

COURT FILE NUMBER: 1501-00955

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: CALGARY

APPLICANTS: LUTHERAN CHURCH – CANADA, THE ALBERTA – BRITISH COLUMBIA DISTRICT, ENCHARIS COMMUNITY HOUSING AND SERVICES, ENCHARIS MANAGEMENT AND SUPPORT SERVICES, AND LUTHERAN CHURCH – CANADA, THE ALBERTA – BRITISH COLUMBIA DISTRICT INVESTMENTS LTD.

DOCUMENT: AFFIDAVIT

ADDRESS FOR SERVICE Sugden, McFee & Roos LLP  
AND CONTACT Barristers & Solicitors  
INFORMATION OF PARTY #700 – 375 Water Street  
FILING THIS DOCUMENT Vancouver, B.C. V6B 5C6

Attention: Errin A. Poyner

Telephone: 604-687-7700  
Fax: 604-687-5596

File No. K-5820(1)

**AFFIDAVIT OF COURTNEY CLARK**  
**Sworn on July 13, 2016**

I, COURTNEY CLARK, of Vancouver, British Columbia, SWEAR AND SAY THAT:

1. I am a legal assistant with the law firm of Sugden, McFee & Roos LLP, and solicitors for Elvira Kroeger and Randy Kellen herein, and as such have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be based on information and belief and where so stated I verily believe the same to be true.
2. Attached hereto and marked as **Exhibit "A"** to my affidavit is a true copy of a letter dated April 29, 2016 from Errin Poyner of Sugden, McFee & Roos LLP addressed to Jeffrey Oliver of Cassels, Brock & Blackwell LLP and Francis Taman of Bishop McKenzie LLP.

3. Attached hereto and marked as **Exhibit "B"** to my affidavit is a true copy of a letter dated April 29, 2016 from Ms. Poyner addressed to Madame Justice B.E.C. Romaine of the Calgary Courts Centre.
  
4. Attached hereto and marked as **Exhibit "C"** to my affidavit is a true copy of an email dated June 2, 2016 from Ksena J. Court of Bishop McKenzie LLP addressed to Ms. Poyner.
  
5. Attached hereto and marked as **Exhibit "D"** to my affidavit is a true copy of an email dated June 24, 2016 from Ms. Poyner to Mr. Oliver, Mr. Taman and Chris Simard of Bennett Jones LLP.

**SWORN BEFORE ME** at the )  
 City of Vancouver, in the )  
 Province of British Columbia, this )  
 13<sup>th</sup> day of July, 2016. )

  
 \_\_\_\_\_  
**COURTNEY CLARK**

\_\_\_\_\_ )  
 Errin A. Poyner )  
 A Commissioner for taking )  
 Affidavits within the Province of )  
 British Columbia. )

**SUGDEN, McFEE & ROOS LLP**  
**BARRISTERS & SOLICITORS**

---

RICHARD R. SUGDEN, Q.C.(2009)

E. DAVID CROSSIN, Q.C.\*  
ALBERT M. ROOS, Q.C.\*  
ERRIN A. POYNER  
MICHAEL D. SHIRREFF  
EMILIE E.A. LEDUC  
JESSIE I. MEIKLE-KÄHS

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ROBIN N. MCFEE, Q.C.\*  
PATRICK F. LEWIS\*  
ROBYN A. JARVIS  
ALLISON E. JACKSON  
ELIZABETH T.W. FRANCE  
MIRIAM ISMAN

THE LANDING  
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VANCOUVER, BRITISH COLUMBIA  
CANADA V6B 5C6

TELEPHONE 604-687-7700  
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**VIA EMAIL**

Cassels Brock & Blackwell LLP  
10<sup>th</sup> Floor, 888 – 3<sup>rd</sup> Street SW  
Calgary, AB T2P 5E9

Bishop & McKenzie LLP  
#1700 – 530 8<sup>th</sup> Avenue SW  
Calgary, AB T2P 3S8

**Attention: Jeffrey Oliver**

**Attention: Francis Taman**

Dear Sirs:

**Re: Lutheran Church of Canada – Alberta and British Columbia District (the “ABC District”)**  
**File Court Number: 1501-00955**


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I am writing to put your clients on notice of an application that I intend to bring on behalf of Mrs. Kroeger and Mr. Kellen in the event that the Amended Amended District Plan receives the requisite double majority voter approval at the Creditors’ Meeting on May 14, 2016.

As you are aware, it is our position that in light of the potential liability exposure of Deloitte LLP arising from Deloitte & Touche’s role as auditor for District from 1990 – 1998/9 and the allegations of professional negligence that have been made by my clients in respect of that engagement, the Monitor (a related firm) is unable to provide a neutral and objective opinion to the Court in respect of the Representative Action provisions of the Plan in the event that an application for judicial sanction of that Plan is brought.

Accordingly, in the event that the Plan receives the requisite double majority voter approval, I intend to immediately bring on an application for an order appointing Ernst & Young LLP as a Limited Purpose Monitor for the purpose of reviewing the Representative Action provisions of the Plan and advising the Court on the District’s application for judicial sanction of the Plan:

- (a) Whether the Representative Action provisions are fair and reasonable to depositors; and
- (b) Whether the Representative Action provisions are necessary to the District’s stated restructuring goals.

This is Exhibit “A” referred to in the  
Affidavit of Courtney Clark  
sworn before me at Vancouver  
this 13 day of July 2016  
  
A Commissioner for taking Affidavits  
within British Columbia

In my view, it serves no purpose to bring this application in advance of the Creditors' Meeting, as the issue will be rendered moot in the event that the requisite double majority of voter approval is not achieved. However, if other parties consider it necessary or desirable to bring this issue before the Court in advance of the Creditors' Meeting, please let me know.

