

2023 01G
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the Bankruptcy and Insolvency Act R.S.C., 1985 c. B-3 as Amended (the “**BIA**”); and

AND IN THE MATTER OF a Notice of Intention to make a proposal for Pathway Construction Limited (the “**Company**”).

Court No. 24615
Estate No. 51-2992411

SUMMARY OF CURRENT DOCUMENT	
Court File Number (s):	Court No. 24615 Estate No. 51-2992411
Date of Filing of Document:	23 October 2023
Name of Filing Party or Person:	Applicant, Pathway Construction Ltd.
Application to which Document being filed relates:	N/A;
Statement of purpose in filing:	To seek an extension to the s.96 BIA stay of proceedings;
Court Sub-File Number, if any:	N/A

INTERLOCUTORY APPLICATION
(*Inter Partes*)

The applicant is applying to a judge sitting in bankruptcy and insolvency, in the Supreme Court of Newfoundland and Labrador, on 27 October 2023 for an Order:

- a) abridging notice periods and service requirements pursuant to section 6 of the *Bankruptcy and Insolvency General Rules*; and
- b) extending the time for the Applicant to make a Proposal in these proceedings by 45 days, commencing from and including the 28 day of October 2023, to and including

the 13 day of December 2023 pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*.

GROUNDS FOR ORDER:

1. Pathway Construction Ltd. (the "**Company**") is a body corporate and is registered to carry on business in the Province of Newfoundland and Labrador.
2. On 28 September, 2023 the Company filed a Notice of Intention to Make a Proposal (the "**Notice**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. 8-3, as amended from time to time (the "**BIA**").
3. Pursuant to section 69 of the BIA, a debtor filing an NOI is automatically given the benefit of an initial 30 day stay of proceedings, which may be extended in increments of 45 days on sufficient cause pursuant to section 50.4(9) of the BIA.
4. Since filing the Notice, the Company has worked diligently toward the goal of presenting a viable Proposal to its creditors. This task, however, cannot be achieved during the initial Stay period, which is currently scheduled to expire at the close of business on October 28, 2023.
5. The Company is accordingly seeking an Order extending the Stay for a further 45 days pursuant to section 50.4(9) of the BIA. The Company believes that if such extension is granted, it will be able to file a Proposal during this period.
6. The Company also seeks to abridge the time requirements for bringing this Application, pursuant to section 6 of the *Bankruptcy and Insolvency General Rules*.
7. The Company shall rely upon the following legislation, rules or points of law in respect of the Application:

a. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. 8-3, s. 50.4(9);

- b. *Bankruptcy and Insolvency General Rules* (Can Reg. 368), ss. 6, 11 and 13;
- c. *Rules of the Supreme Court*, RSNL 1986 .

EVIDENCE SUPPORTING APPLICATION:

The applicant offers the following affidavits in support of the application:

- a. the affidavit of Keith Chard, filed on October 23, 2023;
- b. the report of the Proposal Trustee, BDO Canada Ltd., to be filed on 24 October, 2023.

DATED AT St. John's, in the Province of Newfoundland and Labrador, this 23 day of October 2023.

O'KEEFE & SULLIVAN



Darren D. O'Keefe
Solicitors for the Plaintiff/
Defendant by Counterclaim
Whose address for service is
Suite 202, 80 Elizabeth Ave.,
St. John's, NL, A1A 1W7
dokeefe@okeefesullivan.com

TO:

Supreme Court of Newfoundland and
Labrador Trial Division (General)
Court House, 309 Duckworth Street
P.O. Box 937
St. John's, NL A1C 5M3

AND TO:

The Services List attached hereto as **Schedule "A"**

SCHEDULE "A"

SERVICE LIST
As of 23 October 2023
Pathway Construction Ltd.
Court No. 24615
Estate No. 51-2992411

