

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2025-485-487
[2025] NZHC 2627**

UNDER	Part 19 of the High Court Rules, Part 16 of the Companies Act 1993 and Part 7 of the Trusts Act 2019
IN THE MATTER	of an application concerning CRYPTOPIA LIMITED (IN LIQUIDATION) and CRYPTOPIA NZDT LIMITED (IN LIQUIDATION)
AND	
IN THE MATTER	of an application by DAVID IAN RUSCOE and MALCOLM RUSSELL MOORE as liquidators of Cryptopia Limited (in liquidation) and Cryptopia NZDT Limited (in liquidation)

Hearing:	On the papers
Appearances:	S A Barker and B McKinnon for the liquidators
Judgment:	9 September 2025 at 4.00 pm

**JUDGMENT OF ISAC J
[Appointment of counsel and directions as to service]**

Introduction

[1] The liquidators of Cryptopia Ltd have filed an originating application on notice for directions as to the treatment of unclaimed assets in Cryptopia’s liquidation (the unclaimed assets application).

[2] Accompanying the unclaimed assets application is a without notice interlocutory application seeking orders to facilitate the determination of the unclaimed assets application. In particular, the without notice application seeks:

- (a) the appointment of Ms Jenny Cooper KC and Ms Jane Barrow as representative counsel for creditors of the company;
- (b) the appointment of Mr Peter Watts KC and Mr Matthew Crawford as counsel assisting the Court to provide arguments for and against the liquidators' preferred approach as to the unclaimed assets application in relation to any issues arising that are not dealt with by counsel appointed to represent the unsecured creditors of the company;
- (c) payment of court-appointed counsel's costs and disbursements in respect of their appointments; and
- (d) service.

[3] The liquidators have sought these orders on the papers and this judgment addresses the without-notice application.

Background to the applications

[4] The affidavit of Mr David Ruscoe of 31 July 2025 in support of the unclaimed assets application sets out the relevant background. Briefly it establishes the following context.

[5] The applicants are the liquidators of Cryptopia appointed by special resolution of shareholders on Tuesday 14 May 2019.

[6] In a previous proceeding concerning the liquidation Gendall J found that Cryptopia, as bare trustee, held cryptocurrency assets on trust for the benefit of

accountholders.¹ Each cryptocurrency was held on separate trust for the benefit of accountholders with holdings of that particular currency.

[7] In a later proceeding the liquidators applied for directions from the Court regarding a distribution process that returns cryptocurrency held on trust by Cryptopia to account holders as beneficiaries. On 1 March 2024, Palmer J made several directions as to the distribution of cryptocurrency to account holders and the application of trust administration costs to each of the cryptocurrency trusts.

[8] There is a final cut-off date for claims on 30 September 2025, after which the liquidators may proceed on the basis that the only beneficiaries of each cryptocurrency trust are those account holders who have fully completed the claims portal process. After that stage, the liquidators will require directions as to treatment of unclaimed assets and various other issues necessary to wind up the liquidation of Cryptopia, including making a distribution to unsecured creditors of the company, and transferring the trust property to treasury or to a new trustee (Public Trust).

[9] Determination of the unclaimed assets application will affect the interests of all beneficiary account holders. The beneficiaries include over 960,000 account holders with an account registered to Cryptopia that had a positive coin balance at the date of liquidation. They are registered in over 180 countries. It will also affect the interests of unsecured creditors by either increasing or reducing the pool of assets available to creditors and the number of creditors in the liquidation.

[10] The liquidators' concern now is to ensure the determination of the unclaimed assets application in accordance with the company's duties as bare trustee under the Trusts Act 2019 and at common law.

¹ *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809.

Jurisdiction

[11] Counsel-assisting are appointed by the Court at its discretion.² They do not represent a party to the proceedings.³ Instead, their role is to assist the Court in a way in which the Court would not otherwise have been assisted.⁴ The scope of the role varies according to the circumstances of the particular case.⁵ The Court has the power to appoint representative counsel and to appoint counsel-assisting under r 4.27 of the High Court Rules.

