

Restructuring in the wake of Litigation

The Experiences of the Archdiocese of St. John's



ROMAN CATHOLIC
ARCHDIOCESE OF ST. JOHN'S

MENCHIONS
CONSULTING INC

Session Agenda



Session Agenda

- Background
- Restructuring – The 2021 Plan: Phase 1
- Filing for Creditor Protection – The Fallout
- Restructuring – Phase 1 (resumed)
- Restructuring – The 2021 Plan: Phase 2
- Restructuring – Delays
- Restructuring– Current Status
- Restructuring Complications
- RCECSJ – Ongoing Matters
- SJAI and ARC – Ongoing Matters
- Conclusion
- Questions

Background

The RCECSJ was incorporated by an Act of the Governor, Legislative Council and House of Assembly on **May 12, 1897** as a Corporation Sole. The statute declared the Archbishop and his successors as a corporation, with the power to hold lands and property and to borrow money for its purposes. The purpose of the Corporation is to administer church law and arrange financing for the Parishes and other affiliates within its regional Jurisdiction.

The RCECSJ holds all of the property, personal or otherwise, of the Parishes within the Archdiocese of St. John's. However, the Corporation's audited financial statements do not report all of the operating results or the assets and liabilities of the separate Parishes. **The Parishes have operated, and continue to operate, as separate unincorporated entities, each responsible for their respective operations but subject to the direction and oversight of the Archbishop.**

RCECSJ was granted charitable status by the Canada Revenue Agency's predecessor on **January 1, 1967**. RCECSJ depends upon donations and financial assistance from supporters of the Roman Catholic faith to assist it in meeting its ongoing operating cash requirements

Background

In **1988**, allegations of widespread abuse of children at Mount Cashel Orphanage, an institution run by the Christian Brothers, were made public. In the same year, a Diocesan priest was arrested and charged with sexually abusing boys in parishes throughout the Diocese.

In **1989**, **The Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints** also known as the **Hughes Inquiry** was launched to investigate the response of authorities to allegations of abuse at Mount Cashel Orphanage .

Also in **1989**, Bishop Alphonsus Penney appointed the **Winter Commission** to investigate Diocesan responses to allegations of sexual and physical abuse by members of the clergy.

The Commission conducted hearings in churches across the Archdiocese, commencing on June 11, 1989. The commission delivered its final report in July of **1990**.

Background

Following the 1988 criminal charges against Diocesan priests, lawsuits quickly began to be filed against the RCECSJ related to abuse by Clergy.

In **December 1999**, four plaintiffs filed suit against RCECSJ and the Christian Brothers Institute Inc. for damages resulting from sexual abuse suffered while they were boys at the Mount Cashel Orphanage in the 1950's (the "Mount Cashel Action"). The Plaintiffs' suit was heard over 35 days during **2016**.

In **February 2009**, the court found RCECSJ vicariously liable for abuse committed by a member of the clergy in its employ.

In **March 2018**, the Supreme Court of Newfoundland and Labrador determined that the Archdiocese of St. John's (RCECSJ) was not liable for abuse committed at the Mount Cashel orphanage by certain members of the Christian Brothers.



Background

The decision was appealed, and on **July 29, 2020**, the Appeal Court overturned some of the legal conclusions made by the trial judge; the Appeal Court found that the RCECSJ was vicariously liable for the abuse committed at Mount Cashel.

The RCECSJ made application for leave to the Supreme Court of Canada, however, on **January 14, 2021**, the Supreme Court of Canada rendered its judgement dismissing RCEC's application.

With no other avenues for appeal, RCECSJ engaged law firm McInnes Cooper and EY (Strategy and Transitions) to help quantify the magnitude of damages and find a way to meet its legal obligations.

In **February of 2021**, legal counsel for the plaintiffs agreed to forbear their enforcement of the Judgement while RCECSJ completed a restructuring plan.

