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District of: Newfoundland and Labrador  
Division No.: 01 - Newfoundland and Labrador  
Estate No: 24612  
Court No: 51-2992411

**THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION, IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF:**

**PATHWAY CONSTRUCTION LTD.**

**Report of the Proposal Trustee on the Proposal**

**SECTION A - BACKGROUND & TERMS OF REFERENCE**

Pathway Construction Ltd. (“Pathway” or the “Company”) was incorporated in Newfoundland and Labrador on June 3, 2015. The listed directors and shareholders of Pathway are Mr. Keith Chard and Mr. Jeffery Stuckless (the “Directors”). The registered head office of Pathway is 45 Marine Drive, Clarenville, Newfoundland and Labrador, Canada. The Company operates a civil and industrial construction company.

On September 28, 2023 (the “Filing Date”), Pathway filed a Notice of Intention to make a proposal (“NOI”) pursuant to Section 50.4 of the Bankruptcy and Insolvency Act (“BIA”). BDO Canada Limited (“BDO”) was appointed as the Licensed Insolvency Trustee (the “Proposal Trustee”) under the NOI.

On October 27, 2023, with consent of the Company’s principal secured creditor, the Bank of Montreal (“BMO”), the Supreme Court of Newfoundland and Labrador in Bankruptcy (the “Court”) granted an order approving the extension of time to allow the Company to work towards filing a proposal to its creditors to December 13, 2023.

On December 12, 2023, the Company filed a proposal for the general benefit of its creditors (the “Proposal”) pursuant to section 62.(1) of the BIA.

In preparing this report (the “Report”), BDO has relied upon financial information of the Company, and discussions with the Directors.

The financial information of the Company has not been audited, reviewed, or otherwise verified by the Proposal Trustee as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that the Report may not disclose all significant matters about the Company. Additionally, none of our procedures were intended to disclose defalcations or other irregularities. Accordingly, the Proposal Trustee does not express an opinion or provide any other form of assurance on the financial or other information presented herein. The Proposal Trustee may refine or alter its observations as further information is obtained or brought to its attention after the date of the Report.

The Proposal Trustee assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this Report. Any use which any party makes of this Report, or any reliance or decisions to be made on the Report, is the sole responsibility of such party.

All dollar amounts identified in this Report are expressed in or converted to Canadian dollars.

Capitalized terms used in this Report shall bear the meanings ascribed to them in the Proposal, unless otherwise noted.

## SECTION B - SUMMARY OF PROPOSAL

The Proposal filed by the Company is an operating proposal that will be funded through cash flow generated from Pathway's future operations. In addition, the Company will realize upon the Assets which are redundant in its current operations, namely a Bobcat Mini Excavator, MacTag Trailer and a JCB Backhoe, for purposes of providing a source of cash flow to maintain business operations during the Proposal Period.

The terms of the Proposal are summarized as follows:

1. Article 2.3 of the Proposal states that payments to Secured Creditors shall be made in accordance with existing agreements between such Secured Creditors and the Debtor as amended from time to time or as may be arranged in the future between the Debtor and the Secured Creditors. Payments will continue to be made directly from Pathway to the Secured Creditors.
2. As noted in Article 2.6, the Debtor will remit all necessary installments to the Canada Revenue Agency ("CRA") in accordance with the provisions of the Income Tax Act and Excise Tax Act, submit required tax returns, together with amounts due, if any; during the Proposal Period.
3. As noted in Article 3.1, the Preferred Creditors and Unsecured Creditors are to be paid from funds deposited with the Proposal Trustee, which will total \$264,000 paid in equal quarterly installments of \$22,000 over a period of three years.
4. As noted in Article 3.2, payments to Preferred Creditors and Unsecured Creditors for Proven Claims will be made in the following order after payment of the Priority Payments referred to in Article 4 to the extent of the Proposal Proceeds:
  - i. Proven Claims of Preferred Creditors as at the Filing Date, being those creditors with claims provable pursuant to Section 136 of the BIA;
  - ii. The first \$2,000 of any Unsecured Creditor's Proven Claim, but not exceeding the amount of the Unsecured Creditor's Proven Claim if less than \$2,000 (the "Convenience Claim portion"), will be paid in full, without interest; and
  - iii. On a pro-rata basis, in full and final satisfaction of Unsecured Creditors' Proven Claims (which are to include claims of every nature and kind whatsoever, whether contingent or unliquidated, arising out of transactions entered into by Debtor prior to the Filing Date), payment from the Proposal Proceeds, less payment made towards the Convenience Claim, without interest.