[12] The Court has a supervisory jurisdiction to give directions in relation to “the exercise of any power or performance of any function by the trustee” in the Trusts Act.⁶ An application for directions under s 133 may be brought by way of originating application under r 19.5 of the High Court Rules 2016.⁷

[13] Section 133 gives the Court a broad equitable power to make orders necessary to enable a trustee to perform their duties.⁸ The Court should be properly provided with all the relevant facts, documents and information necessary to give “scrupulous consideration” to a proposed direction under s 133.⁹

[14] Section 4(b) of the Trusts Act sets out a principle that trusts should be administered in a way “that avoids unnecessary cost and complexity”.

[15] The Courts have appointed representative counsel for interested parties in a number of cases including those concerning trusts.¹⁰ In the previous *Cryptopia*

² *Beneficial Owners of Whangaruru Whakaturia No 4 v Warin* [2009] NZCA 60, [2009] NZAR 523 at [21].

³ *AR v Immigration and Protection Tribunal* [2017] NZHC 1401 at [4].

⁴ *Solicitor-General v Moodie* HC Wellington CIV-2005-485-126, 25 July 2006 at [6].

⁵ *Registered Securities Ltd (in liq) v C* (1999) 13 PRNZ 699 at 705-706.

⁶ Trusts Act 2019, s 133.

⁷ Usually, originating applications must fall under one of the enactments listed in r 19.2. However, the Trusts Act, s 133 is not listed. Rule 19.5 permits the Court, in the interests of justice, to allow any proceeding not specifically mentioned to be commenced by originating application. Previous cases have proceeded under r 19.5: See *Macnamara v Macnamara* [2021] NZHC 2361 at [16]; *Covic v Barbarich* [2021] NZHC 2159 at [1].

⁸ *Re McMillan* [2021] NZHC 1497 at [7].

⁹ *Re Honoris Trust* [2021] NZHC 2957 at [55]–[60].

¹⁰ *Wellington 1990 Trust v Wellington Show Association Inc* HC Wellington CP 250-90, 16 July 1990; *Holland v Jonkers* [2021] NZHC 3469; *Re Jury* [2022] NZHC 568; *Re Hugh Green Trust* [2021] NZHC 2184; *Re estate of Vasey* [2015] NZHC 1491; *Sayes v Tamatekapua & Ors* HC Auckland CIV-2007-404-516, 21 November 2008; and *Shanks v Shanks* HC Dunedin CIV-2010-412-310, 2 July 2010.

proceeding of *Ruscoe v Cryptopia Ltd (in liq)*,¹¹ representative counsel (Ms Cooper for creditors and Mr Watts for account holders) were appointed to represent different classes of parties that would or would not benefit from a finding that the digital assets are property that are held on trust for account holders.

The applications

Appointment of representative counsel for the unsecured creditors

[16] The liquidators propose that representative counsel be appointed for the unsecured creditors of Cryptopia on the basis that creditors may be affected by the outcome of the unclaimed assets application. The Court's decision will affect the total number of creditors admitted in the liquidation and the pool of assets available to satisfy their claims. Individual representation for each creditor would cause significant delay in resolution of the matter and would result in unnecessary duplication of cost for affected parties who share a common interest. The interests of justice can be met through appointment of experienced counsel to represent their interests.

[17] Further, appointing counsel to represent the interests of a large body of creditors is permitted in liquidation proceedings to facilitate the efficient and economic resolution of the matter.¹² This application is analogous to an application by liquidators for directions brought pursuant to s 284 Companies Act.

[18] Ms Cooper has been appointed in this role in the liquidators' two previous applications for directions in relation to the liquidation of Cryptopia. Ms Barrow has appeared as Ms Cooper's junior in both previous applications. Both have consented to this appointment.

¹¹ *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728; [2020] 2 NZLR 809

¹² *Re Landbase Nominee Co Ltd* (1989) 4 NZCLC 65,093; *Re Registered Securities Ltd* (1990) 5 NZCLC 66,248; and *Re Trans Capital Ltd (in liquidation)* HC Wellington M84/99 26 May 2000.

