# SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-11-065011-245

DATE: February 12, 2025

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**BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.**

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**IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:**

**ELNA MEDICAL GROUP INC. / GROUPE MÉDICAL ELNA INC.**
and
**9508503 CANADA INC.**
and
**THE OTHER APPLICANTS LISTED IN SCHEDULE A OF THE APPLICATION**
Applicants
and
**RAYMOND CHABOT INC.,**
Monitor

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**JUDGMENT ON APPLICATION FOR A SECOND AMENDED AND RESTATED INITIAL ORDER**

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## OVERVIEW

[1] On December 11, 2024, the undersigned issued an initial order (the "**Initial Order**")[1] pursuant to the *Companies' Creditors Arrangement Act*[2] (the "**CCAA**") on behalf of Applicants, ELNA Medical Group Inc. ("**EMG**"), 9508503 Canada Inc. ("**950 Canada**"), as

[1] *Arrangement relatif à Elna Medical Group Inc./Groupe médicale Elna inc.*, 2024 QCCS 4541.
[2] *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.

well as other Applicants listed in Schedule A of the Initial Order (collectively with EMG and 950 Canada, the "**Applicants**").

[2] Among other things, the Initial Order:

2.1. stayed all proceedings and remedies taken or that might be taken in respect of the Applicants and their property (the "**Stay**"), for an initial period of ten days (the "**Stay Period**");

2.2. stayed all civil proceedings and remedies taken or that might be taken in respect of Mr. Laurent Amram, and any of his property, with respect to: i) personal guarantees granted on debts of the Applicants as well as other related entities forming part of the ELNA Group, and ii) personal loans whose proceeds were totally invested in the Applicants as well as other related entities forming part of the ELNA Group (the "**Amram Stay**");

2.3. appointed Raymond Chabot Inc. ("**RCI**" or the "**Monitor**") as the monitor of the Applicants in these proceedings (the "**CCAA Proceedings**") and granted the Monitor certain powers;

2.4. granted an Administration Charge (as defined in the Initial Order) and a D&O Charge (as defined in the Initial Order);

2.5. authorized the engagement of Crowe BGK LLP (Mr. Patrick Ifergan) to act as Chief Financial Officer (the "**CFO**");

2.6. authorized National Bank of Canada ("**NBC**" or the "**Interim Lender**") to provide the DIP Facility (as defined in the Initial Order) to the Applicants and granted DIP Charge (as defined in the Initial Order) in relation thereto;

2.7. ordered the sealing of certain confidential exhibits.

[3] At the same time the Court issued an order (the "**SISP Approval Order**") approving the initiation of a Sale and Investment Solicitation Process (the "**SISP**") as well as the appended bidding procedures (the "**Bidding Procedures**"). The SISP Approval Order approved the engagement of Raymond Chabot Grant Thornton & Co LLP (the "**Financial Advisor**") to assist in the implementation of the SISP.

[4] On December 17, 2024, the Court issued an Amended and Restated Initial Order (the "**ARIO**")[3] which, among other relief:

4.1. extended the Stay Period and the Amram Stay to February 12, 2025;

4.2. increased certain CCAA Charges;

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[3] *Arrangement relatif à Elna Medical Group Inc./Groupe médicale Elna inc.*, 2024 QCCS 4612.

4.3. authorized the Applicants to establish a Key Employee Retention Program (the "**KERP**" as defined in the ARIO) and a KERP Charge (as defined in the ARIO).

[5] The Applicants now seek a Second Amended and Restated Initial Order (the "**Second ARIO**"), providing for the following relief:

5.1. an extension of the Stay Period until March 10, 2025;

5.2. approval of the ELNA KERP to add certain Quebec-based employees of the Applicants as well as the modification of the corresponding KERP Charge;

5.3. a sealing order with regards to the details of the ELNA KERP and certain Schedules to the second report (the "**Second Report**") of the Monitor.[4]

## ANALYSIS

[6] The Second ARIO is not contested.