Creditor	Address
Adams Electrical Inc	211 Nicholsville Rd. Deer Lake NL A8A 1W5
Allnorth Consultants Ltd.	PO Box 968 Prince George BC V2L 4V1
Allstar Rebar Ltd	PO Box 3244, Stn Main Paradise NL A1L 1A0
Apex Construction Specialties Inc.	P O Box 8776, Stn A St. John's NL A1B 3T2
ARROW Construction Products Limited	P. O. Box 760 Fredericton, NB E3B 5B4
Atlantic Industries Ltd.	32 York Street P O Box 6161 Sackville NB E4L 1G6
Atlantic Ready Mix	PO Box 353 Corner Brook NL A2H 6E3
Bank of Montreal	St John's NL
Benley Ventures Ltd.	P.O. Box 123 Baytona NL A0G 2J0
BFL Canada Risk and Insurance Services Inc	181 University Ave Suite 1700 Toronto ON M5H 3M7
Brandt	PO Box 480 Grand Falls - Winsor NL A2A 2J9
Cabot Timber Mart	276 Balbo Drive Clarendville NL A5A 4B3
Canada Revenue Agency-Payroll	1050 Notre Dame Avenue Sudbury Tax Centre Sudbury ON P3A 5C2
Canadian Tire Mastercard - Fuel	
Carma Construction Ltd	P. O. Box 790 Bonavista NL A0C 1B0
CARQUEST Canada Ltd 28	138 Bennett Drive Gander NL A1V 2E4

SCHEDULE "A"

SERVICE LIST
As of 23 October 2023
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Central Cashier's Office	P.O. Box 8700 St. John's NL A1B 4J6
Central Hydraulics and Supply	6A Earle Street Grand Falls-Winsor NL A2B 1H5
City of St. John's	P.O. Box 908 St. John's NL A1C 5M2
City Tire & Auto - Corner Brook	38 Confederation Drive Corner Brook NL A2H 6J3
Clarkes Trucking & Exc. Ltd.	163 Paradise Road Paradise NL A1L 2Y1
Classic Truck & Trailer Tirecraft	26 Kyle Ave Mount Pearl NL A1N 4R5
Clifford Cooper Construction Ltd	General Delivery Old Shop, Trinity Bay NL A0B 2W0
Coastal Entrance Solutions	146 Glencoe Drive Mount Pearl NL A1N 4P7
Competitive Edge	P. O. Box 323 Gander NL A5A 1M5
CRA - HST	
Dasit Recharging JMC Limited	88 Main Street Grand Falls-Windsor NL A2B 1J6
Dooleys Trucking	60 Ward Street P. O. Box 398 Gander NL A1V 1W8
Creditor	Address
Eastern Roof & Floor Truss (2008 Inc)	27 Forest Road P. O. Box 17 Lethbridge NL A0C 1V0
ER Heating and Refrigeration (2017) Limited	13 Myers Ave Clarenville NL A5A 1T5
ESSO	

SCHEDULE "A"

SERVICE LIST
As of 23 October 2023
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Floyd's Construction Limited	P. O. Box 45 Rocky Harbour NL A0K 4N0
Fortis Concrete Inc.	P. O. Box 9134 Clareville, NL A5A 2C2
Greenwoods HHBC	Route 234, 1 Main St. Lethbridge NL A0C 1V0
H. WAREHAM & SONS LIMITED	49 McCurdy Drive Gander NL A1V 1A1
Harvey Gale & Son Limited	P. O. Box 683 241 Carolina Avenue Stephenville NL A2N 3B5
Hercules	520 Windmill Rd. Dartmouth NS B3B 1B3
Horwood's Limited	245 Grenfell Heights Grand Fall-Windsor NL A2A 2J2
Iron Rock Equipment Ltd	615 Carol Drive Labrador City NL A2V 1S6
Jewer Bailey Consultants ULC	75 Tiffany Court St. John's NL A1A 0L1
Kent	P. O. Box 1200 Saint John NB E2L 4G7
King Process Technology Inc	4 Brentwood Ave Portugal Cove-St. Phillips NL A1M 0B2
Creditor	Address

SCHEDULE "A"

