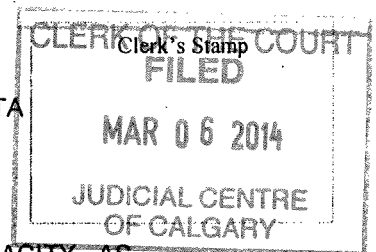
COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

APPLICANT(S)

ERNST & YOUNG INC. IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER AND MANAGER
OF 1252064 ALBERTA LTD., 1330075 ALBERTA
LTD. AND HARVEST CAPITAL MANAGEMENT INC.
AND NOT IN ITS PERSONAL OR CORPORATE
CAPACITY



DOCUMENT

THIRD REPORT OF THE RECEIVER

MARCH 5, 2014

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

RECEIVER

Ernst & Young Inc.
1000, 440 - 2nd Avenue SW
Calgary, Alberta T2P 5E9
Attention: Neil Narfason / Nick Purich
Telephone: 403-206-5067 / (403) 206-5170
Fax: 403-206-5075
Email: Neil.Narfason@ca.ey.com
Nick.JB.Purich@ca.ey.com

COUNSEL

McCarthy Tétrault LLP
Suite 3300, 421 7th Avenue SW
Calgary AB T2P 4K9
Attn: Sean Collins / Walker MacLeod
Telephone: 403-260-3531 / 403-260-3710
Email: scollins@mccarthy.ca
wmacleod@mccarthy.ca

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INTRODUCTION

1. On June 7, 2012, 1252064 Alberta Ltd. (“125”), 1330075 Alberta Ltd. (“133”) and Harvest Capital Management Inc. (“HCMI”) sought and obtained protection from their creditors under the Companies’ Creditors Arrangement Act, R.S.C. 1985 c. C-36, as amended, (the “CCAA”) pursuant to an order of this Honourable Court (the “Initial CCAA Order”). Pursuant to the Initial Order, Ernst & Young Inc. was appointed monitor (the “Monitor”) of 125, 133 and HCMI (the “CCAA Proceedings”).
2. Ernst & Young Inc. was appointed Receiver and Manager (the “Receiver”) of the property, assets and undertakings (the “Property”) of 125, 133 and HCMI pursuant to an Order (the “Receivership Order”) of this Honourable Court dated September 30, 2013.
3. Concurrent with the issuance of the Receivership Order, the CCAA Proceedings were terminated by an order (the “Termination Order”) of this Honourable Court dated September 30, 2013. The Termination Order provides that the charges in the Initial CCAA Order endure, notwithstanding the termination of the Initial CCAA Order.
4. The Receivership Order authorized the Receiver, among other things, to carry on the business of the Company, to sell, convey, transfer, lease or assign the Property out of the normal course of business, subject to court approval for transactions in excess of \$100,000, and to make such arrangements or agreements as deemed necessary by the Receiver.
5. The purpose of this third report (the “Third Report”) of the Receiver is to provide this Honourable Court with the Receiver’s comments with regards to the:
 - a) Background on 125’s investment in a joint venture with respect to certain lands in Panama (the “Panama Investment”);
 - b) Background on the relationship between 125 and Legacy Communities Inc. (“Legacy”) with respect to the Panama Investment;
 - c) The Receiver’s analysis of the sources of funds in the Panama Investment;

- d) An update on the restructuring progress of the Panama Investment; and
 - e) Receiver's requested relief in respect of the priority of the charges granted in the Receivership Order.
- 6. Capitalized terms not defined in this Third Report are as defined in the Receivership Order.
- 7. All references to dollars are in Canadian currency unless otherwise noted.

TERMS OF REFERENCE

- 8. In preparing this Third Report, the Receiver has relied upon unaudited financial information and Company records. The Receiver has not performed an audit, review or other verification of such information.

BACKGROUND

- 9. 125, 133, and HCMI are part of a group of legal entities commonly known as the Harvest Group of Companies (the "Harvest Group"). Mr. Ronald Aitkens ("Mr. Aitkens") was the director and controlling mind of various legal entities comprising the Harvest Group, including the Debtors. The Receiver has reviewed financial information pertaining to the Harvest Group and, based on this review, has determined that the Harvest Group raised in excess of \$266 million between 2004 and 2010, largely through the issuance of bonds to investors, and used the funds to acquire lands and make other investments.
- 10. Various entities within the Harvest Group have defaulted on their obligations to bondholders and have obtained protection under the CCAA. The Receiver is (or was, in respect of Harvest Group entities that have exited from CCAA proceedings) the Court appointed monitor of a total of 27 entities within the Harvest Group that have been granted protection from their creditors pursuant to the CCAA.
- 11. 125 and 133 were companies established with the primary purpose of purchasing lands and reselling the lands to other companies within the Harvest Group which raised funds from external investors under Offering Memorandums ("OM Companies").