[7] It differs from the ARIO in the following ways:

### 1. Stay of Proceedings

#### 1.1 The Extension of the Stay Period to March 19, 2025

[8] The Applicants seek an extension of the Stay Period until March 10, 2025. However, they are not seeking an extension of the Amram Stay as Mr. Amram has filed a notice of intention under the *Bankruptcy and Insolvency Act* (the "**BIA**").

[9] The extension of the Stay Period is required to allow the Applicants and the Monitor to focus on the SISP which is crucial to the restructuring efforts.

[10] The SISP is progressing.

[11] On December 13, 2024, the Financial Advisor sent out a SISP solicitation teaser (the "**Teaser**") to potential acquirers and investors. The Teaser provided information regarding the sale of the Applicants' business, the SISP milestones and invited them to enter into Non-Disclosure Agreements ("**NDA**") with the Applicants.

[12] The Parties who signed an NDA were provided access to the virtual data room ("**VDR**"), obtained a copy of the Applicants' Confidential Information Memorandum and qualified for Phase 1 of the SISP.

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[4] Exhibit R-4.

[13] On January 20, 2025, Mr. Amram informed the Monitor that he wished to participate in the SISP and submit a Phase 1 non-binding letter of interest ("**Amram Notice**").

[14] On January 22, 2025, upon receipt of the Amram Notice, and in consultation with the Applicants and the interim lender, the Monitor prepared a notice to Potential Bidders, which was posted to the VDR on January 22, 2025. It also set in motion the application of paragraphs 34 to 36 of the Bidding Procedures related to the conditions imposed upon any Related Bidder (as defined therein).

[15] These provide that:

15.1. A Related Bidder is no longer entitled to receive information regarding the conduct of the SISP;

15.2. A Related Bidder may no longer exercise any of the Applicants' consultation or consent rights that the Related Bidder would have exercised, and the Monitor can make such decisions on behalf of the Applicants, as it deems appropriate;

15.3. The Financial Advisor then becomes the sole contact person of any Potential Bidder and no discussions and/or exchanges regarding the SISP or any bids are authorized between a Related Bidder and Potential Bidder, save and except if the Monitor is present or party to such discussions.

[16] The Monitor also received confirmation from the CFO that he was not involved in the offer of Mr. Amram and that he would not be participating in the SISP, whether as a Potential Bidder or within a group, and that, despite this absence of involvement, he agreed to not receive the LOIs or any information in connection with the LOIs, in order to preserve the integrity of the process and to avoid any perceived conflict of interest.

[17] The Monitor confirmed that Applicants' counsel would not share the LOIs nor any information in connection with the LOIs to anyone, including in particular to Mr. Amram and the CFO, and that any instructions in connection with the conduct of the SISP pertaining to the Applicants would come from the Monitor, in order to preserve the integrity of the process and to avoid any perceived conflict of interest.

[18] The presence of a Related Bidder also requires certain modifications to the ARIO to allow the CFO or Monitor to exercise certain rights belonging to the Applicants.

[19] By the Phase 1 deadline of January 31, 2025, forty-five non-binding letters of intent ("**Phase 1 LOI**") were received by the Financial Advisor, including a Phase 1 LOI from Mr. Amram.

[20] The Financial Advisor and the Monitor, with the assistance of the Monitor's counsel and the Applicants' counsel, reviewed and considered the Phase 1 LOIs in accordance with the terms of the SISP. In accordance with the terms of the DIP Term Sheet, NBC

was kept apprised of all developments in connection with the SISP and received a copy of Phase 1 LOIs.

[21] On February 7, 2025, the Financial Advisor informed certain interested parties that following receipt and review of the Phase 1 LOIs, they had been qualified to participate in Phase 2 of the SISP ("**Phase 2 Qualified Bidders**"). Other parties received a rejection letter such that all parties having submitted an LOI received a communication from the Financial Advisor.

