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THE TRADER'S CHALLENGE



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December 4, 2000

Church shielded assets from victims

Court documents on mount cashel affair: Christian Brothers in Rome tried to protect holdings after abuse convictions at orphanage

Richard Foot

National Post

The Christian Brothers, the international Catholic teaching order that ran Newfoundland's infamous Mount Cashel orphanage, misled a Canadian court in attempts to protect millions of dollars worth of assets from creditors, according to court documents filed in Ontario.

Their plan was orchestrated out of Rome by senior leaders of the order, whose Canadian arm went into liquidation after members were convicted of molesting boys at the orphanage in St. John's in the 1970s, the documents say.



Mark Van Manen, The
Vancouver Sun

Archbishop Adam Exner

Brothers in Rome tried to transfer ownership of Canadian assets outside the country, "in the hope that by doing so the shares would not be subject to sale by the liquidator," the documents say.

The records also say that Adam Exner, the Roman Catholic Archbishop of Vancouver, tried to help the Christian Brothers shield two of their alleged assets, two Vancouver schools, despite a judge's order requiring the Brothers to use all assets to compensate the Mount Cashel victims.

A report to the Ontario Superior Court of Justice, filed in August by the lawyer for Arthur Andersen Inc., the court-appointed liquidator of the Christian Brothers of Ireland in Canada [CBIC], raises "questions about the bona fides [or honest intention] of the decision by the Christian Brothers to wind up CBIC for the purposes of maximizing compensation to the victims of abuse, and demonstrates possible ... breaches of an undertaking to this court."

The report says the Brothers tried to "minimize the assets available to CBIC's creditors and were actively working for the benefit of those who wanted control of these assets and who were not directly exposed to CBIC's liabilities."

It says the liquidation was structured to "preserve for the Christian Brothers or the Archbishop of Vancouver the only assets of [CBIC] able to provide meaningful compensation to the tort creditors of CBIC."

In 1996, overwhelmed by claims against them, the Christian Brothers put their Canadian operations into liquidation. Today, the claims total nearly \$80-million, from 126 alleged victims and from the Newfoundland government, which hopes to recoup some of the \$12-million it paid to victims in a separate settlement following the abuse scandal.

At the time of liquidation, Barry Lynch, the senior Canadian Brother, swore in an affidavit that the wind-up of operations would ensure that a "maximum amount" of assets would be "employed compensating all of the claimants in a fair and expedited manner," documents say.

Brother Lynch informed the court that the total value of the order's Canadian assets was about \$4.2-million. That figure represents the sale of the Mount Cashel orphanage and a few smaller properties elsewhere.

However, documents show in 1991 Brother Lynch was a member of an internal financial task force that calculated the Canadian Brothers had, "in conservative terms, well over \$100-million in assets."

David Wingfield, the lawyer who wrote the report, said he doesn't know where most of that \$100-million has gone. His report, filed in August, threatens legal action if assets are ever found to have been "removed or secreted" out of Canada.

He does know that \$40-million worth of property lies in two private Catholic schools: Vancouver College, in Vancouver; and St. Thomas More Collegiate, in Burnaby, B.C. However, the order won't admit to owning them.

Court records suggest the order's winding-up exercise was designed to let the Brothers pay off their liabilities for about \$4-million -- "the only amount [they] were willing voluntarily to relinquish" -- while keeping the two schools out of the hands of the liquidator and the creditors.

Documents say the Brothers were "actively working with the Archbishop of Vancouver and for the General Council of the Christian Brothers [in Rome], to ensure that the liquidator would not have access to the shares and underlying assets of Vancouver College Limited and St. Thomas More."

Brother Lynch had misgivings about this strategy, documents show. Two months before liquidation began, he wrote to his superior in Rome, questioning a plan "in which the survivors may not be fairly and equitably compensated For example," he said, "our decision to keep Vancouver College out of the compensation picture needs to be reviewed."

His advice went unheeded. Brother Lynch's affidavit later stated that the Brothers do not own, but only "administer" Vancouver College, and that the ownership of St. Thomas More is unclear.