**SERVICE LIST
As of 23 October 2023
Pathway Construction Ltd.
Court No. 24615
Estate No. 51-2992411**

Log Max	P.O. Box 1398 Moncton NB E1C 8T6
Madsen Construction Equipment	141 Glencoe Drive Mount Pearl NL A1N 4S7
Marwood Ltd.	Postal Station A PO Box 338 Fredericton NB E3B 4Z9
Modern Printing Group	1037 Topsail Rd Mount Pearl NL A1N 5E9
P & B Trucking	13 Industrial Park Springdale NL A0J 1T0
Parts for Trucks	15 MacDonald Ave Dartmouth NS B3B 1C6
Paul Equipmnet & Sons (2008)	CP/Box 2535 55 Rue Drapeau Street Balmoral NB E8E 2W7
Pete Noseworthy	
Provall Parts Limited	7 Blackmore Avenue Clarenville NL A5A 1B8
Quality Component Repair	
R Coates Contracting	P. O. Box 156 Glenwood NL A0G 2K0
R&R HVAC and Controls Ltd	961 CBS Highway Conception Bay South NL A1X 7T2

SCHEDULE "A"

SERVICE LIST
As of 23 October 2023
Pathway Construction Ltd.
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Richard Power CPA	221E Memorial Drive Clarenville, NL A5A 1R3
Riverbend Freight Services Ltd	26 Kyle Avenue Mount Pearl NL A1N 4R5
S&H Construction Ltd	P.O. Box 9132 Clarenville NL A5A 2C2
Creditor	Address
Shagg Island Enterprises Ltd.	P. O. Box 293 Musgravetown NL A0C 1Z0
South Coast Construction Inc.	2 Fish Plant Road P. O. Box 369 Burgeo NL A0N 2H0
Stephenson's Services (2006) Limited	P. O, Box 180 Bloomfield NL A0C 1A0
T & G Woodworks	Site 3 Box 8 Appleton NL A0G 2K0
Technical Lift and Transport Limited	37 Tobins Road St. John's NL A1E 6A3
Town Of Clarenville	99 Pleasant Street Clarenville NL A5A 1V9
Town of Georges Brook - Milton	149 Trinity Drive Georges Brook-Milton NL A5A 0L4
Town of Ramea	P.O. Box 69 Ramea NL A0N 2J0

SCHEDULE "A"

**SERVICE LIST
As of 23 October 2023
Pathway Construction Ltd.
Court No. 24615
Estate No. 51-2992411**

United Rentals of Canada, Inc.	Postal Station A P O Box 4526 Toronto ON M5W 5Z9
Vardy Villa Limited	129 Cormack Drive Clarenville NL A5A 1M5
Wajax	PO Box 11790 Dept 29 M9082C/U Succursale Centre-Ville QC H3C 0C4
Western Pumps Services	P. O. Box 39 Norris Point NL A0K 3V0
Workplace Health & Safety	146-148 Forest Rd St. Johns NL A1A 3B8

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AND IN THE MATTER OF a Notice of Intention to make a proposal for Pathway Construction Limited (the "**Company**").

Court No. 24615
Estate No. 51-2992411

AFFIDAVIT OF DARREN O'KEEFE

I Darren O'Keefe, Barrister, make oath and give evidence as follows:

- 1 I am legal counsel for Pathway Construction Ltd. (the "**Company**"), the debtor in this proposal proceeding pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").
- 2 I attach hereto as Schedule "A" a copy of an affidavit provided to me by Keith Chard, Director of the Company, on 23 October 2023. I understand from speaking with Keith Chard that the original of this affidavit is being filed with the Honorable Supreme Court on 24 October 2023.
- 3 I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information and belief.

SWORN BEFORE ME at the City of St. John's, in the Province of Newfoundland and Labrador, this 23 day of October, 2023.


A Commissioner for taking Affidavits.

Name:



DARREN O'KEEFE

ANGELA De CARIA
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2025.