[22] The Financial Advisor then initiated Phase 2 of the SISP, populated and opened a separate Phase 2 VDR, and the Phase 2 Qualified Bidders were invited to continue their due diligence and submit definitive offers by March 7, 2025.

[23] An extension to March 10, 2025, will allow the Phase 2 Qualified Bidders to file their bids and the Financial Advisor to analyse same.

[24] No creditor of the Applicants will be materially prejudiced if the extension is granted.

[25] The DIP Facility provides the ELNA Group with sufficient cash flow to continue operations and its restructuring initiatives under the CCAA up to and including March 19, 2025.

[26] The Monitor supports the requested extension of the Stay Period until March 10, 2025.

[27] The extension is approved.

## 2. ELNA KERP and ELNA KERP Charge

[28] The Initial Order included a Medicentres doctors retention program ("**MRP**") and a MRP Charge to secure the ongoing support of doctors of the Medicenters' clinics.

[29] The ARIO approved a KERP and a KERP Charge to secure the contribution of two employees who were essential to the success of the CCAA proceedings.

[30] The Applicants are now seeking approval of the ELNA KERP in respect of certain key employees based in Quebec as well as the corresponding ELNA KERP Charge.

[31] As the Court mentioned when it approved the initial KERP, there are three overarching considerations applicable on an application to approve a retention or incentive program in an insolvency proceeding, being:

31.1. arm's length safeguards;

31.2. necessity; and

31.3. reasonableness of design.[5]

[32] Factors to be considered include:

32.1. whether the Monitor supports the program agreement and charge, to which great weight is attributed;

32.2. whether the beneficiaries of the program are likely to consider other employment opportunities if the program and associated charge are not approved;

32.3. whether the continued employment of the beneficiaries of the program is important for the stability of the business and to enhance the effectiveness of any marketing process;

32.4. the beneficiaries' history with and knowledge of the debtor company;

32.5. whether a replacement could be found in a timely manner should the beneficiary elect to terminate his or her employment with the debtor company;

32.6. whether the program agreement and charge were approved by the debtor company's board of directors, including any independent directors, as the business judgment of the board should not be ignored;

32.7. whether the program agreement and charge are supported or consented to by secured creditors of the debtor; and

32.8. whether the payments under the program are payable upon the completion of the restructuring process.[6]

[33] The ELNA KERP and the corresponding ELNA KERP Charge are appropriate in the present circumstances.

[34] The ELNA KERP was developed by the Applicants, in consultation with the Monitor, to facilitate and encourage the continued participation of key employees who are required to ensure minimal disruption of activities in this critical phase of the SISP, and to avoid further erosion of the Applicants' workforce.

[35] The ELNA KERP provides participants with an additional payment as an incentive to continue their employment through the CCAA proceedings. These employees have

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5 *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586, para. 69; *Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980 at para. 30.

6 *Just Energy Group Inc. et al.*, 2021 ONSC 7630, para. 7; Mountain Equipment Co-Operative (Re), supra, 5, para. 68; *Aralez Pharmaceuticals Inc. (Re), supra,* note 5, para 29; *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 at para 59.

significant experience and specialized expertise that cannot be easily replicated or replaced at this stage of the proceedings.

[36] Some of these key employees have received other employment offers and opportunities.

[37] The ELNA KERP includes seven employees. The total amount of the ELNA KERP payments to be made pursuant to the ELNA KERP will be $250,000 in the aggregate. Mr. Amram is not a proposed beneficiary of the ELNA KERP.

[38] The ELNA KERP payments will be made to each participant in a single lump-sum payment payable in priority following the closing of a single, or multiple, transaction(s) for substantially all of the Applicants' assets, property and undertakings. It is a condition to receive any payments under the ELNA KERP that the employee remain actively employed throughout the CCAA proceedings and maintains satisfactory compliance with current employment conditions.