HCMI was a company established with the purpose of providing management services to the OM Companies.

12. As a result of the deficiencies in the financial records of the Harvest Group, the Monitor was required to complete a reconstruction of the Harvest Group's accounting records. The reconstruction consisted of identifying the cash transactions that occurred within the Harvest Group. The Monitor reviewed the bank statements, cancelled cheques, deposit books, various trust accounts and other source documents to determine the sources and uses of funds within the Harvest Group.
13. The reconstruction of the Harvest Group's accounting records is presented in detail in the Ninth Report of the Monitor in the CCAA Proceedings dated August 30, 2013.
14. Additional background information and other information regarding these receivership proceedings have been posted by the Receiver on its website at: www.ey.com/ca/foundationgroup.

THE PANAMA INVESTMENT

15. 125 entered into a joint venture agreement (the "JVA") for development of a property located in Isla Del Ray, located near Panama City, with Punta Gorda Holding Corp. ("Punta Gorda") on July 12, 2007 (the "Joint Venture").
16. Under the JVA, 125 was to contribute \$7 million USD and Punta Gorda was to contribute 50 hectares of land to the joint venture. The Receiver notes that according to the Monitor's financial reconstruction, the actual amount advanced by 125 under the JVA was \$5,228,722.
17. The Receiver has been continuing to make recovery efforts for 125's interest in the Joint Venture as defined and described herein.

RELATIONSHIP BETWEEN 125 AND LEGACY WITH RESPECT TO PANAMA

18. Legacy was one of the OM Companies within the Harvest Group which obtained protection from its creditors pursuant to the CCAA. Ernst & Young Inc. was the court appointed Monitor of Legacy which had a plan of arrangement sanctioned by this

Honourable Court on July 5, 2012. Legacy now functions with a fully independent board of directors.

19. As noted above, Mr. Aitkens was the controlling mind of the Harvest Group and affected numerous transactions among various companies within the Harvest Group including 125 and Legacy.

SOURCES OF FUNDS IN THE PANAMA INVESTMENT

20. On September 24, 2007, Legacy advanced \$4,664,880 to 125. On September 25, 2007, \$4,664,880 was advanced by 125 to the Joint Venture.
21. The Receiver has provided all information and supporting documentation forming its analysis to Legacy and its counsel.

PANAMA INVESTMENT RESTRUCTURING UPDATE

22. The Receiver has been advised by its Panamanian counsel that it is necessary for the Receiver to obtain recognition of the Receivership Order in Panama for the purposes of pursuing recovery in respect of the Joint Venture in Panama. Accordingly, the Receiver has taken preliminary steps in Panama to begin the recognition proceedings, including retaining counsel in Panama and obtaining certification of various orders issued in the receivership proceedings and other documents. The Receiver has also had discussions with the joint venture partner about how recoveries might be maximized in respect of the Joint Venture.
23. Legacy has disputed the priority of the Receiver's Charge and the Receiver's Borrowing Charge on previous occasions. The Receiver is unwilling to take further steps in Panama, which will necessarily involve incurring obligations to third parties, without confirmation from Legacy that it will not further dispute the priority of the Receiver's Charge and the Receiver's Borrowing Charge as established in the Receivership Order.

24. The Receiver's Counsel has contacted Legacy's Counsel to obtain an acknowledgement of the priority of the charges. Copies of his correspondence are attached as Appendix A to this Third Report.

RECEIVER'S REQUESTED RELIEF

25. The Receiver respectfully requests that this Honourable Court grant an order confirming the priority of the charges established in the Receivership Order and declaring that to the proceeds of any assets realizations in respect of 125, 133 and HCMI are subject to such charges.

Dated at Calgary AB, this 5th day of March, 2014.

ERNST & YOUNG INC.

**in its capacity as Receiver and
Manager of 1252064 Alberta Ltd., 1330075 Alberta Ltd.
and Harvest Capital Management Inc.**



Neil Narfason, CA•CIRP, CBV
Senior Vice-President



Nick J.B. Purich, CA
Senior

Appendix A

Nick Purich

From: Ken Staroszk <kstar@wilcraft.com>
Sent: February 12, 2014 9:11 AM
To: MacLeod, Walker W.
Cc: Tara Hunsperger
Subject: Re: Panama

ok

On 14-02-12 8:50 AM, "MacLeod, Walker W." <wmacleod@mccarthy.ca> wrote:

>Ken, apologies, but I now realize I have an afternoon meeting - can we
> speak at 3 pm?