Background

On **April 15, 2021**, the plaintiffs in the Mount Cashel Action filed a judgment at the Sheriff's Office totaling \$2,395,312.45

On **December 21 2021**, RCECSJ was forced into creditor protection by legal counsel for the victims. Since then, operations have been overseen by a court-appointed Monitor, whose task it is to liquate all the assets of the Archdiocese.

Background

Against a background of litigation, the Archdiocese of St. John's attempted to rebuild itself by:

- Implementing the recommendations of the Winter Commission
- Undertaking multiple consultative restructuring processes to 'right size' the Diocese from both a financial and human resource perspective
 - 2012 Plan
 - 2017 Plan
 - 2021 Plan

Restructuring – The 2021 Plan: Phase 1

In 2021, under the direction of EY, RCECSJ began to **inventory** and **value** all of its assets.

As a **Corporation Sole**, there is no distinction between assets held in the name of Parishes and those held in the name of the Archdiocese. All assets are considered the property of RCECSJ.

Parishes were asked to submit to the Archdiocesan Business office the following:

- a listing of every bank account in which the parish was holding funds, including a description of what the funds are used for (for example: general bank account, Mass Stipend account, building fund, cemetery account, etc.)
- a listing of all investments held, including those held by the Archdiocese and any other financial institution. The source of those funds must also be included
- a listing of all real property, including all buildings, vacant land, property assessments, surveys, appraisals, and lease agreements in place
- a listing of any tangible assets with an estimated value of >\$10,000 (for example, artwork, statues, musical instruments, etc.)

Restructuring – The 2021 Plan: Phase 1

In **August 2021**, RCECSJ engaged a real estate appraiser to value 40 properties in the St. John’s area (the “urban properties”), and began developing a reasonable liquidation strategy to sell its urban properties in a commercially reasonable manner, to generate funds for the benefit of its creditors.

The first property was listed for sale by tender, in October 2021.

The initial appraisal reports were expected in **February, 2022**, however they were delayed until March of that year.

Properties outside of the greater St. John’s area (the “rural properties”) were scheduled to be valued at a later date (in Phase 2).

*On December 16, 2021 legal counsel for the plaintiffs provided formal notice that the Forbearance Agreement was terminated, with effect from and after the third business day following the date of the letter, and that they would seek to enforce the judgement filed with the Sheriff’s Office on **April 15, 2021**. In order to avoid such a judgement, RCECSJ filed for Creditor Protection under the Bankruptcy and Insolvency Act (BIA) on **December 21, 2021**.*

Filing for Creditor Protection - Fallout

Immediately prior to the filing, RCECSJ under the direction of EY, re-allocated its cash reserves providing all Parishes with a standard 45-day opening working capital cash allocation based upon each Parishes size of operation, with the balance of the Corporations cash reserves being allocated to the Archdiocese's main operating account.

- Family Aid bank accounts were not adjusted as part of the cash reserve re-allocation process.

Scotiabank, the Corporation's banker since the mid-1970's **terminated all credit facilities** with the Corporation.

- All corporate credit cards with immediately canceled, and the outstanding balances deducted from the Archdiocese's main operating account
- Mirror-netting agreements were terminated, which meant accounts no longer could avail of overdraft protection
- EFT services were terminated overnight (leaving many parishes scrambling to replace the recurring donations they had survived on through Covid-19 restrictions)

Parishes were advised that financial assistance from the Archdiocese or other Parishes was no longer available, and in the event that a Parish could not meet its ongoing operational obligations it would have to close.

Filing for Creditor Protection - Fallout

Communications were sent to Parish priests, Finance Committee Chairs, and Administrative Assistants on **December 21, 2021** to advise them of the Archdiocese's filing.

Also on **December 21, 2021** the Archdiocese incorporated two new legal entities – a future operating company and a future holding company.

On **December 22, 2021** additional communications were sent to Parish Priests, Finance Committee Chairs, and Administrative Assistants regarding the cash re-allocation, the terminated banking services, and the new Monitoring Protocol that would be implemented immediately.