Counsel-assisting

[19] Representative counsel is unlikely to be appointed in respect of a class of persons whose interests involve substantial internal conflicts.¹³ For that reason, the liquidators also propose appointment of counsel-assisting.

[20] Appointment of counsel-assisting is sought on the basis that:

- (a) There are a significant number of account holders who have an interest in the outcome of the unclaimed assets application.¹⁴
- (b) There are many overlapping groups of account holders who, due to their particular cryptocurrency holdings, their participation in the claims portal to date, and whether or not they have suffered losses in the hack, may or may not benefit from a particular order sought. To split the body of account holders into various classes with common interests and appoint representative counsel for each class would cause delay in resolution of the matter and would result in unnecessary expenditure of trust assets. The interests of justice can be met through appointment of experienced counsel-assisting to make arguments for and against the liquidators' preferred approach to the completion of the liquidation in the unclaimed assets application, for the Court's benefit.
- (c) The orders sought are a pragmatic, fair and efficient solution to the practical difficulties that will arise, if parties were required to obtain individual representation.

[21] The liquidators seek the appointment of two counsel-assisting: Mr Watts and Mr Crawford. Mr Watts has been court-appointed counsel in the liquidators' two previous applications for directions in relation to the liquidation of Cryptopia.¹⁵ The

¹³ Jessica Gorman and others *McGechan on Procedure* (online ed, Thomson Reuters). at [HR4.27.01].

¹⁴ There are approximately 960,000 account holders with a positive balance, each a beneficiary of at least one of the many trusts operated by Cryptopia.

¹⁵ In CIV-2019-409-544, he acted as representative counsel for account holders; and in CIV-2023-485-411 he acted as counsel-assisting.

liquidators consider it necessary to also appoint Mr Crawford because Mr Watts will be unavailable for some periods. Further, given the number of issues affecting account holders in the application, the Court would benefit from the appointment of two counsel-assisting, to ensure all relevant arguments are raised and ventilated. Both Mr Watts and Mr Crawford have consented to the appointment.

Costs of appointed counsel

[22] The liquidators seek orders that the reasonable costs and disbursements (at appropriate commercial rates) of court-appointed counsel, of and incidental to the unclaimed assets application, be met: for Ms Cooper and Ms Barrow, from the company's assets; and for Mr Watts and Mr Crawford, from the trust assets.

[23] The liquidators consider it is appropriate to do so because the appointments are necessary to enable the Court to determine the application. Further, the appointment will facilitate the most efficient method for determining the relevant issues. It is in the interests of both the beneficiaries of the trusts and the creditors of the company that the application is determined efficiently. It is also in all account holders' and creditors' interests that all relevant arguments are appropriately ventilated.

Service on account holders

[24] The liquidators say they cannot effect personal service because for the majority of account holders the only contact information held by Cryptopia is an email address. The directions sought as to service are consistent with directions obtained in previous Cryptopia proceedings, the liquidators' reports¹⁶ and previous sale applications determined by the Court.¹⁷ They are also consistent with the usual method by which Cryptopia gave notice to account holders under its terms.

[25] The liquidators say there has historically been good engagement with the company's web page after the liquidators' reports have been published.

¹⁶ Varied Court Orders under ss 255 and 257 of the Companies Act 1993, dated 27 May 2019.

¹⁷ CIV 2019-409-286 on 29 May 2019; CIV 2021-409-33 on 19 February 2021; CIV 2022-485-47 on 16 February 2022; CIV 2023-485-411 on 9 August 2023.

[26] The directions sought for service of the interlocutory application nevertheless includes directions that an email is sent to each account holder (if the liquidators hold their email address), attaching a link to downloadable copies of the documentation to be served, to ensure that all affected parties can access copies of the documents.

[27] The proposed directions are said to best achieve the overarching objective of the High Court Rules and are an appropriate solution to the practical difficulties caused by the limited contact information held for the majority of account holders, the large number of account holders and their geographical spread around the world.