>

>

>Walker MacLeod
>Partner | Associé
>Bankruptcy & Restructuring | Faillite et restructuration
>403-260-3710
>403-463-1207
>403-260-3501
>wmacleod@mccarthy.ca
>McCarthy Tétrault LLP
>Suite 3300
>421 - 7th Avenue SW
>Calgary AB T2P 4K9

>

>

>Please, think of the environment before printing this message.

>

>

>-----Original Message-----

>From: Ken Staroszk [mailto:kstar@wilcraft.com]
>Sent: Tuesday, February 11, 2014 5:54 PM
>To: MacLeod, Walker W.
>Subject: Re: Panama

>

>Ok. I can call you at 2.

>

>Sent from my iPhone

>

>> On Feb 11, 2014, at 5:00 PM, "MacLeod, Walker W."

>><wmacleod@mccarthy.ca> wrote:

>>

>> Ken, thanks, Neil is tied up. I'm happy to meet but I would prefer
>> to do a call - I don't expect it to be a lengthy one as the issues are
>> not complicated?

>>

>>

>> Walker MacLeod
>> Partner | Associé
>> Bankruptcy & Restructuring | Faillite et restructuration

>> 403-260-3710
>> 403-463-1207
>> 403-260-3501
>> wmacleod@mccarthy.ca
>> McCarthy Téroult LLP
>> Suite 3300
>> 421 - 7th Avenue SW
>> Calgary AB T2P 4K9

>>
>> Please, think of the environment before printing this message.
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>>

>> -----Original Message-----

>> From: Ken Staroszik [mailto:kstar@wilcraft.com]
>> Sent: Tuesday, February 11, 2014 3:51 PM
>> To: MacLeod, Walker W.
>> Subject: Re: Panama

>>
>> That is fine. I could come to your office at 2:30. Do you want to
>> meet with Neil as well. Ken

>>
>> On 14-02-11 3:48 PM, "MacLeod, Walker W." <wmacleod@mccarthy.ca> wrote:
>>>

>>> Ken, would appreciate if we could coordinate a time this week to
>>> speak on this as we need clarity on this issue if we are going to
>>> proceed further in Panama. I am available tomorrow afternoon if
>>> that works with your schedule.

>>>

>>> Thanks,

>>>

>>> Walker MacLeod
>>> Partner | Associé
>>> Bankruptcy & Restructuring | Faillite et restructuration
>>> 403-260-3710
>>> 403-463-1207
>>> 403-260-3501
>>> wmacleod@mccarthy.ca
>>> McCarthy Téroult LLP
>>> Suite 3300
>>> 421 - 7th Avenue SW
>>> Calgary AB T2P 4K9

>>>

>>>

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>>>

>>> -----Original Message-----

>>> From: Ken Staroszik [mailto:kstar@wilcraft.com]
>>> Sent: Wednesday, February 05, 2014 9:59 AM
>>> To: MacLeod, Walker W.