Monitoring Protocol:

- ALL expenses processed through the Archdiocesan Business Office must first be reviewed and approved before payment could be released
 - Emphasis on Pre/Post filing invoices for the first few months
- Expenses >\$2000 at the Parish level had to be reviewed and approved before payment could be released

Filing for Creditor Protection - Fallout

On **January 12, 2022** correspondence was sent to all of RCECSJ's creditors advising them of the creditor protection filing, and that any unpaid invoices for services provided prior to December 21, 2021 would remain unpaid until a final proposal was submitted to the Court.

On **January 20, 2022**, the Corporation returned to Court to ask for an extension of stay of proceedings to allow for the continuation of the orderly restructuring of the Archdiocese.

Restructuring – Phase 1 (resumed)

In January, RCECSJ listed 4 rectories for sale in the St. John's area, the appraisals of which were provided by a local realtor.

- Immediate implications for RCECSJ clergy who were living in those rectories

Also in January, RCECSJ with assistance from EY and McInnes Cooper began drafting a Tender Sale Package for the urban properties.

Restructuring – Phase 1 (resumed)

In January and February, 2022 the Archdiocese began to look for sources of financing to acquire property from RCECSJ to continue operations. Options included:

- Fundraising (at the Parish-level)
- Bank financing (this time with TD)
- Private lenders

In February, 2022 two parishes came to the Archdiocese to voluntarily close due to insufficient operating capital, and consultations began in earnest with the remaining parishes re: amalgamations the resulting number of churches that could viably be maintained. In March, 2022 the Archdiocese made the decision to close an insolvent church within a larger parish.

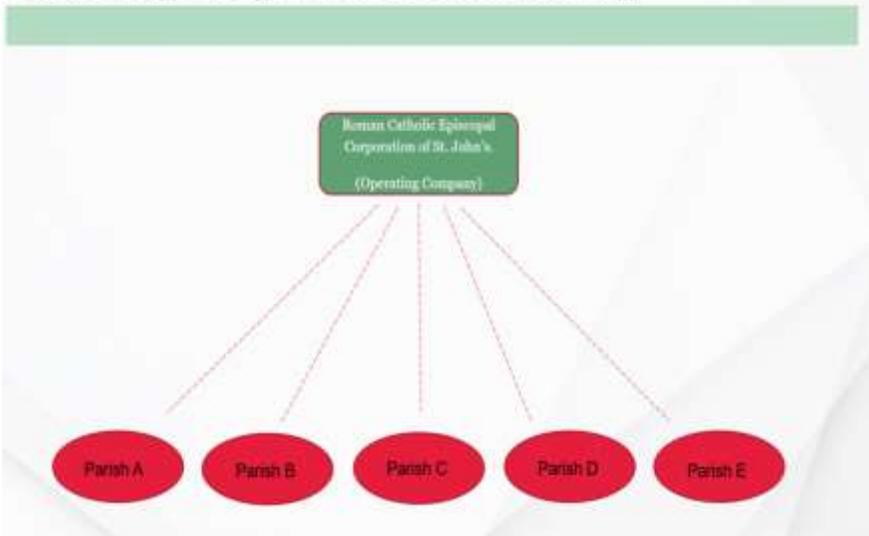
Restructuring – Phase 1 (resumed)

In **March 2022**, the Archdiocese began the process of applying for charitable status for its future operating and future holding companies