[39] The ELNA KERP will be guaranteed by an ELNA KERP Charge, on all of the present and future assets, property and undertakings of the Applicants, ranking ahead of all other secured and unsecured creditors, other than the Administration Charge, the Medicentres KERP Charge, the MRP Charge, and the DIP Charge, but before the D&O Charge, up to a maximum amount of $250,000.

[40] The Monitor supports the ELNA KERP and the ELNA KERP Charge.

[41] They are approved.

## 3. Sealing Order

[42] The Applicants seek an order declaring that the details of the ELNA KERP (Exhibit R-5) and certain schedules to the Monitor's second report be strictly kept confidential and filed under seal.

[43] In *Sherman Estate v Donovan*,[7] the Supreme Court of Canada confirmed that a sealing order can only be granted in the following circumstances:

43.1. court openness poses a serious risk to an important public interest;

43.2. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,

43.3. as a matter of proportionality, the benefits of the order outweigh its negative effects.

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[7] *Sherman Estate v. Donovan*, 2021 SCC 25, para. 38.

[44] These conditions are met here.

[45] Exhibit R-5 contains personal information related to key employees. The identification of these employees could lead to them receiving further offers which could jeopardize the restructuring.

[46] The schedules contain commercially sensitive information regarding the business and assets of the Applicants as well as a summary of the Phase 1 LOIs, and the Phase 2 Qualified Bidders. Disclosure of such information risks compromising the SISP.

[47] Canadian courts, as a general practice, consider that all aspects of a bidding or sales process should be kept confidential. The sealing of this information protects the integrity of the process and ensures that, while the process is running its course, all potential bidders are treated equitably, and no one obtains an unfair advantage. Courts have considered that publicly divulging such information would negatively impact on future realizations on the assets and the parties' efforts to maximize value for stakeholders. The commercial interests of the monitor, bidders, creditors and other stakeholders to promote a fair sales and solicitation process in restructuring, insolvency or liquidation matters constitutes an important public interest.[8]

## 4. Execution Notwithstanding Appeal

[48] Given the urgency and severity of the circumstances confronting the Applicants, it is appropriate that the execution of the orders sought herein be granted notwithstanding appeal.

## 5. Potential Conflict of Interest

[49] During the hearing, the Court raised issues regarding potential conflicts of interest involving the firm of McCarthy Tétrault LLP ("**McCarthy**") who represents the Monitor in the present proceedings.

[50] Indeed, the Pre-filing report of the Monitor had disclosed that a team of McCarthy lawyers had acted for the monitor in the Brunswick Health Group CCAA matter (Superior Court no 500-11-062636-234) (the "**Brunswick CCAA**").

[51] In the course of the Brunswick CCAA, 15529301 Canada inc., a company ultimately owned by Mr. Amram, purchased a group of medical clinics. Further to this transaction, the assets of the Brunswick Health Group were encumbered in favour of the monitor of

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[8] *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857, para. 53; *Yukon (Government of) v.*, 2022 YKSC 2, paras. 39 to 43; *Danier Leather Inc. (Re)*, 2016 ONSC 1044, paras. 82 to 86; *GE Canada Real Estate Financing Business Property Co v. 1262354 Ontario Inc.*, 2014 ONSC 1173, paras. 33 and 34; *Look Communications Inc v. Look Mobile Corp* (2009), 183 ACWS (3d) 736 (Ont Sup Ct); *887574 Ontario Inc. v. Pizza Pizza Ltd.*, (1994), 23 B.L.R. (2d) 239 (Ont. Gen. Div.).

the Brunswick Health Group, as *fondé de pouvoir* for the existing secured creditors in the file, namely TD Bank and BDC.