>>> Cc: Tara Hunsperger
>>> Subject: Re: Panama
>>>
>>> Ok
>>>
>>> Sent from my iPhone
>>>
>>>> On Feb 5, 2014, at 9:17 AM, "MacLeod, Walker W."
>>>><wmacleod@mccarthy.ca>
>>>> wrote:
>>>>
>>>> Ken, thanks, I am away tomorrow - what about Friday?
>>>>
>>>> Sent from my iPhone
>>>>
>>>> On Feb 5, 2014, at 8:08 AM, "Ken Staroszik"
>>>> <kstar@wilcraft.com<mailto:kstar@wilcraft.com>> wrote:
>>>>
>>>> I will call you tomorrow .
>>>>
>>>> Sent from my iPhone
>>>>
>>>> On Feb 5, 2014, at 8:27 AM, "MacLeod, Walker W."
>>>> <wmacleod@mccarthy.ca<mailto:wmacleod@mccarthy.ca>> wrote:
>>>>
>>>> Ken, further to my email below, please advise if you now have
>>>> instructions relative to Legacy's position on the priority of the
>>>> Receiver's Charge on any assets or recoveries from Panama?
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>>>> <image001.png>
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>>>> Walker MacLeod
>>>>
>>>> Partner | Associé
>>>>
>>>> Bankruptcy & Restructuring | Faillite et restructuration
>>>>
>>>>
>>>> T: 403-260-3710
>>>>
>>>> C: 403-463-1207
>>>>
>>>> F: 403-260-3501
>>>>
>>>> E: wmacleod@mccarthy.ca<mailto:wmacleod@mccarthy.ca>
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>>>> McCarthy Tétrault LLP
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>>>> Suite 3300
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>>>> 421 - 7th Avenue SW
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>>>> Calgary AB T2P 4K9
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>>>> <image003.jpg>
>>>> <image007.png> <image008.png>
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>>>> From: MacLeod, Walker W.
>>>> Sent: Monday, January 06, 2014 10:03 AM
>>>> To: 'Ken Staroszik'
>>>> Cc: 'Neil Narfason'; Nick Purich; Collins, Sean F.
>>>> Subject: RE: Panama
>>>>
>>>> Ken, best wishes in 2014 to you. I'm following up on the email
>>>>below and am wondering if you have instructions relative to
>>>>Legacy's position on the priority of the Receiver's Charge on any
>>>>assets or recoveries from Panama?
>>>>
>>>> Thanks,
>>>>
>>>>
>>>> <Image001.png>
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>>>> Walker MacLeod
>>>>
>>>> Partner | Associé
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>>>> Bankruptcy & Restructuring | Faillite et restructuration
>>>>
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>>>> T: 403-260-3710
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>>>> C: 403-463-1207
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>>>> F: 403-260-3501
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>>>> E: wmacleod@mccarthy.ca<mailto:wmacleod@mccarthy.ca>
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>>>>
>>>> From: MacLeod, Walker W.
>>>> Sent: Thursday, December 12, 2013 9:18 AM
>>>> To: Ken Staroszk
>>>> Cc: Neil Narfason
>>>> Subject: RE: Panama
>>>>
>>>> Ken, thanks - Neil is unavailable today in any event so we can look
>>>>at setting up a time to speak thereafter. I'm happy to go through
>>>>the reasoning on our position on the Panama in more detail but the
>>>>short story is that the lack of funds in the estate and the risk of
>>>>litigating in Panama or Canada has led us to direct focus on
>>>>reaching a negotiated
>>>> resolution with the JV counter party. In order to achieve this
>>>>result
>>>> we believe we would need to take steps to recognize EY's authority
>>>>under the receivership order in Panama.
>>>>
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>>>> Walker MacLeod
>>>>
>>>> Associate | Sociétaire
>>>>
>>>> Bankruptcy & Restructuring | Faillite et restructuration
>>>>
>>>>
>>>> T: 403-260-3710
>>>>
>>>> C: 403-463-1207
>>>>
>>>> F: 403-260-3501
>>>>

>>>> E: wmacleod@mccarthy.ca<mailto:wmacleod@mccarthy.ca>
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>>>> <image002.png>
>>>> McCarthy Tétrault LLP
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>>>> Please, think of the environment before printing this message.
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>>>>
>>>> From: Ken Staroszik [mailto:kstar@wilcraft.com]
>>>> Sent: Thursday, December 12, 2013 7:07 AM
>>>> To: MacLeod, Walker W.
>>>> Cc: Neil Narfason
>>>> Subject: Panama
>>>>
>>>> I will recommend to the Legacy Board that it agree to a charge on
>>>> the Panama asset for the receiver.
>>>>
>>>> What is more difficult to determine is what to do to collect the
>>>> money. Does the receiver have to make a new application in Panama
>>>> for recognition now that the CCAA proceedings are over?
>>>>
>>>> Once the receiver or the monitor has recognition, what can he do?
>>>> Especially in Panama.
>>>>
>>>> The JVA provides that it is a Saskatchewan JV, is subject to the
>>>> laws of Saskatchewan. Why not sue in Saskatchewan or Alberta? If
>>>> so, who would the defendant be.
>>>>
>>>> Legacy is facing a limitation on Dec 21'13. I am contemplating
>>>> suing Aitkins and the JV for a return of Legacy' \$4.7 million.
>>>> This is not without its issues, but is the best course I can think
>>>> of at this time.
>>>> But I don't want to interfere with something the receiver/monitor
>>>> is doing.
>>>>

>>>> I am off the Grande Prairie in a few minutes, back tonight. Perhaps
>>>> we could talk tomorrow.

