

**IN THE MATTER OF PROPERTY TUITION PTY LTD
(ACN 129 421 281)**

Proceeding No: VID407/2015

Australian Securities and Investments Commission

Applicant

Jamie Neville McIntyre First Respondent

Dennis McIntyre Second Respondent

**Archery Road Pty Ltd
(ACN 162 921 735)** Third Respondent

**Secret Valley Estate Pty Ltd
(ACN 602 817 532)** Fourth Respondent

**Kingsway South Holdings Pty Ltd
(ACN 159 230 976)** Fifth Respondent

**Bendigo Vineyard Estate Pty Ltd
(ACN 600 088 211)** Sixth Respondent

**Melbourne Tarniet Estate Pty Ltd
(ACN 603 945 393)** Seventh Respondent

**Property Tuition Pty Ltd
(ACN 129 421 281)** Eighth Respondent

**Education Holdings Pty Ltd
(ACN 129 551 917)** Ninth Respondent

**Sourcing Property Pty Ltd
(ACN 602 474 779)** Tenth Respondent

Tenth Respondent's Report

**Sourcing Property Pty Ltd
(Provisional Liquidators Appointed)
15 December 2015**



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Definitions

21 st Century Group	Education Holdings Pty Ltd, Property Tuition Pty Ltd, Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd, Melbourne Tarniet Estate Pty Ltd, Sourcing Property Pty Ltd and other entities controlled by Dennis and / or Jamie McIntyre
21 st Century Media Holdings Pty Ltd	Media Holdings
805 ARPL	805 Archer Road Pty Ltd (In Liquidation) (Subject to Deed of Company Arrangement)
ARITA	Australian Restructuring Insolvency and Turnaround Association
ARPL	Archery Road Pty Ltd
ASIC	The Australian Securities & Investments Commission
ATO	Australian Taxation Office
Bendigo property or Bendigo Vineyard Estate and Resort	51 St Andrews Road, Maiden Gully
Bendigo Scheme	Bendigo Vineyard Estate Scheme
Bendigo Vineyard	Bendigo Vineyard Estate Pty Ltd
Botanica	805 Archer Road, Kialla, Victoria
Broadview	Broadview Pinkett Pty Ltd
Corporate Respondents	Education Holdings Pty Ltd, Property Tuition Pty Ltd, Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd, Melbourne Tarniet Estate Pty Ltd, Sourcing Property Pty Ltd
Date of Appointment	7 October 2015
Deloitte	Deloitte Touche Tohmatsu
Developments	805 Archer Road, Kialla, Victoria, 1955 Old Sydney Road, Bylands, Victoria, 124 Booth Road, Brookhill, Queensland, 51 St Andrews Road, Maiden Gully, Victoria and 1491 Dohertys Road, Mount Cottrell, Victoria
Development Companies	Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd and Melbourne Tarniet Estate Pty Ltd
DIRRI	Declaration of Independence and Relevant Relationships and Indemnities
DOCA	Deed of Company Arrangement
Education Holdings	Education Holdings Pty Ltd, formerly 21 st Century Education Pty Ltd
ERV	Estimated Realisable Value
FME	Farm Management Enterprises Pty Ltd
Henry River	Henry River Pty Ltd
IOC3	Isle of Capri 3 Pty Ltd
Kialla property	805 Archer Road, Kialla
KS Holdings	Kingsway South Holdings Pty Ltd
LRA	Lot Reservation Agreement
LRD	Lot Reservation Deed
Management	Management of the Company
McIntyre Controlled Entities	Broadview Pinkett Pty Ltd, Pinnacle Event Management Pty Ltd, Financial Educators Association Pty Ltd, Salarium Services Pty Ltd, 21st Century Media Holdings Pty Ltd, Isle of Capri 2 Pty Ltd, Isle of Capri 3 Pty Ltd, Property Direct (International) Pty Ltd, GC Princess Boatshare Pty Ltd, Farm Management Enterprise Pty Ltd,

