

Supreme Court of Nova Scotia Practice Memorandum No. 8 **#8 Model CCAA and Receivership Orders**

Led by Justice Peter Glennie of the Court of Queen's Bench of New Brunswick and Mr. Josh McElman of the New Brunswick Bar, the superior courts of the Atlantic Provinces developed a model receivership order, CCAA initial order, and CCAA charging order. To some extent, these follow precedents of the Toronto Commercial List.

Of course, each province had to adapt the model orders to accord with differing rules of court, substantive law, and practice. However, there remains a high degree of consistency among the four jurisdictions.

The orders attached to this memorandum may be used to the extent a receivership or a reorganization is suited to them. Counsel must advise the court of deviations and the reasons for them. The orders follow the format in the Civil Procedure Forms, including the use of brackets for suggestions or options and italics for possible wording.

Be sure to omit provisions not required for a reorganization or receivership. For example, many receiverships will not require borrowing power for the receiver or protections against critical suppliers.

Receivership orders under the *Bankruptcy and Insolvency Act* are restricted by s. 243(1) to applications by a secured creditor. So, the model order is of limited use for other kinds of receivership.

The Nova Scotia receivership order is premised on foreclosure rather than direct vesting because we have no statutory authority for general vesting orders. Title at the time of the security instrument, or acquired afterward, is conveyed by a receiver's deed that forecloses the equity, including subsequent encumbrances and other interests in the equity.

Subsequent encumbrancers may be bound as named respondents, parties joined without being named in the style, or under Rule 35.12. Provision may be made in the receivership order, in an eventual order approving a sale, or at any point in between for binding a subsequent encumbrancer. The attached receivership order

refers to these possibilities, but it does not provide for any of them.

With the exception of the provisions in the *Bankruptcy and Insolvency Act* about receivership and the few provisions of the *Bankruptcy and Insolvency General Rules* that apply to receiverships, the *Civil Procedure Rules*, including Rule 73 - Receiver, are a source for procedure for the hybrid proceeding. See, General Rule 3. Note, however, that documents must be filed with the Registrar. See, General Rule 9(5).

Another Nova Scotia peculiarity is the distaste our Rules have for headings with "In the matter of". The *Bankruptcy and Insolvency General Rules* mandate this for a BIA receivership, and the Civil Procedure Rules have recently been changed to provide for a CCAA heading.

The model orders contemplate starting with an application in chambers, with further relief under notices of motion. An effort will be made to assign the Registrar, or the same judge, for all, or most, hearings. Motions would be made by appointment.

Adopted by the Court on June 26, 2015.

Joseph P. Kennedy
Chief Justice of the Supreme Court of Nova Scotia