>>>>

>>>>

>>>> Ken

>>>>

>>>>

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>>

Nick Purich

From: Ken Staroszik <kstar@wilcraft.com>
Sent: March-03-14 5:26 PM
To: MacLeod, Walker W.
Subject: Re: Legacy - 125

Thanks. Ken

From: "MacLeod, Walker W." <wmacleod@mccarthy.ca>
Date: Mon, 3 Mar 2014 17:34:16 -0700
To: Kenneth Staroszik <kstar@wilcraft.com>
Cc: Neil Narfason <Neil.Narfason@ca.ey.com>, Nick Purich <nick.jb.purich@ca.ey.com>, Sean Collins <scollins@mccarthy.ca>
Subject: RE: Legacy - 125

Ken, the order in respect of Panama would simply confirm the priority of the charges as we have previously requested.

We are also bringing a separate application to declare that 125 Alberta is the legal and beneficial owner of the 59 Liberty LP units that are subject to dispute as between 125 Alberta and Legacy. The accounting analysis performed by the Receiver in respect of the acquisition of the units demonstrates conclusively that Legacy was not the source of the funds used to acquire the Liberty LP units. We need both of these issues resolved so that the administration of the estate can continue.

Effective March 17 - we move to the top!
Suite 4000

**mccarthy
tétrault**

Walker MacLeod
Partner | Associé
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T 403 262-1110
O 403-163-1207
F 403-262-1101
E w.macleod@mccarthy.ca

McCarthy Tétrault LLP
Suite 3001
425 - 7th Avenue SW
Calgary AB T2P 4K5

Please do not use electronic mail for sending this message



From: Ken Staroszik [mailto:kstar@wilcraft.com]
Sent: Monday, March 03, 2014 5:27 PM
To: MacLeod, Walker W.
Subject: Re: Legacy - 125

I was away in court in Yellowknife, so was not able to deal with your question earlier. However, as it turn out I am meeting with the board on Wednesday. Can you tell me what order the Receiver is seeking?

From: "MacLeod, Walker W." <wmacleod@mccarthy.ca>

Date: Mon, 3 Mar 2014 17:11:31 -0700

To: Kenneth Staroszik <kstar@wilcraft.com>

Cc: Sean Collins <scollins@mccarthy.ca>, Neil Narfason <Neil.Narfason@ca.ey.com>, Nick Purich <nick.jp.purich@ca.ey.com>

Subject: RE: Legacy - 125

Ken, as we have unfortunately not heard from you in respect of the below and need to advance the Panama recognition application we have booked March 13 at 2 pm for an application to confirm the priority of the charges in the Receivership Order. The Receiver's materials will be served later this week. If you would like to discuss any aspect of the application please contact me at your convenience.

Regards,

Effective March 17 - we move to the top!
Suite 4000

**mccarthy
tétrault**

**Walker MacLeod
Partner | Associate**

Bankruptcy & Restructuring | Real Estate Restructuring
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E: wmacleod@mccarthy.ca

McCarthy Tétrault LLP

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121 - 11th Avenue SW
Calgary AB T2P 4K9

Please click on the attachment before printing to save paper.



From: MacLeod, Walker W.

Sent: Monday, February 24, 2014 6:45 PM

To: 'Ken Staroszik'

Cc: Collins, Sean F.; Neil Narfason (Neil.Narfason@ca.ey.com); 'Nick Purich'

Subject: RE: Legacy - 125

Ken, can we please hear from you in relation to the email below and my email relative to Harvest GP (a copy of which is attached hereto for reference).

Effective March 17 - we move to the top!
Suite 4000



Walker MacLeod
Partner | Associate
Barristers & Solicitors | Real Estate Negotiators
F: 403 269 3710
C: 403 483 1501
F: 403 509 3501
E: w.macleod@mccarthy.ca

McCarthy Tétrault LLP
Suite 3000
421 - 7th Avenue SW
Calgary AB T2P 4K0

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From: MacLeod, Walker W.
Sent: Friday, February 14, 2014 3:12 PM
To: Ken Staroszik
Cc: Collins, Sean F.; Neil Narfason (Neil.Narfason@ca.ey.com); Nick Purich
Subject: Legacy - 125

Ken, further to our conversation earlier this week the Receiver confirms that (a) any settlement made in respect of the claims in Panama will either be made with the consent of Legacy or approval of the ABQB and (b) the Receiver will keep Legacy apprised of actions and developments in Panama. Please confirm by reply that Legacy will not contest the priority of the Receiver's Charge and the Receiver's Borrowing Charge arising under the September 30, 2013 Receivership Order in respect of 1252064 Alberta Ltd., 1330075 Alberta Ltd. and Harvest Capital Management Inc. (a copy of the order is attached for ease of reference).

Regards,



Walker MacLeod
Partner | Associate
Barristers & Solicitors | Real Estate Negotiators
F: 403 269 3710
C: 403 483 1501
F: 403 509 3501
E: w.macleod@mccarthy.ca

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