	Siddha Holdings Pty Ltd and Phoenix Investment Holdings LLC
Melbourne Grove Estate or Mt Cottrell Property	1491 Dohertys Road, Mount Cottrell, Victoria
MGE Scheme	Melbourne Grove Estate Scheme
MIS	Managed Investment Scheme
NAB	National Australia Bank Ltd
Oak Valley Lakes Estate and Resort	124 Booth Road, Brookhill, Queensland
Order	Order made by Middleton J. on 7 October 2015 in the Federal Court of Australia, Victoria General Division No.VID 407/2015
OVE Scheme	Oak Valley Estate Scheme
Pinnacle	Pinnacle Event Management Pty Ltd
POD	Proof of Debt
PPSA	Personal Properties Security Act
PPSR	Personal Property Securities Register
Proceeding	Federal Court of Australia, Victoria General Division No.VID 407/2015 between ASIC and Jamie Neville McIntyre &OR's commenced by Originating Process dated 3 August 2015
PDI	Property Direct (International) Pty Ltd
Provisional Liquidators	Simon Wallace Smith and Robert Scott Woods appointed pursuant to s472(2) of the Act as joint and several provisional liquidators of each of the Corporate Respondents pursuant to the Orders
PSA	Property Sourcing Agreement
PT	Property Tuition Pty Ltd formerly 21 st Century Property Pty Ltd
RATA	Report as to Affairs
Salarium Services	Salarium Services Pty Ltd
Schemes	Botanica, Secret Valley Estate, Oak Valley Lakes Estate and Resort, Bendigo Vineyard Estate and Resort and Melbourne Grove Estate
Secret Valley	Secret Valley Estate Pty Ltd
Secret Valley Estate or Wallan Property	1955 Old Sydney Road, Bylands, Victoria
Sourcing Property	Sourcing Property Pty Ltd
SV Scheme	Secret Valley Estate Scheme
Tarniet	Melbourne Tarniet Estate Pty Ltd
The Act	Corporations Act 2001
The Court	The Federal Court of Australia or any of the state Supreme Courts
The Regulations	Corporations Regulations 2001
Townsville Property	124 Booth Road, Brookhill, Queensland
WBC	Westpac Banking Corporation Ltd
www	What Working Women Want
Xero	Xero Accounting Software Program

Sourcing Property Pty Ltd

The report should be read in conjunction with the Summary Report.

Sourcing Property was incorporated on 22 October 2014. Dennis McIntyre is the sole Director and Secretary of Sourcing Property. The sole shareholder is Henry River. Jamie McIntyre is the sole shareholder of Henry River.

Since 22 October 2014, the registered office and principal place of business of Sourcing Property was Level 8, 96-100 Albert Road, South Melbourne, Victoria (“Albert Road premises”).

A copy of the historical company extract maintained by ASIC is attached as **annexure SP-1**.

1. Company Background

We were advised in our interview with Jamie McIntyre on 19 October 2015 that Sourcing Property was incorporated to source property for land banking schemes in Queensland as a result of different legislative requirements, however the company never traded. This is discussed in further detail below.

We note that on 7 October 2015, we were also appointed as Provisional Liquidators of KS Holdings. We note that KS Holdings was to be the developer of “Oak Valley Estate,” the OVE Scheme, a property at 124 Booth Road, Brookhill, Queensland.

Investors wishing to reserve a lot in the Townsville property were invited to sign a Lot Reservation Deed (“LRD”) with KS Holdings. According to the terms of the LRD, KS Holdings would reserve the lot for the investor and develop the Townsville property in accordance with the concept plan. The price recorded in the LRD was the price for the investor to purchase the lot in the event that development approval was obtained. Clause 5.3 of the LRD however provided that investors would have no liability to pay any money under the LRD.

According to our investigations, investors wishing to reserve a lot in the Townsville property were offered the opportunity to enter into a Property Sourcing Agreement (“PSA”) with Sourcing Property.

The PSA provided the following:

- Investors would become members of Sourcing Property;
- Members would be entitled to acquire an interest in a lot in the land development (“investment opportunity”) sourced by Sourcing Property by payment of a project sourcing fee;
- In the event that the investment opportunity did not proceed within 20 years, the member would have **45 days** to request a refund of the project sourcing fee;
- If members did not exercise their right to a refund within the 45 days then their investment would roll over for a further 5 year period; and
- If approval was not obtained following the expiration of the additional 5 year period, the PSA would terminate and “no monies paid by the member pursuant to this agreement shall be refundable”¹

¹ Clause 4.1(c) of the Property Sourcing Agreement

The PSA also provided members with a charging right over the assets of Sourcing Property for all monies that are or may become due and payable. This right was enforceable if Sourcing Property defaulted under the PSA.