Without notice application

[28] Finally, the liquidators submit it is appropriate that the interlocutory application be determined on a without notice basis for the following reasons:

- (a) Requiring the matter to proceed on notice would cause undue delay, and prejudice to all parties interested in the application for distribution. There is a significant number of parties involved, and service would be both expensive and cause considerable delay.
- (b) Personal service of the application is not otherwise possible, because the liquidators do not have any other available means of contacting the vast number of account holders (recognised in the orders made by Gendall J dated 17 May 2019 (varied 24 May 2019) in CIV 2019-409-247).
- (c) The proposed approach to service is consistent with the Court's previous orders in relation to the Cryptopia liquidation.¹⁸
- (d) The application relates to a routine matter, being orders for representation and service in the context of a liquidation that affects a significant number of actual and potential parties.

¹⁸ Orders of Gendall J dated 29 May 2019, 19 February 2021 and 16 February 2022. Orders of Palmer J dated 9 August 2023.

- (e) Beneficiaries known to the applicants who may wish to be heard on this application will be notified on a *Pickwick* basis and may apply to be heard on the application.
- (f) The proposed orders would be brought to the attention of beneficiaries, who retain the right to apply to modify or extinguish them, on notice to the other parties to the application.

[29] The liquidators seek to have the issues in the interlocutory application determined on a without notice basis under r 7.23 of the High Court Rules, albeit copied to proposed court-appointed counsel.¹⁹

[30] The liquidators also accept it is appropriate that notice be given to the beneficiaries of Cryptopia after the orders are made, with leave to apply to discharge or vary the orders, providing that such an application is brought promptly.

Consideration and orders

[31] Having considered the affidavit of Mr Ruscoe of 31 July 2025 and the memorandum of counsel for the liquidators of 6 August, I am satisfied it is appropriate to grant the orders sought for the reasons advanced by the applicants.

[32] I therefore make orders:

- (a) appointing Jenny Cooper and Jane Barrow as representative counsel for creditors of the company;
- (b) appointing Peter Watts and Matthew Crawford as counsel assisting the Court;
- (c) directing that:
 - (i) the role of court-appointed counsel is to assist the Court in respect of this proceeding, either in the interests of unsecured

¹⁹ High Court Rules 2016, r 19.4.

creditors as a class (in the case of Ms Cooper and Ms Barrow),
or to assist the Court (in the case of Mr Watts and Mr Crawford);

- (ii) it is not Ms Cooper or Ms Barrow's role to represent the interests of account holders (including hack victims) as a class except to the extent they are in the same position as other unsecured creditors who are not account holders;
 - (iii) it is not the role of court-appointed counsel to represent the interests of any individual party, whether they are a creditor or an account holder or have some other interest in the liquidation;
 - (iv) the duties of court-appointed counsel are owed to the Court, not to any individual party, creditor or account holder;
 - (v) Mr Watts and Mr Crawford are counsel assisting the Court. They are not representing the interests of any party or any class of party interested in the liquidation of Cryptopia;
- (d) directing that the reasonable fees and disbursements of Jenny Cooper and Jane Barrow (at appropriate commercial rates) relating to the application shall be met from company assets on the basis that their fees and expenses are a necessary and reasonable expense of the liquidation;
- (e) directing that the reasonable fees and disbursements of Peter Watts and Matthew Crawford (at appropriate commercial rates) relating to the application shall be met from the trust assets, on the basis that their fees and expenses are necessary and reasonable expenses of exercising the duties of trustee, of and incidental to the protection, preservation, management and distribution of cryptocurrency held on trust;
- (f) leave is reserved for any party to file an application for joinder to the unclaimed assets application if they wish to appear by separate counsel;

- (g) leave is reserved for the liquidators to apply to the Court to extent these orders beyond the determination of the unclaimed assets application;
- (h) service of the unclaimed assets application is to be effected on account holders and creditors of Cryptopia by making downloadable copies of the proceedings available on the Cryptopia website and account holder email addresses (if provided);
- (i) any interested party to the unclaimed assets application is granted leave to apply to the Court within 10 working days of such service referred to in (h) to modify or discharge these orders on appropriate notice being given to the liquidators;
- (j) leave is reserved for the liquidators to apply further in respect of any ancillary orders.

Isac J

Solicitors:
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