Furthermore, I note Ms. Court's letter of today's date to Madame Justice Romaine requesting dates for the hearing of the judicial sanction application. Please bear in mind that my clients' application must be heard first. Accordingly, I will be writing to the Court to advise that I intend to bring on my application, and seeking the Court's guidance with respect to scheduling.

I am enclosing the Affidavit #3 and Affidavit #4 of Courtney Clark, which I intend to rely upon on the application.

Yours truly,

**SUGDEN, McFEE & ROOS LLP**  
PER:

**ERRIN A. POYNER**  
EAP/cc  
Enclosure

cc: Chris Simard  
Doug Nishimura  
Allan Garber

# SUGDEN, McFEE & ROOS LLP

BARRISTERS & SOLICITORS

RICHARD R. SUGDEN, Q.C.(2009)

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ALBERT M. ROOS, Q.C.\*  
ERRIN A. POYNER  
MICHAEL D. SHIRREFF  
EMILIE E.A. LEDUC  
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ROBIN N. MCFEE, Q.C.\*  
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\*DENOTES LAW CORPORATION

File No.: K-5280(1)  
Email: epoyner@smrlaw.ca  
April 29, 2016

## VIA FACSIMILE

Calgary Courts Centre  
Justice Chambers  
#601 – 5<sup>th</sup> Street  
Calgary, AB T2P 5P7

**Attention: The Honorable Madame Justice B.E.C. Romaine**

My Lady:

**Re: Lutheran Church of Canada – Alberta and British Columbia District (the “ABC District”)  
File Court Number: 1501-00955**

I am counsel for District and DIL Depositors Elvira Kroeger and Randy Kellen in the above mentioned matter. I write further to the letter of Ms. Ksenia Court, counsel for the Applicants, of today’s date.

Ms. Court has requested dates in June for a full day application for Judicial Sanction of the District and DIL Plans. I have today advised the parties that in the event that the District Plan receives the requisite double majority voter approval the Creditors’ Meeting scheduled for May 14, 2016, I will be bringing on an application for the appointment of Ernst & Young LLP as a Limited Purpose Monitor for the purpose of reviewing the Representative Action provisions of the Plan and providing an opinion to the Court as to the fairness and reasonableness of those provisions to the depositors.

Accordingly, I respectfully request the guidance of the Court with respect to the scheduling of these applications, both of which are contingent upon the District Plan receiving the requisite double majority voter approval. The parties may benefit from a short appearance before your Ladyship to address these scheduling matters.

Yours truly,

**SUGDEN, McFEE & ROOS LLP**  
PER:

**ERRIN A. POYNER**  
EAP/cc

cc: Counsel on Service List

This is Exhibit <sup>B</sup> referred to in the  
Affidavit of Courtney Clark  
sworn before me at Vancouver  
this 13 day of July 2016  
~~A Commissioner for taking Affidavits  
within British Columbia~~

**Errin Poyner**

**From:** Ksena Court <KCourt@bmlp.ca>  
**Sent:** June-02-16 2:56 PM  
**To:** Errin Poyner  
**Cc:** allan@garberlaw.ca; Oliver, Jeffrey; Chris Simard; Douglas Nishimura; Francis Taman  
**Subject:** "Limited Purpose Monitor" application and Sanction Hearings

Hi Errin,

As you are aware, we were before Justice Romaine this afternoon respecting our application filed May 23, 2016. At the end of the hearing, Justice Romaine advised that she wished to set a date for the hearing of your "Limited Purpose Monitor" application and the Sanction Hearings. Justice Romaine is amenable to having these applications heard on the same day as proposed in my letter to her of May 27, 2016.

Justice Romaine advised that she is available during the following times:

- The week of June 27 – 30 – it is my understanding that you are currently not available during this time due to a trial. In the event that your circumstances change, please let me know.
- The week of July 11 – I confirm that Francis is available on July 11, 13, 14, and 15. Errin, in your letter to Justice Romaine of May 27, 2016, you confirmed that you were available on July 11. Please confirm that this is still the case. Please also advise whether you are available on July 13, 14, or 15.

Once I hear from you, I will get in touch with Justice Romaine's office and send a confirming letter.

If any of the counsel copied on this email are not available on any of the proposed dates, please let me know.

**Ksena J. Court**  
**Barrister & Solicitor**

T 403.750.7994  
E [KCourt@bmlp.ca](mailto:KCourt@bmlp.ca)  
W <http://www.bmlp.ca/profile/court-ksena-j>  
Suite 1700, 530 - 8th Avenue S.W.  
Calgary, Alberta T2P 3S8

This is Exhibit "c" referred to in the  
Affidavit of Courtney Clark  
sworn before me at Vancouver  
this 15 day of July, 2016

[Signature]  
A Commissioner for Taking Affidavits  
with British Columbia



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**Errin Poyner**

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**From:** Errin Poyner  
**Sent:** June-24-16 4:48 PM  
**To:** joliver@casselsbrock.com; ftaman@bmlp.ca; SimardC@bennettjones.com  
**Cc:** allan@garberlaw.ca; Courtney Clark  
**Subject:** Limited Purpose Monitor application

All,


I write to advise that I intend to expand the relief sought in my clients' motion to include removal of the Monitor for all purposes. The basis for the application is the Monitor's failure to disclose the MDSP, the Conrich ASP, and the related Appeals.

I will file and serve my materials on July 4 in accordance with the Commercial Practice Note.

Yours truly,

Errin Poyner

Sent from my iPhone

This is Exhibit "D" referred to in the  
Affidavit of Courtney Clark  
sworn before me at Vancouver  
this 13 day of July 2016  
  
A Commissioner for taking Affidavits  
within British Columbia