A copy of the PSA and LRD are attached as **annexures SP-2** and **SP-3**.

By virtue of ASIC filing winding up proceedings, Sourcing Property has defaulted under the PSA² and accordingly investors have enforceable and registrable charging rights over the assets of Sourcing Property in relation to all monies due and payable to them. As outlined above however, members were only entitled to a refund if, following the expiration of the 20 year period for development approval, they requested same within 45 days³.

We note that we have not identified any assets of Sourcing Property. Furthermore, on the basis of our interviews with Jamie and Dennis McIntyre on 19 October 2015 and 20 October 2015, respectively, we do not consider that Sourcing Property was ever intended to own assets. Accordingly, we do not consider there to be any value in the charging right given to investors.

The Townsville property was promoted as being a 20 year project however clause 6 of the LRD provided that it would terminate after a period of 3 years from the date of signing, if not terminated earlier. The PSA is for a term of 20 years (and can be extended). The marketing material for the OVE Scheme also provides for a period of 20 years. The fact that the LRD only provides for a term of 3 years is inconsistent with the manner in which the OVE Scheme was promoted. Accordingly, we consider the marketing material to be both misleading and deceptive in this regard.

Our investigations have revealed that 14 investors paid amounts totalling \$704,697 in relation to the OVE Scheme.

A copy of the investor list is attached as **annexure SP-4**.

We consider that the use of the LRD and PSA appear to be a deliberate attempt to circumvent the *Land Sales Act 1984* (Qld) (**LS Act**) which requires that any monies paid under an agreement whereby proposed lots are sold, subject to being subdivided, are required to be held on trust. Where funds are released from trust, they are required to be repaid immediately. By using the PSA to sell “membership services” to investors, commission was paid and released, without, purportedly, Sourcing Property, KS Holdings or PT being in breach of the LS Act.

Whilst the LRD is arguably void at the option of the investor because of non-disclosure issues under the LS Act, the LRD does not fall foul of the requirements to hold money on trust as no monies were payable under it.

Under section 89 of the *Property Occupations Act 2014* (Qld) (“PO Act”), if a company wishes to keep the sourcing fee, otherwise than on trust, the company is required to:

- a) hold a property agent's licence; and
- b) be authorised under the licence to perform the activity they are seeking a reward for; and
- c) be properly appointed under part 4 by the person to be charged with the reward or expense (by entering into a Property Occupations Form 6).

We note that a person who keeps a “reward” for the performance of an activity as a property agent other than as set out above commits an offence. Our investigations indicate that neither Sourcing Property nor PT are, or were at the time of release of the sourcing fee, licensed estate agents. Further,

² Clause 11.2(d) of the Property Sourcing Agreement

³ Clause 4.1(a) of the Property Sourcing Agreement

our investigations do not indicate that the requisite Form 6 was provided to investors in relation to the PSA.

Investors may have rights to recover from Sourcing Property and PT the sourcing fees not held on trust for them and released however we note that both entities are in provisional liquidation.

2. Summary of Transactions

According to both Dennis and Jamie McIntyre, in consideration for promoting sales of lots in the Developments on behalf of the Development Companies, PT was entitled to, pursuant to a commission agreement between the respective companies, receive 50% of the lot reservation fees paid by investors. This fee was to satisfy “administrative expenses, marketing expenses and commissions paid to PT.”⁴ We note that we have not been able to locate a copy of the commission agreement.

During separate interviews with both Jamie and Dennis McIntyre on 19 October 2015 and 20 October 2015, respectively we requested that a copy of the commission agreement be provided to our office. On 20 October 2015, a list of documentation / information required to be provided to our office (including the commission agreement) was emailed to Michaela Prince of Carlton Ross.⁵ On 23 October 2015, Michaela Prince of Carlton Ross emailed our office and advised that Dennis McIntyre believed that a copy of the commission agreement had been provided to ASIC. We note that ASIC has advised that they have not been provided with or sighted a copy of the agreement. On 2 November 2015, Ms Stephanie Forgione of our office emailed Michaela Prince and requested details of who provided the commission agreement to ASIC and asked that they seek a copy of the agreement from that person. On 10 November 2015, we received a reply email advising that they were unsure who provided the commission agreement to ASIC and accordingly were unable to provide our office with this information.