[52] The Pre-filing report of the Monitor also mentioned that a third team of McCarthy lawyers was acting as counsel for Fiera Enhanced Private Debt Fund LP ("**Fiera**") who is a secured creditor of certain entities of the ELNA group, including La Cité Médicale Inc. ("**LCM**") and Physimed Health Group ("**Physimed**"). While the LCM and Physimed entities are not part of the present CCAA proceedings, Fiera sent prior notices of the exercise of a hypothecary right (sale under judicial authority) and notices of intention to enforce security pursuant to section 244 of the BIA to both LCM and Physimed. On December 23, 2024, a receiver was appointed at the request of Fiera for LCM. Mr. Amram is a guarantor of both LCM and Physimed. Furthermore, as EMG renders services to Brunswick, LCM and Physimed services agreements are being negotiated between the parties.

[53] The Pre-filing report noted that McCarthy has put in place confidentiality and conflict measures between the teams working for Fiera, the monitor in the Brunswick CCAA and the Monitor in the present proceedings. The Monitor also noted that these conflicts had been disclosed to the ELNA Group, to NBC and to Fiera who were all satisfied of the measures taken.

[54] While the Court asked questions about this at the first day hearing, no one objected. Thus, the matter was not pursued any further.

[55] The Second report of the Monitor now mentions that the Monitor was advised that McCarthy lawyers could be contacted to act as advisors for one or more Potential Bidders.

[56] The Monitor states that it has implemented proactive measures (the "**Conflict Measures**") to avoid any potential or perceived conflicts of interest conflicts and preserve the integrity of the SISP.

[57] These measures state that:

> 57.1. <u>One or more separate McCarthy team(s) may advise Bidder(s) under the SISP</u>, with applicable confidentiality measures and subject to the conditions of the paragraph below
>
> 57.2. The Bidder(s) concerned must be informed and accept that the McCarthy team advising it in the context of the SISP (i) cannot have communications with the Applicants, the Monitor, the Financial Advisor or their representatives, (ii) cannot participate in negotiations or discussions with them, (iii) cannot represent the Bidder in Court, and (iv) <u>McCarthy will continue its representation of the Monitor in the proceedings under the CCAA, regardless of the circumstances and developments</u>.
>
> 57.3. The Applicants, <u>the Monitor, the Financial Advisor or their representatives</u>

> in the context of the CCAA proceedings cannot be informed of any such mandate(s) for a Bidder, if any, nor even of the identity of the Bidder(s). A McCarthy lawyer in charge of conflict measures has implemented these measures, including confidentiality screens, and monitors them.
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> 57.4. In this context, and for clarity, no notice that a separate McCarthy team acts for a Bidder can be sent, since the Applicants, the Monitor and the Financial Advisor cannot be informed of any such mandate, as the case may be.
>
> [Emphasis added]

[58] The Court does not doubt the professionalism of the lawyers involved or the fact that everyone is acting in good faith.

[59] This being said, it has serious reservations with what is suggested.

[60] The Monitor's role has often been described as "the eyes and the ears of the Court".[9] The Court must be able to rely on the Monitor's independent and impartial expertise on all matters related to the CCAA proceedings, including on the Conflict Measures put in place to avoid conflicts and protect the perceived integrity of the SISP.

[61] It is difficult for the Court to have faith in such Conflict Measures when the Monitor is obtaining legal advice on this issue from the very firm that is the source of the conflict. Indeed, this conflict is the cause of the potential threat to the integrity of the SISP that the Conflict Measures are meant to protect.

[62] The exacting standards of the legal profession are designed to:

- 62.1. Preserve the integrity of the judicial system;
- 62.2. Prevent the harm caused when a lawyer subdues his client's representation to his own interests, the interest of another client or the interest of a third party; and
- 62.3. Prevent the misuse by counsel of confidential information obtained from a client.[10]

[63] The preservation of the integrity of the judicial system is so important that it must take precedence when it cannot be reconciled with the right of the litigant to counsel of

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9 *Canada v. Canada North Group Inc.*, 2021 SCC 30, par. 28; *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, para. 52; *Ernst & Young Inc. v. Essar Global Fund Ltd.*, 2017 ONCA 1014, 139 O.R. (3d) 1, para. 109; *Winalta Inc. (Re)*, 2011 ABQB 399, paras. 67 and following.