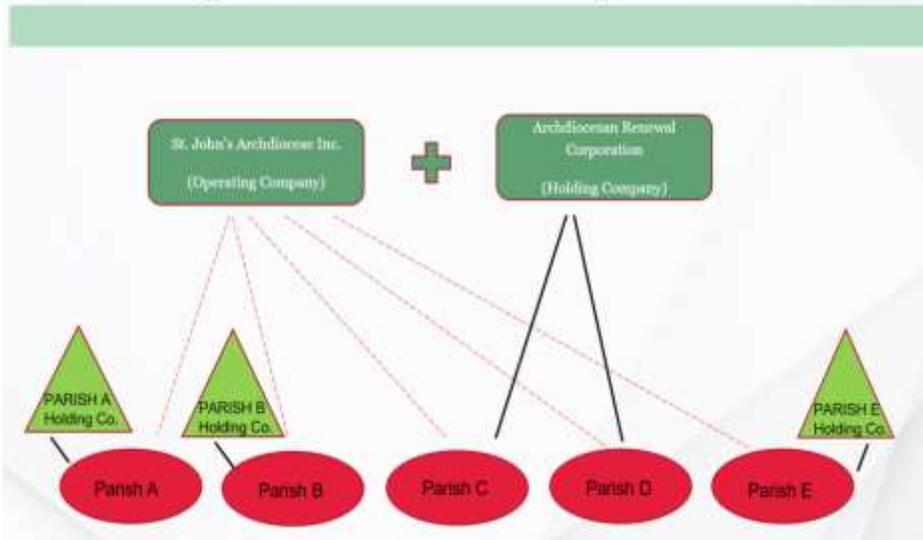
Also in **March**, we began discussions with a number of parishioner groups who wanted to “buy-back” their church independently from the holding company established by the Archdiocese. This led to numerous meetings with parishioners groups.

Restructuring – Phase 1 (resumed)

Existing Corporate Relationship



New Corporate Relationship



Restructuring – Phase 1 (resumed)

Also in **March 2022**, the Tender Sale Package was released. Sealed bids were due by **June 2, 2022**.

- The Trustee (EY) is responsible for the administration of the Tender Process including identifying potential buyers, advertising the opportunity, responding to due diligence inquiries, receiving and analyzing bid submissions, negotiating tender terms if required and presenting offers and recommendations to the Court.

The original Tender package included:

- Churches
- Parish Halls
- Vacant Land
- Cemetery Lands
- Residual Rights in relation to 19 schools in the greater St. John's area

Over the course of the tender period, Cemetery Lands and the Residual Rights in the schools were removed (more on this later!)

In **May, 2022 RCECSJ** applied to the court to have the process converted from a BIA process to a CCAA process (which would extend the amount of time available to restructure).

Restructuring – Phase 1 (resumed)

The Tender Process produced 71 tender submissions (the “Bids”) from 57 individual parties providing offers on individual parcels, multiple parcels, enbloc submissions and submissions incorporating unique tender conditions.

The Monitor’s analysis allocated the Bids into three 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).

On **July 12, 2022**, the Monitor asked the Court to approve 42 sub-parcel sales, worth \$20,622,332.

Restructuring – Phase 1 (resumed)

