2025 01H _____

IN THE COURT OF APPEAL OF NEWFOUNDLAND AND LABRADOR

BETWEEN:

THE BANK OF NOVA SCOTIA

APPELLANT

AND:

OCEAN VIEW FARMS LIMITED

RESPONDENT

APPLICATION TO THE COURT

This is notice that the Appellant, The Bank of Nova Scotia (the **Bank**) applies for leave to appeal under sections 13 and 14 of the *Companies' Creditors Arrangement Act*, RSC 1985 c.C-36, as amended (the **CCAA**) from the order of MacDonald J made and filed on 15 September 2025 (the **Charging Order**) following a hearing on 11 and 15 September 2025 in the Supreme Court of Newfoundland and Labrador, General Division, sitting in St John's, Newfoundland and Labrador.

1. The Bank is the senior secured creditor of the Respondent, Ocean View Farms Limited (the **Company**), with a total claim of over $7,600,000. The Company filed an initial application under the *Companies' Creditors Arrangement Act*, RSC 1985 c.C-36, as amended (the **CCAA**) on 4 September 2025 for, among other things, an order approving an interim financing agreement with Libra Finance Company Inc (the **Libra Financing**) and granting a charge in favour of Libra in priority over any secured creditor of the Company.

2. On 9 September 2025, the Bank filed an interlocutory application for, among other things, an order approving, authorizing, and directing the Company to enter into an interim financing agreement with the Bank as an alternative to the Libra Financing. At

the first hearing of the Company's initial application on 11 September 2025, the Bank agreed to an initial order being made under the CCAA and the Company's nominated monitor being appointed, on the basis that the Bank would have an opportunity to prepare a revised interim financing agreement on the same terms as the Libra Financing, which the Bank understood would be approved at the adjourned hearing on 15 September 2025. In advance of the adjourned hearing, the Bank presented a revised interim financing agreement on the same legal and commercial terms as the Libra Financing, save that the Bank's proposed interest rate was lower (the **Bank Financing**). Relevantly to this proposed appeal, both proposals included provisions requiring the lender's approval for the Company to enter into certain transactions or take certain steps in the CCAA proceedings (the **Approval Rights**).

3. At the 15 September 2025 hearing, and contrary to the Bank's understanding of the arrangements that concluded the prior hearing, the Company opposed the Bank Financing. The court below approved the Libra Financing and rejected the Bank Financing. The order now appealed (the **Charging Order**) was made and filed as of the same day, authorizing and empowering the Company to enter into the Libra Financing and granting the interim lender a charge on the Company's property in priority to existing secured creditors, including the Bank.

4. If leave is granted, the issue on this proposed appeal is whether the court below erred in applying the legal test and exercising its discretion when it rejected the Bank Financing in favour of the Libra Financing. In particular, the Bank's position is that the court below erred in at least three ways:

    4.1. First, the court below failed to consider whether the Bank would be materially prejudiced as a result of the priority charge being granted for the Libra Financing, as it was bound to do undersection 11.2(4)(f) of the CCAA. It accordingly made an error in law and exercised its discretion unreasonably.

4.2. Second, the court below treated the Approval Rights included in the Bank Financing as an automatic disqualifying factor to approving the Bank Financing, and accordingly made an error in law and exercised its discretion unreasonably.

4.3. Third, the reasoning of the court below suggests that it proceeded on the basis that the Bank would act unreasonably or not in good faith in exercising any Approval Rights. There was no evidential basis for proceeding on this basis. Accordingly, the court below exercised its discretion unreasonably.

5. The issue on this application is whether the Court should grant the Bank leave to appeal against the Charging Order. In that respect, the Bank says that:

5.1. The proposed appeal is *prima facie* meritorious. As set out above, the court below failed to consider a factor that it was bound to do so by the CCAA, while it also wrongly treated one element of the Bank Financing as automatically disqualifying and expressed unfounded distrust that the Bank would act appropriately if the Bank Financing was approved. Those are errors in law and principle, or reflect an unreasonable decision, that justify this Court reviewing the discretionary decision of the court below.

5.2. The point on the proposed appeal is of significance to the practice. There is limited appellate case law on competing interim financing proposals, and the issue of whether an existing secured creditor may be granted contractual approval rights in a CCAA proceeding is important for the insolvency practice generally.

5.3. The point on the proposed appeal is of significance to the proceeding. The identity of the interim lender, and whether the Bank's security should be subordinated to a third party lender, are issues that are critical to proceeding as evidenced by the controversy generated in the court below.

5.4. The proposed appeal will not unduly hinder the progress of the underlying CCAA proceeding. The appeal and the CCAA proceeding can proceed in parallel. If the Court grants the primary relief sought by the Bank, the Bank will be substituted as the interim lender with no disruption to the underlying CCAA proceeding.

The application is set to be heard on the ____ day of _____, 20____ at 10:00am.

Dated at St John's, Newfoundland and Labrador, this 24th day of September, 2025.

Cox & Palmer
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