10 *Compagnie de chemins de fer nationaux du Canada* c. *McKercher LLP*, 2013 SCC 39 (« ***McKercher*** »), para. 23.

his or her choice. As such, it is a ground that may, in and of itself, require disqualification even in the absence of a risk of misuse of confidential information.[11]

[64] Because public confidence in the administration of justice will only be guaranteed if the integrity of the system is seen to be protected, the test must be assessed in terms of the perception of a member of the public who is properly informed of the facts of the case.[12]

[65] When a lawyer has represented opposite parties in different successive matters, an applicant who wishes to disqualify counsel must prove that there is a sufficient connection between these mandates. If the applicant succeeds, there is a presumption that confidential information has been transmitted. Indeed, there is a strong inference that lawyers who work together share confidences. While a lawyer may rebut this presumption, the burden of proof is heavy. The court must be satisfied that a reasonably informed member of the public would be satisfied that no confidential information was transmitted.[13]

[66] However, the rule is more draconian in the case of simultaneous or joint representation. It is trite law that when a lawyer wishes to concurrently represent clients who have adverse interests, the bright line test requires that the lawyer obtain the consent of both regardless of whether the matters are related.[14] Moreover, when a lawyer wishes to represent both parties in a transaction, he or she must advise them of the risk that he or she may not be able to represent either one of them in the event of a conflict between the parties.[15] These requirements form part of a lawyer's duty of candour and loyalty. As Justice Binnie observed, a lawyer must not "keep the client in the dark about matters he or she knows to be relevant to the retainer".[16] Generally, the lawyer may only continue to act against a former joint client if both clients consent.[17] In the same vein, a lawyer can generally not act for a party to a contract he or she drafted when a subsequent conflict arises between the contracting parties.[18]

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11 *Succession MacDonald* c. *Martin*, [1990] 3 SCR 1235 (« ***Macdonald*** »), p. 2079; *Baril* c. *Woods*, 2022 QCCA 277, para. 24 (Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2022-09-01) 40127); *Faure* c. *Goulet*, 2021 QCCA 308, para. 16; *Dussault* c. *9007-5433 Québec inc.*, 2020 QCCA 853, para. 24.

12 *Macdonald*.

13 *Macdonald*, pp. 1260, 1262 and 1270.

14 *McKercher*, paras. 8, 27 and 31; *R. v. Neil*, 2002 SCC 70, [2002] 3 S.C.R. 631, para 29.

15 *Code of Professional Conduct of Lawyers*, RLRQ, c. B-1, r. 3.1, s. 84; Ann M. SODEN, «Family Matters: Ethical Issues and Avoidance of Disputes in Estate and Incapacity Planning», in Barreau du Québec, Service de la formation continue, *Développements récents en successions et fiducies (2009)*, volume 305, Cowansville, Éditions Yvon Blais, 2009 [online], p. 111; Michel TÉTRAULT, *Droit de la famille*, 2nd ed., Cowansville, Éditions Yvon Blais, 2003, p. 1091.

16 *Strother* v. *3464920 Canada Inc.*, 2007 SCC 24, para. 55.

17 *Code of Professional Conduct of Lawyers*, *supra*, note 15, s. 85, 87 and 88; *Latour* c. *Lombardi*, [1994] R.L. 456 (C.S.), para. 8.

18 *Med Pizza inc.* c. *3880516 Canada inc.*, 2007 QCCS 3707, paras. 2 and 23; *Jack* c. *Jack*, 2006 QCCS 4170; *Fabian* c. *2930986 Canada inc.*, J.E. 98-1034 (C.S.); *Lapointe* c. *Disques Gamma (Qué.) ltée*,

[67] In such a case, the rule is not premised so much on the receipt of confidential information but on the duty of loyalty and the preservation of the public perception of the integrity of the judicial system[19].

