

2022 012 4092  
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF an application of the  
Roman Catholic Episcopal Corporation of  
St. John's

AND IN THE MATTER OF the Companies'  
Creditors Arrangement Act, RSC 1985,  
c C-36, as amended

**INTERLOCUTORY APPLICATION**  
*(Inter Partes)*

<b>SUMMARY OF CURRENT DOCUMENT</b>	
Court File Number(s):	2022 012 4092
Date of Filing Document:	July 13, 2022
Name of Party Filing or Person:	The Monitor, Ernst & Young Inc.
Application to which Document being filed relates:	Application for an Order approving the sale of certain real property following a tender process, pursuant to the order of Handrigan J., dated March 4, 2022
Statement of Purpose in Filing:	To commence the application

**NATURE OF THE APPLICATION**

1. The Monitor, Ernst & Young Inc., seeks an order:
  - (a) abridging the time for service, validating service, and dispensing with further service of the within Application;

- (b) approving the sale of the Accepted Bid Properties (as defined below and in the Monitor's Second Report) on the terms and conditions as set out in the Monitor's Second Report and Confidential Supplemental Second Report; and
- (c) directing that the Monitor's Supplemental Second Report be sealed with the Court until further order of the Court.

## **MATERIAL FACTS**

### **Background**

2. The Roman Catholic Episcopal Corporation of St. John's (the "RCECSJ") is a body corporate duly incorporated under the laws of the Province of Newfoundland and Labrador for the purpose of holding lands and property of the Roman Catholic Archdiocese of St. John's. The RCECSJ holds all of the property, personal or otherwise, of 34 parishes within the Archdiocese of St. John's.
3. On March 16, 2018, this Court rendered a judgment in *John Doe (G.E.B. 25) v. The Roman Catholic Episcopal Corporation of St. John's* involving claims by four plaintiffs for abuse by Christian Brothers during their childhood while living at Mount Cashel Orphanage in the late 1940's and 1950's (the "**Mount Cashel Action**"). This Court found no basis for liability against the RCECSJ and dismissed the claims. The Court went on to provide an assessment of damages that would have been due the four plaintiffs and assessed damages in the total amount of \$2,611,113.96.
4. On July 28, 2020, the Newfoundland and Labrador Court of Appeal overturned the trial court decision and held that the RCECSJ was vicariously liable for the sexual abuse perpetrated by Christian Brothers at the Mount Cashel orphanage. The Court of Appeal also modified the pre-judgment interest award.

5. On January 14, 2021, the Supreme Court of Canada dismissed an application for leave to appeal the decision of the Newfoundland and Labrador Court of Appeal.
6. On April 15, 2021, the four plaintiffs involved in the Mount Cashel Action filed a judgment at the Sheriff's Office totalling \$2,395,312.45 (the "**Judgment**").
7. Since the filing of the Judgment, the RCECSJ has received claims from four separate solicitors based in St. John's, NL who advise that they collectively represent in excess of 100 men who intend to file claims against the RCECSJ and that these claims are expected to exceed \$50 million.
8. On December 21, 2021, the RCECSJ filed a notice of intention to make a proposal pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3 (the "**NOI Proceedings**"). Ernst & Young Inc. was appointed as Proposal Trustee in the NOI Proceedings.
9. Pursuant to an order of this Court dated January 28, 2022, Representative Counsel was appointed as representative counsel to (i) former residents of the Mount Cashel orphanage in St. John's who suffered abuse during the time of their residence there; and, (ii) all other persons who suffered abuse in the Province of Newfoundland and Labrador by clergy or members of lay religious orders for whom the RCECSJ is in law responsible (collectively, the "**Claimants**").
10. The Claimants are the largest creditors of the RCECSJ.
11. The NOI Proceedings were converted to a stay of proceedings under the CCAA pursuant to an order of this Court dated May 11, 2022 and effective May 17, 2022 (the "**CCAA Proceedings**"). Ernst & Young Inc. was appointed as Monitor of the RCECSJ.

12. The stay period was subsequently extended to July 31, 2022 pursuant to an amended and restated Initial Order dated May 27, 2022.

### **The Tender Process**

13. In the (then) Trustee's Third Report, dated February 28, 2022, the Trustee set out a tender sale process (the "**Tender Process**") with respect to an inventory of the RCECSJ's church, parish hall, rectory, vacant land, and other real estate holdings situated within the St. John's region, but specifically excluding the RCECSJ's ownership rights in relation to 19 school properties (the "**Real Property**").
14. The Tender Process was the result of consultation and agreement between the Trustee, the RCECSJ, Representative Counsel, and other stakeholders.
15. On March 4, 2022, this Court made an order approving the Tender Process.
16. The Monitor's efforts to prepare, advertise, market, and solicit interest in the Tender Process included:
  - (a) coordination of real estate appraisals through Neil Tedstone Realty Advisors;
  - (b) solicitation of stakeholder comments, including comments from Representative Counsel, on the proposed form of tender, the advertising program, tender timelines, and the development of a targeted listing of potentially interested parties;
  - (c) advertising the Tender Process in the St. John's Telegram newspaper and the Insolvency Insider, a national on-line publication reporting on insolvency administrations in Canada; and
  - (d) discussions and/or correspondence with approximately 385 prospective bidders to promote interest in the opportunity.