Dividends to Preferred Creditors and Unsecured Creditors for Proven Claims shall be paid annually, with the first payment shortly following March 31, 2025, followed by two (2) additional payments shortly following March 31, 2026 and March 31, 2027, respectively.

Further, Deferred Creditors, namely any claim owed to Eastern Roof and Floor Truss Manufacturing (2008) Inc. ("Eastern"), a related company owned and operated by Mr. Chard, shall not receive any distribution in this Proposal.

5. As noted in Article 3.3, all payments made to the Preferred Creditors and Unsecured Creditors are subject to a levy payable to the Office of the Superintendent of Bankruptcy pursuant to the BIA.
6. As noted in Article 4.1, professional fees owing to the Proposal Trustee, and its legal counsel, if applicable, are to be paid in priority to any amounts distributed to Preferred Creditors and Unsecured Creditors.

7. As noted in Article 4.2, the Debtor shall make payments to Priority Creditors with Proven Claims in accordance with the provisions of the BIA, namely, Crown Claims owing to CRA for source deductions that were stayed at the Filing Date.

The terms of the Proposal are conditional on being accepted by the Required Majority of the Unsecured Creditor Class and approval by the Court.

## **SECTION C - FINANCIAL POSITION AND CAUSES OF FINANCIAL DIFFICULTY**

In early 2022, Pathway completed a project for Dandy Dans Fish Market Ltd. ("Dandy Dans"). Pathway incurred costs of \$461,930 and expected to realize revenue of \$535,726. Dandy Dans made payments totaling \$70,000 leaving \$529,676 outstanding, including \$63,950 in interest. Pathway made significant attempts to recover this amount which remains outstanding. Pathway is currently pursuing legal action against Dandy Dans to recover and enforce any award or judgement granted to Pathway in connection with or as a result of a litigation claim.

Not receiving the amount outstanding from Dandy Dans has had a profoundly detrimental impact on the Company's cash flows, hindering its ability to cover essential operational costs. As a result, Pathway was forced to dip into its reserves or take on debt to bridge the financial gap. The Company's financial stability steadily eroded leading to the inability to sustain day-to-day operations and service outstanding debts, forcing the Company into insolvency.

These constraints were further impacted by reduced activity in the construction industry and loss of significant contracts during the COVID-19 pandemic, as well as the surge in project costs due to inflation.

The Company has taken the following steps to manage its financial challenges:

- i. Management implemented salary reductions for Mr. Chard and laid off a Project Manager;
- ii. Eastern has loaned funds to Pathway and continues to advance short term loans to alleviate short term liquidity crunches; and
- iii. The Company entered into informal cost sharing arrangements with Eastern for common services.

The Company's latest produced external unaudited financial statements was as at year end December 31, 2022. The Company's latest internal financial records are as at September 28, 2023. Detailed analysis of the Company's estimated current financial position is provided in Section D below.

## **SECTION D - IDENTIFICATION AND EVALUATION OF ASSETS**

According to the Proposal Trustee's review of the Company's internal financial records, the Company's assets and estimated realizable value (in a liquidation) is summarized below:

Estimated Realizable Value	Estimated Book Value	Bankruptcy	
		Low	High
<b>Assets</b>			
Accounts Receivable	529,676	-	-
Equipment under Lease	595,576	-	-
Equipment under BMO Security	110,712	44,285	60,892
	706,288	44,285	60,892
<b>Less</b>			
Priority claims - Source Deductions		(34,018)	(34,018)
Claims of Secured Creditors		(475,000)	(475,000)
		(509,018)	(509,018)
Estimated Net Realization		-	-

The estimated realizations contained in this Report are based on the Proposal Trustee's review of the Company's internal financial records as at December 12, 2023, and discussions with the Directors. The realization value of the Company's assets are estimated as at January 11, 2024, the date of deemed bankruptcy if the Proposal is not accepted by the Unsecured Creditors and approved by the Court.