Despite saying that the schools were not their property, the Brothers worked with the Archbishop of Vancouver in 1998 to try to use monies from the schools -- plus \$1-million in Archdiocese funds -- to privately settle their claims behind the back of the liquidator, documents say. The offers, totalling about \$10-million, failed.

Since that time the Christian Brothers, through the schools, have taken the liquidator to court, trying to prove that the order does not own the schools. Courts in Ontario and B.C. have disagreed. Last month the Supreme Court of Canada also turned down the schools' request to hear their appeal of an Ontario court ruling that they are subject to liquidation. John Nixon, chairman of Vancouver College, said the trial judge in B.C.

erred in ruling that the Christian Brothers own the schools, and Vancouver College is appealing that decision.

Legal fees have since eaten up all of the \$4-million voluntarily liquidated by the Brothers, leaving nothing so far for compensating the victims.

Mr. Wingfield said this is the first case he knows of in Canada where an organization has voluntarily submitted to liquidation, then turned around and sued the liquidator.

"The circumstances of this are both unique and remarkably troubling," he says.



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THE TRADER'S CHALLENGE



December 4, 2000

An order and its debts

The decades-old Mount Cashel scandal shocked Newfoundland and rocked the Catholic Church in Canada. According to a report, the Christian Brothers are still trying to avoid paying the price of what their members did

Richard Foot

National Post

It was August, 1996 -- 20 years after complaints of child abuse first surfaced at the Mount Cashel orphanage in Newfoundland -- that Barry Lynch, the senior Canadian official in the Congregation of Christian Brothers, wrote to his superiors in Rome questioning the moral conduct of the order.

Five Canadian Brothers had been convicted of offences at Mount Cashel ranging from buggery to assault causing bodily harm. Now dozens of victims were suing the order for compensation, and in response the Brothers had put their Canadian properties in liquidation.

Yet in a letter reproduced in court documents filed this year, Brother Lynch questioned the sincerity of the liquidation effort, telling Rome that the order was failing to take responsibility for its actions. "There is a profound and complex part of this issue of Christian Brothers' child sexual abuse which we have not addressed in a full and significant manner and that is the issue of the commitment to justice that we as Christian Brothers are called to in responding to the survivors of the sexual abuse perpetrated by members of our Congregation."

He added: "We cannot pursue this issue of justice with an attitude which effectively asks, 'How can we get beyond financial compensation with the least amount of damage to the community and mission?' "



Nick Didlick, National Post

The Congregation of Christian Brothers says the Vancouver-area schools Vancouver College,...



Jeff Vinnick, National Post

...and St. Thomas More Collegiate, above right, are administered by the order, but are not assets subject to liquidation.

Court documents say in 1975 the Christian Brothers tried to avoid the criminal consequences of Mount Cashel abuse by making a bargain with St. John's police to keep the matter secret in return for getting the abusers out of Newfoundland. Many were transferred to two private schools operated by the teaching order in British Columbia: Vancouver College, in Vancouver; and St. Thomas More, in Burnaby.

Sixteen years later, following a Newfoundland inquiry into the coverup, five brothers were convicted and jailed.

Today, with the criminal cases behind them, court documents say, "The Christian Brothers are also trying to avoid the civil consequences of their actions."

These court records, filed in Ontario and British Columbia, are the submissions of a lawyer for Arthur Andersen Inc., the accounting firm appointed by the Ontario Superior Court to wind up the Christian Brothers of Ireland in Canada (CBIC). Since 1996, the liquidator has been fighting in both Ontario and British Columbia courts with the two Vancouver-area schools. The liquidator says the schools are by far the CBIC's most valuable properties, worth about \$40-million, and should be sold to raise funds for compensation.

The schools say although they were founded by the Christian Brothers, have been administered by the Brothers, employ Brothers as teachers, and have Brothers living on campus, their shares are not owned outright by the order, but are protected by a special trust. Therefore, they are immune from liquidation.

The courts have disagreed, although Vancouver College is still appealing this ruling in British Columbia.

"This whole thing is an outrage, that we're in this at all," says John Nixon, chairman of Vancouver College. "We are not liable for anything that happened in Newfoundland and we should not sacrifice our school on the basis of claims that have arisen there."

Whatever the future of the schools, the liquidator's documents say they raise questions about the honest intent of a Roman Catholic organization -- it obtained permission from the Vatican in 1996 to wind up operations -- to fully cover its liabilities to the victims of child abuse.