On this basis, we have doubts as to the existence of a documented commission agreement between the respective Development Companies and PT and we consider the payment of a 50% commission to be excessive and unreasonable in the circumstances. Furthermore, our investigations indicate that the purported obligation to pay a 50% commission was not disclosed to investors in any of the due diligence or marketing material provided to them by PT, KS Holdings or Sourcing Property with respect to the Townsville development and / or OVE Scheme.

As outlined above, there was no requirement for investors to make any payments to the Development Company, KS Holdings under the LRD. Investors were required however to pay a membership fee to Sourcing Property under the PSA.

Our investigations have revealed that investors were issued with a tax invoice from PT in relation to the sourcing fees which were payable to Sourcing Property under the PSA. Further, these sourcing fees were paid to and / or deposited into a bank account maintained by PT and recorded as a loan to PT in the KS Holdings Xero accounts. KS Holdings recognised the sourcing fees paid to PT as revenue in its accounts. KS Holdings credited this loan account for an amount equal to 50% of the sourcing fees paid by investors as at 30 June 2015 in the amount of \$328,257⁶ pursuant to the purported commission arrangement thereby reducing the balance of the loan account and the amount payable by PT.

We have been unable to identify any bank account maintained by Sourcing Property.

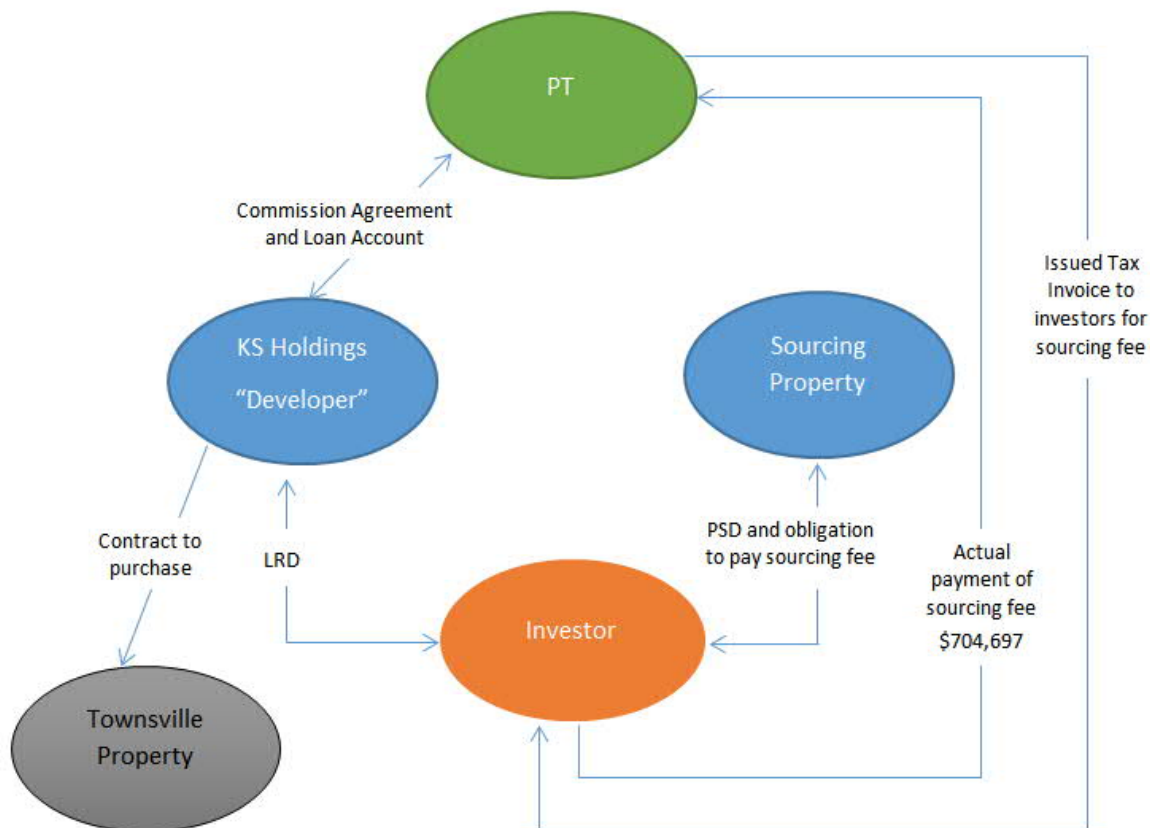
⁴ Para 23 of affidavit of Jamie McIntyre, sworn on 31 August 2015