As noted in Section C of this Report, the Company's accounts receivable balance is comprised entirely of the amount outstanding from Dandy Dans. In a bankruptcy scenario, the Proposal Trustee estimates that this amount would be unrecoverable unless creditors are willing to fund the litigation claim.

Pathway owes approximately \$512,481 to its equipment lessors. In a bankruptcy scenario, the Proposal Trustee would recommend surrendering the leased assets. This decision is based on the estimated market value of the assets, which, when netted against what is owed to the lessors and factoring in the costs associated with arranging the sale and negotiating releases of the assets, would outweigh any potential benefit to be derived from realizing on the assets.

The Proposal Trustee estimates the net realizable value of the equipment not subject to leasing arrangements would range between \$44,000 and \$60,000 in a liquidation scenario, after considering selling costs. The equipment not subject to leasing arrangements is subject to BMO's general security agreement. In the event of bankruptcy, the realization from the sale of these assets less payments to priority creditors would be directed towards settling the Company's obligations with BMO.

As of January 11, 2024, the date of a deemed bankruptcy, the Company will owe approximately \$34,000 in payroll source deductions, inclusive of pre-filing amounts of \$19,000. It is pertinent to highlight that these obligations rank in priority to all other creditors. In essence, any realization from a bankruptcy scenario would be nil for unsecured creditors, as the CRA deemed trust claim for source deductions and the secured claim of BMO would take precedence.

## SECTION E - CONDUCT OF THE DEBTORS

The Proposal Trustee has reviewed transactions that occurred prior to and after the filing of the NOI. The Proposal Trustee notes that majority of the transactions appear to have been conducted in the normal course of business with the exception of the following:

1. During the month of September 2023, payments were made to the CRA for Harmonized Sales Tax (HST) totaling \$62,873, and for payroll source deductions totalling \$55,965. These payments, given their substantial nature, stand out as atypical.

2. Payments totalling \$12,616, relating to outstanding cheques that were issued prior to the filing of the NOI for pre-filing obligations, cleared during the post-filing period. It has been observed that these cheques cleared the bank subsequent to the filing as a stop payment order was not issued by management.

Management has provided insight into the decision to make payments to CRA prior to filing the NOI. According to management, in early September 2023, a CRA agent had initiated inquiries and recommended making payments for outstanding amounts due to CRA to avoid the issuance of an Enhanced Requirement to Pay (ERTP) and the subsequent freezing of bank accounts. The payments were made as a precautionary measure to prevent potential disruption in operations, as the freezing of bank accounts would have significantly impacted the Company's ability to continue its regular business activities.

Management advised the Proposal Trustee that the decision was also influenced by a previous experience where the CRA had frozen the Company's bank accounts several months prior. This previous incident had resulted in operational challenges, prompting management to take proactive measures to prevent a recurrence. By making the payments to the CRA before filing the NOI, the Company aimed to maintain liquidity, ensuring operations continued without interruption.

In the Proposal Trustee's view, the Company and its Director have acted and continue to act in good faith and with due diligence. The Proposal Trustee is not aware of any offences under the BIA having been committed during the Proposal Period.

## **SECTION F - CREDITOR CLAIMS**

According to the internal financial records provided to the Proposal Trustee, the Company's Creditors as of the filing date are comprised of:

<b>Creditor Summary</b>	<b>Approx. No.</b>	<b>Balance</b>
Secured Creditors	8	987,481
Priority Creditors	1	19,018
Unsecured Creditors	71	717,965
Deferred Creditors	1	152,778
	<hr/>	<hr/>
	81	1,877,242

The Proposal Trustee is not aware of any material discrepancies between the amounts contained within the books and records of the Company and the expected claims to be filed by Creditors. Any discrepancies will be investigated by the Proposal Trustee.

## **SECTION G - PREVIOUS DEALINGS WITH THE DEBTORS**

Prior to the NOI filing, BDO had no previous dealings with the Company. Further, BDO confirms that it is not aware of any conflict of interest arising from the acceptance of this appointment as Proposal Trustee.