17. The deadline for interested parties to submit tender bids was 12 p.m. AST on June 2, 2022.
18. The Tender Process produced 71 tender submissions (the "**Bids**") from 57 individual parties making offers on individual parcels, multiple parcels, en-bloc submissions, and submissions incorporating unique tender conditions.
19. The Monitor prepared an analysis of the Bids against the Tedstone Appraisals' fair market value ("**FMV**") and orderly liquidation value ("**OLV**") estimates, along with other considerations the Monitor believed relevant to the Tender Process analysis including the number of bidders responding, holding cost considerations, and the likelihood that an alternative sales process might produce a more favourable recovery for the estate.
20. Following its review and assessment, the Monitor separated the Bids into 3 categories:
  - (a) Recommend for acceptance (37 sub-parcels);
  - (b) Solicit competitive bid re-submissions (6 sub-parcels); and
  - (c) Recommend bid rejection and pursue an alternative realization strategy (18 sub-parcels).
21. The RCECSJ and Representative Counsel were consulted on the Tender Process results and the Monitor's assessment and proposal for response to the Bids.
22. On June 14, 2022, with the support of Representative Counsel and the RCECSJ, successful bidders were notified that their Bids were accepted subject to the approval of this Court. Unsuccessful bidders were similarly notified that their Bids were not accepted and their deposits were returned.

23. Following an amended bid process for the 6 sub-parcels for which competing Bids were received, the Monitor accepted Bids on 42 parcels (the "**Accepted Bid Properties**").
24. The Accepted Bid Properties are more fully described in the Monitor's Second Report.
25. The aggregate sales value attributable to the Accepted Bid Properties totals \$20,622,332, representing 65.4% of the appraised FMV and 112.9% of the appraised OLV for those properties.
26. The Monitor is prepared to proceed with transactions to close the sale of the Accepted Bid Properties. The Monitor will update this Court regarding the unsold Real Property and the Monitor's proposal for further sales efforts in due course.
27. As more fully described in the Monitor's Second Report and Supplemental Second Report, the Monitor submits that the bids for the Accepted Bid Properties are fair and reasonable in the circumstances, and that proceeding with those sales will maximize the available recovery for the estate and its creditors.

**Sealing Order**

28. The Monitor has set out in its Supplemental Second Report:
  - (a) additional information for this Court's review regarding each parcel, the Bids received, and further analysis; and
  - (b) the unredacted Agreement of Purchase and Sale for 1 Coady's Lane – which sale will be addressed by the RCECSJ on its own application.
29. The Monitor requests that the Monitor's Supplemental Second Report be sealed until further order of this Court.

30. The Monitor's Supplemental Second Report contains commercially sensitive information pertaining to:
- (a) certain appraisal, valuation, and other confidential information in respect of the Real Property;
  - (b) accepted and rejected Bids submitted to the Monitor;
  - (c) the Monitor's analysis and evaluation of successful and unsuccessful Bids; and
  - (d) the valuation of the Coady's Lane property.
31. Publication of the information contained in the Monitor's Supplemental Second Report would pose a serious risk to the commercial interests of stakeholders and would irreparably harm the Monitor's and the RCECSJ's efforts to maximize realizations from the Real Property for the benefit of creditors and the estate.
32. Any interested party may apply, on notice to the Monitor and the RCECSJ, to vary the terms of the sealing order or to unseal the Monitor's Supplemental Second Report.

**RELIEF SOUGHT**

33. The Monitor requests an order:
- (a) abridging the time for service, validating service, and dispensing with further service of this application;
  - (b) approving the sale of the Accepted Bid Properties as set out in the Monitor's Second Report;
  - (c) directing that the Monitor's Supplemental Second Report be sealed until further order of this Court; and

(d) for such further and other relief as counsel may advise and this Court deems just.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 13<sup>th</sup> day of July, 2022.



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**Maurice Chiasson, Q.C. and Joe Thorne**

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**Solicitors for the Monitor, Ernst & Young  
Inc.**

**TO: Counsel and others listed in Schedule A hereto**

**ISSUED** at St. John's, in the Province of Newfoundland and Labrador, this \_\_\_\_ day of \_\_\_\_\_, 2022.



**District of Newfoundland and Labrador  
Division No. 01-NL  
Court No. 24092  
Estate No. 51-2792506**

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**NOTICE TO THE RESPONDENTS**

You are hereby notified that the foregoing application will be made to the judge presiding in Chambers at the Court House at St. John's, Newfoundland and Labrador on Monday, the 18<sup>th</sup> day of July, 2022 at 9:30 a.m.

**To: Counsel and others listed in Schedule A hereto**