⁵ Carlton Ross represent Dennis and Jamie McIntyre

⁶ We note that this was a manual journal in the accounts of PT which was created on 25 August 2015.

Our investigations have revealed that 14 investors paid amounts totalling \$704,697 in relation to the OVE Scheme.

A summary of the above arrangement is illustrated in the following diagram:



Our investigations have not revealed that the obligation to pay a 50% commission to PT was disclosed in the PSA, LRD or any other promotional material issued to investors in relation to the OVE Scheme. The LRD's refer to the developer incurring project expenses. Project expenses are defined as "the expenditure and all capital and operating costs, charges, expenses, fees, taxes.....and other payments and expenditures incidental to the conduct of the project."⁷

An extract from one of the marketing brochures issued to investors in relation to the OVE Scheme is provided below:

16. What's in it for 21st Century Property?

21st Century Property gains a membership fee for providing education on advanced property strategies and a project sourcing fee for acting as a facilitator between the developer and sophisticated investors. 21st Century Property also offers the service of connecting potential reservation agreement holders with developers, including development projects of associated companies.

This marketing brochure is attached as **annexure SP-5**.

⁷ Clause 1.1 of the Oak Valley Lakes Estate and Resort Lot Reservation Deed.

3. Assets and Liabilities

On 8 October 2015, we were provided access to the Xero accounting software maintained by the Corporate Respondents in relation to 7 of the 8 Corporate Respondents over which we were appointed. We note that Sourcing Property does not appear to have maintained any Xero accounts.

Dennis McIntyre provided our office with a completed RATA on 4 November 2015. A copy of the RATA is attached as **annexure SP-6**. We lodged the RATA with ASIC on 5 November 2015. We note that the RATA did not record any assets or liabilities.

Following our appointment, we undertook the following in order to identify whether Sourcing Property owned any assets or had any liabilities:

- Issued correspondence to major financial institutions regarding any accounts held;
- Issued correspondence to VicRoads, NSW RTA and Queensland Transport in order to identify any vehicles; and
- Conducted land titles searches.

We note that no assets were identified.

Further, our investigations have not identified any liabilities of Sourcing Property. We note that the ATO has advised that the Company was not registered for GST.

We consider that investors may have contingent claims against Sourcing Property in relation to the membership fees paid which were refundable in the event that development approval was not obtained. On the basis of investigations conducted to date, we consider these contingent claims to be approximately \$704,697. Further investigations however would need to be conducted in relation to same before determination regarding any claims can be made.

A liquidator, if appointed, would need to conduct further investigations regarding any assets which may be owned by Sourcing Property and further any claims which may be made in relation to the “membership fees” paid to PT under the PSA.

4. Opinion as to Solvency

In the absence of any books and records of the Company or identified assets and / or liabilities, we are unable to comment as to the solvency of Sourcing Property.

5. Likely return to creditors

We have not identified any claims against Sourcing Property, save for the potential contingent claims of investors.

6. Other information necessary to enable the Company's financial position to be assessed

In order to understand the financial position of Sourcing Property, we would require the following:

- Complete set of books and records maintained (if any);
- Complete set of PSA's signed by investors; and
- Further details regarding its affairs and trading activities (if any).

7. Suspected contraventions of the Act

7.1. Failure to maintain proper books and records

Pursuant to Section 286 of the Act, a company must keep written financial records that correctly record and explain its transactions, financial position and performance and would enable true and fair financial statements to be prepared and presented in accordance with the accounting standards.

As outlined in the Summary Report, from an examination of the books and records we have obtained it appears that there has been a failure to maintain proper books and records.