## **SECTION H - INFORMAL MEETINGS WITH CREDITORS**

The Proposal Trustee participated in informal meetings with Pathway's management and BMO, the Company's principal Secured Creditor, to obtain cooperation and the support of BMO throughout the NOI period. There were no informal meetings held with Unsecured Creditors of the Company prior to the filing of the Proposal.

## **SECTION I - REMUNERATION OF THE PROPOSAL TRUSTEE**

The Proposal Trustee's professional fees during the Proposal Period are to be funded by the proposal proceeds.

## SECTION J - STATEMENT OF ESTIMATED REALIZATION

The Proposal Trustee estimates the net distribution to the Unsecured Creditors under the Proposal and a potential bankruptcy scenario as follows:

Statement of Estimated Realizations	Estimated Book Value	Proposal	Bankruptcy	
			Low	High
Accounts Receivable	529,676	-	-	-
Equipment Under Lease	595,576	-	-	-
Equipment under BMO Security	110,712	-	44,285	60,892
Proposal Proceeds	-	264,000	-	-
	<u>706,288</u>	<u>264,000</u>	<u>44,285</u>	<u>60,892</u>
Less: Claims of Priority Creditors		-	(34,018)	(34,018)
Less: Claims of Secured Creditors		-	(475,000)	(475,000)
Less: Professional fees		(40,000)	(20,000)	(15,000)
		<u>(40,000)</u>	<u>(529,018)</u>	<u>(524,018)</u>
Estate Balance		224,000	-	-
Levy to OSB		(11,200)	-	-
<b>Available for distribution to Unsecured Creditors</b>		<b>212,800</b>	-	-
Total Unsecured Creditor Claims		717,965	717,965	717,965
<b>Dividend yield</b>		<b>30%</b>	<b>0%</b>	<b>0%</b>

It is estimated that the net recovery to Unsecured Creditors if the Proposal is successful will be in the range of thirty (30) cents on the dollar net of payment of CRA's s.60(1)(1.1) BIA source deductions priority claim, administration costs of the estate, and the s.147 BIA levy. As noted in the estimated realization schedule above, the recovery to Unsecured Creditors under the terms of the Proposal is expected to exceed that which would become available in a bankruptcy administration should the Proposal not be accepted by the Required Majority of Unsecured Creditors and a bankruptcy were to ensue as all estimated asset realizations are subject to CRA's source deduction priority claim and security held by BMO.

## SECTION K - RECOMMENDATIONS

The Proposal Trustee understands that Pathway's management is committed to the making of a successful Proposal and, as a result, has taken steps to ensure that the funds that are required to be contributed pursuant to the terms of the Proposal will be available at the prescribed time.

The Proposal Trustee believes that this Proposal provides an opportunity for Unsecured Creditors to achieve a higher recovery on the outstanding debt than would otherwise be achieved in a bankruptcy administration. As advised, it is the Proposal Trustee's preliminary estimate that in a bankruptcy administration the return to Unsecured Creditors will be nil as against a net recovery of thirty (30) cents on the dollar under the terms of the Proposal.

With a view to the above, the Trustee believes that the Proposal is of benefit to creditors, and recommends that Unsecured Creditors support it by voting in favor of the Proposal. It is important for Unsecured Creditors to understand that if the

Proposal does not achieve the required statutory majority of creditors voting at the meeting of creditors to be held on January 11, 2024, Pathway will automatically be deemed to have made an assignment in bankruptcy and the opportunity for Unsecured Creditors to recover on their outstanding debt at the level suggested under the terms of the Proposal will be lost.

Furthermore, the Proposal Trustee intends to vote proxies received, naming it as the proxy holder, in favour of the Proposal.

Dated at Halifax, Nova Scotia, the 18<sup>th</sup> day of December, 2023.

**BDO CANADA LIMITED**

Acting in its capacity as Licensed Insolvency Trustee under the Proposal of Pathway Construction Ltd.  
and not in its personal capacity

Per:

A handwritten signature in black ink, appearing to read "Neil Jones", written in a cursive style.

Neil Jones, CPA, CA, CIRP, LIT  
*Senior Vice-President*