SCHEDULE "A"

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Court No. 24615
Estate No. 51-2992411

AFFIDAVIT OF KEITH CHARD

I Keith Chard make oath and give evidence as follows:

- 1 I am a director of Pathway Construction Ltd. (the "**Company**"), the debtor in this proposal proceeding pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**").
- 2 I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information and belief.
- 3 I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
- 4 On 28 September 2023, the Company filed a Notice of Intention to Make a Proposal Pursuant to Subsection 50.4(1) of the BIA (the "**NOI**"). Pursuant to the NOI, BDO Canada Ltd. is acting as Trustee (the "**Proposal Trustee**") under the Company's proposal proceedings.
- 5 I am advised by Darren O'Keefe, legal counsel to the Company, and do verily believe that effective 28 September 2023, the Company received the benefit of a stay of proceedings (the "**Stay**") for an initial 30-day period in accordance with the provisions of the BIA.
- 6 I understand the Stay is scheduled to expire at the close of business on 28 October 2023 and that the Stay may be extended by Order of this Honourable Court upon the Company demonstrating the necessary elements supporting such an extension.
- 7 Since the commencement of the Stay, management of the Company has made concerted and continued efforts to assist in the restructuring of the Company's affairs.
- 8 Within these proposal proceedings, the Company intends to file a plan of arrangement with its creditors for approval, or to return to Court to approval of a plan of arrangement.

- 9 The Company and its agents have assisted the Proposal Trustee in the preparation of a cash flow forecast, responded to relevant inquiries and worked with the Proposal Trustee to assess options and strategies to further the goal of formulating a viable proposal to creditors, which in part involve the steps described above.
- 10 The Company continues to work diligently to achieve the goal of presenting a viable proposal to its creditors. This task, however, cannot be completed during the initial Stay period. As such, an extension of the Stay by a further 45 days is required.
- 11 Without the order being granted, the Company will not be in a position to put forward a meaningful proposal to its creditors and will, in all likelihood, be deemed bankrupt as a result.
- 12 I verily believe that the Company has worked with due diligence and in good faith during the Stay period towards a successful restructuring of their affairs, and that no creditor of any of the Company stands to suffer prejudice should the extension be granted.
- 13 I verily believe that if the requested extension to the Stay Period is granted, the Company will be able to file a viable proposal by or before the end of the requested extension period.
- 14 I swear this affidavit in support of the Company's motion for the relief requested, and for no other or improper purpose.

SWORN BEFORE ME at the Town of)
 Clarenville, in the Province of)
 Newfoundland and Labrador, this ___)
 day of October, 2023.)



A Commissioner for taking Affidavits.)

Name: **WAYNE CHARD**
 A Commissioner for Oaths
 in and for the Province of Newfoundland and Labrador.
 My commission expires on December 31, 2027



KEITH CHARD

2023 01G
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Court No. 24615
Estate No. 51-2992411

STAY EXTENSION ORDER

Before the Honourable Justice

in Chambers:

THIS APPLICATION, made by Pathway Construction Ltd. (the "**Applicant**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the "**BIA**") for an order: extending the Stay Period (each as defined herein) up to and including December 13, 2023;

ON READING the affidavit of Keith Chard, sworn 23 October 2023, and the Exhibits thereto, the First Report of BDO Canada Ltd. dated October 24, 2023 in its capacity as proposal trustee of the Applicants (the "**Proposal Trustee**");

AND UPON appearing that appropriate Notice has been provided to all interested parties;

AND UPON the Applicant having applied for relief under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, s. 50.4(9) and the *Bankruptcy and Insolvency General Rules*;

ON HEARING the submissions of counsel for the Applicant, the Proposal Trustee, and such other counsel that were present, no one else appearing for any party although duly served:

NOW UPON MOTION:

IT IS ORDERED THAT:

- 1) To the extent necessary and required, notice periods with respect to this Motion be and are hereby abridged.
- 2) That pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to December 13, 2023.

ISSUED at St. John's, Newfoundland and Labrador this ____ day of October 2023.