[68] In the present proceedings, McCarthy is advising the Monitor who is drafting and implementing the Bidding Procedures as well as the Conflict Measures put in place to minimize the consequences of a conflict. It may be called upon to advise the Monitor on the interpretation of these procedures or measures. McCarthy also wishes to have the right to represent one or more Potential Bidders.

[69] How can a reasonably informed member of the public be confident that a Potential Bidder who is represented by the same firm that drafted the Bidding Procedures or Conflict Measures and will be called to interpret them will not hold an advantage over the others? Moreover, how can Potential Bidders who are simultaneously represented by the same firm be confident that one bidder will not be preferred to the other? In the Court's view, a reasonably informed member of the public would conclude that it cannot have such faith.

[70] The bright line test is fully engaged here. The matters are clearly related. Furthermore, the interests of the Monitor and those of Potential Bidders diverge. The Monitor's interest is to select the bid that is the most advantageous for the stakeholders. The Bidder's interest is that his bid be selected for his personal benefit. The perception of conflict is exacerbated here given that the presence of a Related Bidder has resulted in the Financial Advisor becoming the sole contact person for any Potential Bidder and the Monitor being authorized to exercise the rights of the Applicants under the SISP Approval Order.

[71] Similarly, it seems obvious that concurrent Bidders for the same assets also have conflicting interests. Each of them wants his bid to succeed to the exclusion of the other.

[72] The Court believes this conflict is live and real. But even if it were considered to be a potential one, the fact that Potential Bidders are being asked to accept that "McCarthy will continue its representation of the Monitor in the proceedings" makes it impossible to remediate the issue in the event the conflict becomes more acute.

[73] In any event, because conflicts of interest are a matter of public order, the Court does not believe that it is appropriate to ask Potential Bidders to blindly waive their right in advance to seek the disqualification of the firm representing the Monitor "regardless of the circumstances and developments". To be valid, consent to a conflict must be informed and enlightened as to the particular circumstances of the conflict.

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J.E. 96-834 (C.S.), paras. 8 to 10; *Bow Valley Energy Inc.* c. *San Diego Gas & Electric Co.* (1996) 38 Alta L.B. (3d) 116 (C.A.); *A.P.V. Pavailler inc.* c. *Bonischot*, [1992] R.D.J. 542 (C.A.), para. 10.

[19] *McKercher*, para. 31.

[74] Finally, as simultaneous or joint representation requires the consent of all parties involved, this can't be achieved if relevant parties "cannot be informed of any such mandate(s) for a Bidder, if any, nor even of the identity of the Bidder(s)".

[75] Thus, it appears to the undersigned that the measures suggested are simply incompatible with the ethical rules governing conflicts in Quebec.

[76] As the Court is not required to approve the Conflict Measures, no changes are required in the Second ARIO.

[77] Nonetheless, the Court invites the relevant parties to reflect on the situation.

[78] If the parties remain of the same view, the Court asks that the Monitor obtain independent legal advice (from a firm other than McCarthy) to ensure that the Conflict Measures constitute a solution that does not compromise the integrity of the SISP and the judicial system.

**CONCLUSION**

[79] The Second ARIO is in the interest of the stakeholders including, first and foremost, the patients who rely on ELNA Group's services.

[80] The Second ARIO is granted.

[81] Given that the parties' documents were submitted in English, that this ARIO applies to assets in other Canadian provinces and that it is urgent that judgment be rendered without delay, the present judgment is issued prior to a French translation being available.

**FOR THESE REASONS, THE COURT:**

[82] **ISSUES** an Second ARIO submitted by the parties this day and attached to the present judgment;

[83] **THE WHOLE** without costs.

Martin Sheehan

Signature numérique de Martin Sheehan
Date : 2025.02.12 11:26:33 -05'00'

MARTIN F. SHEEHAN, J.S.C.

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