Tender Parcel	Property Description	Successful Bidder Recommendation
1A	Basilica Cathedral and Pastoral Centre	Basilica Heritage Foundation, Inc.
1B	St. Bonaventure's College	Basilica Heritage Foundation, Inc.
1C	St. Bon's Forum	Basilica Heritage Foundation, Inc.
2A	St. Patrick's Church	Howard Real Estate Holdings
2C	Vacant Land (located at 18 Deanery Ave, St. John's)	84392 Newfoundland and Labrador Inc.
2D	Vacant Land (located on Patrick Street, St. John's)	St. John's Independent School Inc.
3A	St. Teresa's Church and other adjoining structures	St. Teresa's Mundy Pond Corporation
4A	Corpus Christi Church, Parish Office and Community Centre	Stewart McKelvey, as Agent
4B	Vacant Land (231 Waterford Bridge Road, St. John's)	Stewart McKelvey, as Agent
5A	St. Pius X Church and St. Pius X Junior High School	Association For New Canadians
6A	Mary Queen of Peace Church and Rectory	54105 Newfoundland and Labrador Ltd.
6B	Mary Queen of Peace Hall	10981 Newfoundland Ltd.
8B	Vacant Land (Topsail Road, Mount Pearl)	P.M.C. Holdings Ltd.
8C	Vacant Land (Topsail Road, Mount Pearl)	City of Mount Pearl
8D	Vacant Land (Pinebud Crescent, Mount Pearl)	City of Mount Pearl
9B	St. Peter's Rectory	84392 Newfoundland and Labrador Inc.
11A	St. Thomas of Villanova Church and Vacant Land (Ball Field)	Archdiocesan Renewal Corp.
12B	St. Edward's Rectory	Pine Bud Investments Inc.
12C	Vacant Land (St. Edwards Road, Conception Bay South)	Pine Bud Investments Inc.
13A	Holy Rosary Church, Rectory and Hall	Portugal Cove-St. Phillip's Chamber of Commerce Inc. / Holy Rosary on behalf of Newco
14A	St. Joseph's Church	89149 Newfoundland and Labrador Corp.
14B	Vacant Land (Cribbies Road, Petty Harbour-Maddox Cove)	89149 Newfoundland and Labrador Corp.
15A	St. Francis of Assisi Church	Rocky Hill Holdings Inc.
15B	Archbishop's Residence	Rocky Hill Holdings Inc.
15C	St. Francis of Assisi Rectory	Rocky Hill Holdings Inc.
15D	Vacant Land (51 Outer Cove Road, Logy Bay-Middle Cove-Outer Cove)	Rocky Hill Holdings Inc.
15E	Vacant Land (23 - 25 Outer Cove Rd, Logy Bay-Middle Cove-Outer Cove)	Pine Bud Investments Inc.
16B	Holy Trinity Parish Hall	YBC Development Ltd.
17A	St. Michael's Church	Town of Flatrock
17B	Our Lady of Lourdes Grotto	Town of Flatrock
18A	St. Agnes Church and Rectory	G.J. Shortall Ltd.
19A	O'Dwyer Apartments	Ashley and Wajdi Bensaid
19B	Vacant Land (51 Hazelwood Crescent, St. John's)	P.M.C. Holdings Ltd.
20A	Ecole Rocher du Nord	Emerald Atlantic Group Inc
20B	Vacant Land (Ricketts Road, St. John's)	Emerald Atlantic Group Inc
20C	Vacant Land (Ricketts Road, St. John's)	Emerald Atlantic Group Inc
23C	Vacant Land (370-410 Beachy Cove Road)	Emerald Atlantic Group Inc
25A	<i>Intentionally Deleted</i>	N/A
25B	Vacant Land (Octagon Pond, Paradise)	Emerald Atlantic Group Inc
25D	Vacant Land (456-466 Bauline Line, Torbay)	640 Torbay Road Inc.
25E	Vacant Land (27A Piperstock Place, Torbay)	Blair White
25F	Vacant Land (Bullock Town Road, Torbay)	YBC Development Ltd.
25G	Vacant Land (Route 90, Salmonier Arm)	Nature Conservancy of Canada



Restructuring – Phase 2

The Tender Process did not produce satisfactory submissions on all sub-parcels.

Acceptable bids were not received for 19 sub-parcels (the “Residual Parcels”). These Residual Parcels were then listed with a qualified realtor as a means to liquidate the Residual Parcels for the benefit of the creditors.

These properties were listed in **July and August, 2022**.

At the same time, an additional 70 properties situated on the Southern Avalon and Burin Peninsulas (the “Rural Properties” were being appraised, and listed, with seven local real estate agents.

Restructuring – Phase 2

With the listings of rural properties, parishioner consultations in the impacted rural areas began again, with the Archbishop spending significant time traveling to the affected Catholic Communities for consultation.

By **September 1, 2022**, 63 of the 89 Residual and Rural Properties had been listed for sale on MLS, with a cumulative listing price of \$15.9 million, with acceptable offers received on 19 of the properties, worth \$4.6 million.

Restructuring – Delays

Offers vs. Closing

By **December 1, 2022**, there were 128 properties “in play” through either the tender sales process or through one of the seven realtors engaged.

Of the 128 properties:

- 23 were actually closed
- 60 had accepted offers
- 45 had no accepted offers

Of the 45 with no accepted offers:

- 29 were still being used by RCECSJ for ministry or administration
- 16 were ‘abandoned’

Restructuring – Delays

Difficulties with Closings:

- Title
- Surveys
- Affidavits of Possession
- Subdivision
- Financing
- Damage due to (mostly) insurable events

Restructuring – Delays

Operational Transition – “Scheduled” for **December 31, 2022**

- Charitable Status: Operating Company (St. John’s Archdiocese Inc., “SJAI”)
- Charitable Status: Holding Company (Archdiocesan Renewal Corporation, “ARC”)

- Resources shortages

- Administrative Hurdles
 - Banking
 - Financial Reporting Centralization (and related GL set-up)

On **December 22, 2022**, the Archdiocese was forced to delay the transition of its operations by 3 months to **March 31, 2023**.