"The winding up was structured to enable the [CBIC] to obtain a discharge of its [Mount Cashel] liabilities for approximately \$4.3-million -- the only amount the [CBIC] was willing voluntarily to relinquish -- but to preserve for the Christian Brothers or the Archbishop of Vancouver the only assets of the [Canadian Brothers] able to provide meaningful compensation to the tort creditors of CBIC," the documents say.

In the early 1990s, the Canadian Brothers were optimistic they could survive the Mount Cashel compensation claims intact. Court records show an internal financial task force, which weighed the order's liabilities in the wake of the Mount Cashel affair, calculated the Brothers' Canadian



Nick Didlick, National Post

Vancouver College chairman John Nixon.

assets at \$100-million. It is not clear what those assets were, although a large portion lay in the value of the Vancouver schools.

Records also show as the Brothers prepared to deal with Mount Cashel claims, they began asserting their ownership rights over Vancouver College and St. Thomas More in meetings and correspondence with school officials. Another internal report in 1991 said the two schools are owned by the CBIC, which in turn is "liable for its own malfeasance and may be subject to civil suit."

Records also show in 1995 the Brothers considered liquidating Vancouver College, possibly selling the property to the Roman Catholic Archdiocese of Vancouver -- and using half the proceeds to pay Mount Cashel compensation, the other half to construct a new school elsewhere in the city.

But by 1996, claims for compensation had risen so high (they now total nearly \$80-million) that the Brothers chose another strategy: They filed for liquidation. Documents show as they did this they failed to disclose any assets to the winding-up court except \$4.3-million worth of properties that included vacation homes in Ontario and the Mount Cashel orphanage.

They did not disclose any ownership rights over the Vancouver schools, documents say, and began seeking ways to protect the schools from the liquidator.

Senior authorities of the Christian Brothers based in Rome had refused requests of the Canadian branch for money to help pay compensation claims. In 1995, however, the Brothers' international leader had written from Rome suggesting the ownership of Vancouver College should be transferred to an offshore company controlled by the order, documents say. The transfer was never made.

But documents say in 1995 CBIC decided to drop references to Vancouver College as "a wholly owned subsidiary organization" on its financial statements. This was done despite the objections of CBIC's accountants at Ernst and Young, who wrote that "EY has some concerns about the organization's willingness and fullest co-operation in providing all necessary and relevant information."

By 1996, two months before the Brothers submitted to liquidation by the court, Brother Lynch wrote his letter expressing his personal doubts to superiors in Rome. Documents say he "refers to some 'very practical conflicts of conscience,' on the question of compensation and concludes the letter by saying 'our decision to keep Vancouver College out of the compensation picture needs to be reviewed.'"

Despite this worry, in his affidavit to the winding-up court Brother Lynch later stated the order's Canadian assets amounted to only \$4.2-million. In the affidavit, he also swore his hope that the winding up would "provide the claimants with the maximum level of financial compensation possible out of the assets of the [CBIC]."

The documents also show by 1998 -- as the two schools were in court insisting the CBIC was not their owner -- Brothers in Rome and Canada worked with the archbishop of Vancouver to make a secret settlement offer to Mount Cashel claimants using monies from the archdiocese and the schools. In 1997, a \$10-million mortgage had been taken out against Vancouver College, which by 1998 had not been drawn down.

John Nixon, the Vancouver College chairman, says the offer "was an

attempt to get the school out from under the cloud of liquidation. But it's passed," he says. "It's over, it's not relevant any more."

The offer -- made without the consent of the court-appointed liquidator, who had legal claims against the properties -- was ultimately rejected.

The liquidator's documents say this and other actions by the Brothers suggest the order intended to "minimize," not maximize its compensation for Mount Cashel victims, and that "even as the Christian Brothers were preparing to place their company into liquidation, they were also preparing to fight their liquidator in the defence of Vancouver College and St. Thomas More."

The existing litigation in B.C., the documents say, "represents the final attempt by the Christian Brothers to avoid the consequences that must flow from the acts of abuse committed at Mount Cashel and from the complicity of the Christian Brothers organization."



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