We note that besides an incomplete set of executed PSAs, we have been unable to locate any records maintained by Sourcing Property. We further note that unlike the other Corporate Respondents, Sourcing Property did not maintain any Xero accounts.

7.2. Breach of Director's Duties

Section 9 of the Act defines a director to include a person who, despite not being validly appointed as a director, acts in that capacity or the directors of the company are accustomed to acting in accordance with that person's instructions.

We consider that Jamie McIntyre is a director of Sourcing Property (and the other Corporate Respondents) within the definition of section 9 of Act by virtue of the following:

- He liaised with and made representations to ASIC regarding the Company's financial position;
- It is clear, from interviews conducted with the group's Chief Financial Officer and General Manager that they were all accustomed to acting in accordance with the instructions of Jamie McIntyre;
- Swarit Verma (the CFO) advised during his interview that transactions from the bank account were approved by Jamie McIntyre; and
- Dennis McIntyre, the Director was accustomed to acting in accordance with his instructions.

We further consider that both Dennis and Jamie McIntyre (the "Directors") have breached the following duties as directors.

7.2.1 Failure to act in good faith, in the best interests of the company and for a proper purpose

We consider that the Directors have breached their duties to Sourcing Property and failed to act in good faith and in its best interests by virtue of allowing all amounts payable to it under the PSA to be paid to PT. We note that as Directors of PT, the Directors ought to have known that it was unable to repay these amounts / loans. Accordingly, we consider that the Directors have acted improperly, in the absence of good faith and without care and diligence to the detriment of Sourcing Property, which has resulted in a benefit to another entity they control.

As outlined above, a liquidator, if appointed, would be required to conduct further investigations regarding PT's affairs and identify any further breaches of the Act and any additional transactions which may be recoverable for the benefit of creditors.

7.3. Uncommercial Transactions

Section 588FB defines an uncommercial transaction as a transaction where it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:

- a) the benefits (if any) to the company of entering into the transaction; and
- b) the detriment to the company of entering into the transaction; and
- c) the respective benefits to other parties to the transaction of entering into it; and
- d) any other relevant matter.

Payments made by investors in relation to the Townsville Development / OVE Scheme under the PSA were not paid to Sourcing Property.

We provide the following summary in relation to the funds paid by investors to reserve a lot in the Townsville property:

- A sourcing fee was paid by investors under the PSA executed with Sourcing Property;
- PT invoiced investors for the sourcing fee;
- Sourcing fees were paid to PT;
- KS Holdings recorded sourcing fees paid as revenue and the payments received by PT against the PT loan account; and
- KS Holdings credited this loan account for an amount equal to 50% of the sourcing fees paid by investors pursuant to the purported commission arrangement thereby reducing the balance of the loan account and the amount payable by PT.

We have identified 14 investors who paid amounts to PT in relation to the OVE Scheme by way of membership fees totalling \$704,697. We consider that these amounts were payable to Sourcing Property under the PSA and accordingly that they represent loans to PT. We note that PT is insolvent and unable to repay any amounts received from / on behalf of Sourcing Property.

We consider that these loans to PT were uncommercial and were made to the detriment of Sourcing Property in circumstances where the Directors ought to have known that PT was unable to repay these amounts. Further, we do not consider that a reasonable person in the circumstances of the Company would have entered into these transactions having regard to the detriment to Sourcing Property.

We note that a liquidator, if appointed, would conduct further investigations regarding these transactions in order to identify any amounts which may be recoverable for the benefit of creditors.

8. Provisional Liquidators' Recommendation

Given the nature of the breaches identified and the financial position of Sourcing Property, we recommend that it be wound up to enable proper investigations to be conducted into its affairs.

A liquidator would be required to undertake a detailed funds tracing exercise in order to identify any transactions which may be recoverable for the benefit of any creditors.

Annexures

Document No.	Description of Document
1	Company Historical Extract as at 7 October 2015
2	Property Sourcing Agreement for [REDACTED]
3	Lot Reservation Deed for [REDACTED]
4	List of investors in the Oak Valley Estate Scheme
5	Marketing Brochure for Oak Valley Estate & Resort
6	Report as to the Affairs of Dennis McIntyre dated 5 November 2015