Restructuring – Current Status

- Charitable Status: SJAI – Granted August 31, 2022/Effective Date May 27, 2022
- Charitable Status: ARC – Granted February 27, 2023/Effective Date January 1, 2023

Transition formally occurred on March 31, 2023:

- All employees of the RCECSJ were terminated effective March 31, 2023.
 - Certain employees were subsequently be hired by SJAI.
- The RCECSJ clergy and lay person pension plans were terminated effective March 31, 2023.
 - A group RRSP plan was established in SJAI.
- A hard cut off for both donation revenues and operating disbursements at both the RCECSJ and parish operating levels as of March 31, 2023 is required (*ongoing*)
- RCECSJ bank accounts (corporate and parish) are being closed and consolidated into one main, corporate, bank account (*ongoing*)
- SJAI bank accounts held at a separate financial institution. Revenues and operating obligations applicable to 2023 operations will be managed though those accounts. SJAI operations are not subject to the review of the Monitor or these CCAA proceedings.

Restructuring – Current Status

Triple Net Lease Agreements

- SJAI continues to use 29 RCECSJ properties for which have been listed for sale, but for which no sales agreement exists
- SJAI, under a court-approved Triple Net Lease, will operate the these properties until such time as those property are sold or ministry use is determined to no longer be feasible
- SJAI also needed to establish lease arrangements with third parties (including Parish-level holding companies) that purchased buildings from which SJAI wanted to continue operations

Restructuring Complications

- Emotion
 - Sale of Cemetery Lands
 - Sale of “Parish Property”
- Misinformation
 - One-sided dialogue in the media and through social media
- Common Law considerations and Canon Law considerations
 - Schools Act 1997
 - Parish challenges
- Resource constraints
- Corporate Structure Considerations
 - Diocesan Holding Corporation vs. Parish Level Holding Corporations
 - Governance

Restructuring Complications

- Lease negotiations
- HST Considerations
- Insurance considerations

RCECSJ – Ongoing Matters

- RCECSJ administrative services (accounting, finance and real estate maintenance) are now provided through sub-contracted employee service agreements with SJAI (and MCI).
 - CRA considerations re: closure of 34 parishes considered to be ‘internal divisions’ of RCECSJ
 - Other statutory filings
 - Other court filings
- Closure of remaining sales agreements:

As of **April 28, 2023** there were 129 properties “in play” through either the tender sales process or through one of the five realtors engaged.

 - Of the 129 properties:
 - 56 were actually closed
 - 42 had accepted offers
 - 31 had no accepted offers
 - Of the 31 with no accepted offers:
 - 16 were still being used by RCECSJ for ministry or administration
 - 15 were ‘abandoned’
- Closure of the “Schools Agreement”

RCECSJ – Ongoing Matters

- Sale of Vacant Lands ([Phase 3](#))
- Property management of 'abandoned' structures
- The claims process/officer selection
- Claims adjudication and quantification of obligation
- Intact Insurance (formerly Guardian Insurance) Hearing
- Settlement

SJAI and ARC – Ongoing Matters

- Governance
- Policy and Procedure Development
- Reporting Standardization
- Employee Compensation – Internal and External Equity
- Resource constraints
- Cash flow constraints

Conclusions

- Restructuring a diocese is a massive undertaking.
- Restructuring in the wake of litigation and a court-monitored creditor protection process is a monumental feat.

As we meet today, we have not reached a final conclusion - the story of the Archdiocese of St. John's is still being written.

- Diocesan operations and holdings under RCECSJ's are winding down
- SJAI's and ARC's chapters are just beginning

Questions

