

2019 01G 7735
SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the
Receivership of Norcon Marine
Services Ltd.

AND IN THE MATTER of the
Bankruptcy and Insolvency Act, RSC
1985, c B-3, as amended

Estate No.
Court No.

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

AND:

NORCON MARINE SERVICES LTD.

APPLICANT

RESPONDENT

**ORIGINATING APPLICATION
(Inter Partes)**

SUMMARY OF CURRENT DOCUMENT	
Court File Number	2019 01G
Date of Filing Document	December 5, 2019
Name of Party Filing or Person	Business Development Bank of Canada
Application to which Document being filed relates:	Application seeking Court appointed receiver pursuant to s.243 of the <i>Bankruptcy and Insolvency Act</i> , R.S.C. 1985, c. B-3.
Statement of Purpose in filing:	To originate the application.
Court Sub-File Number, if any	

The Application of the Applicant, the Business Development ("BDC") states as follows:

Nature of Application

1. BDC seeks an order for the following relief:
 - a. for a court-appointed receiver pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "BIA") over the assets, undertakings, and property of Norcon Marine Services Ltd. ("Norcon");
 - b. for the Applicants costs of this Application, on a solicitor-client basis; and
 - c. for such further and other order as this Court deems just.

Material Facts

Introduction

2. BDC is a body corporate continued and governed by the *Business Development Bank of Canada Act*, SC 1995 c. 28, as amended, with branch offices throughout Newfoundland and Labrador, and an address for service in relation to this matter care of Cox & Palmer, Suite 1100, Scotia Centre, 235 Water Street, St. John's, Newfoundland and Labrador, A1C 1B6.
3. Norcon is a body corporate, incorporated under the laws of Newfoundland and Labrador and having its registered office at 3 Wharf Road, Clarenville, Newfoundland and Labrador, A5A 2B2.

Debt and Security to the Applicant

4. As of 6 November 2019, Norcon is justly and truly indebted to BDC in the amount of \$559,122.20, including interest (the "**Norcon Indebtedness**"), in connection with the following:
 - a. Loan 033518-05 pursuant to a Letter of Offer dated November 26, 2012 between BDC and Norcon, as amended;
 - b. Loan 033518-10 pursuant to a Letter of Offer dated March 9, 2017 between BDC

and Norcon; and

- c. Loan 033518-11 pursuant to a Letter of Offer dated November 22, 2017 between BDC and Norcon.

(collectively, the “**Loans**”)

5. Pursuant to a Cross-Collateralization Agreement (as defined below), Norcon is also responsible for the indebtedness of Burry’s Shipyard Inc. to BDC (the “**BSI Indebtedness**”). As of 6 November 2019, the BSI Indebtedness is in the total amount of \$836,380.43 including interest, itemized as follows:
 - a. Loan -68720-01 in the amount of \$580,967.65;
 - b. Loan 068720-04 in the amount of \$163,818.22; and
 - c. Loan 068720-05 in the amount of \$91,594.56.

(The Norcon Indebtedness and the BSI Indebtedness are hereinafter referred to collectively as the “**Indebtedness**”)

6. BDC holds, *inter alia*, the following security with respect to the Indebtedness:
 - a. General Security Agreement dated 15 March 2017, providing BDC with a security interest over all present and after-acquired personal property of Norcon, notice of which was registered at the Personal Property Security Registry for the Province of Newfoundland and Labrador (the “**GSA**”).
 - b. A Marine Mortgage with respect to the vessel MV Northern Seal from Norcon to BDC dated 6 December 2012;
 - c. A Marine Mortgage with respect to the vessel MV Norcon Oceanus from Norcon to BDC dated 17 December 2012;

- d. A Marine Mortgage with respect to the vessel MV Norcon Galatea from Norcon to BDC dated 28 June 2018;
- e. A Marine Mortgage with respect to the vessel MV Norcon Triton from Norcon to BDC dated 28 June 2018;
- f. Joint and Several Guarantee of Sonia Burry and Glenn Burry (the "Guarantors") dated 6 December 2012 for 20% of the outstanding amount of Loan 033518-05;
- g. Joint and Several Guarantee of the Guarantors dated 15 March 2017 for 25% of the outstanding amount of Loan 033518-10;
- h. Joint and Several Guarantee of the Guarantors dated 24 November 2017 for 25% of the outstanding amount of Loan 033518-11; and
- i. Cross-Collateralization Agreement dated 27 June 2018 between BDC, Burry's Shipyard Inc. ("BSI"), Norcon and the Guarantors (the "Cross-Collateralization Agreement")

(Collectively, the "Security")

Default

- 7. Norcon has committed several Events of Default under the Loans by, *inter alia*, failing to comply with the Loans by failing to make payments when due as set out in the Loans.
- 8. Pursuant to the Loans and Security, BDC is entitled to demand repayment of the Indebtedness at any time without notice.
- 9. By correspondence dated November 8, 2019, BDC made a written demand on Norcon for payment of the Indebtedness. On that same day, BDC sent Norcon its Notice of Intention to Enforce Security, pursuant to Section 244(1) of the BIA. The Indebtedness remains due and owing.

Status of Other Creditors of the Respondents

10. Searches by BDC at the Registry of Deeds for Newfoundland and Labrador, the Registry of Mechanics' Liens for Newfoundland and Labrador and the Newfoundland and Labrador Personal Property Registry reveal the following registered creditors of Norcon, in addition to BDC:
 - a. Roynat Inc. in respect of generator(s) described in the financing statement registered in the Newfoundland and Labrador Personal Property Registry at Registration Number 13768437.
 - b. Wells Fargo Equipment Finance Company in respect of certain serial numbered equipment described in the financing statements registered in the Newfoundland and Labrador Personal Property Registry at Registration Numbers 14952253 & 14954937;
 - c. The Bank of Nova Scotia in respect of all present and after-acquired personal property and certain serial numbered equipment described in the financing statements registered in the Newfoundland and Labrador Personal Property Registry at Registration Numbers 13916374 & 15033780; and
 - d. The Bank of Nova Scotia in respect of Marine Mortgages on the vessel Norcon Galatea, the vessel Northern Seal, and the vessel Norcon Triton

Proposed Receivership Proceedings

11. BDC now seeks the appointment of Grant Thornton Limited ("GTL") as receiver of all the assets, undertakings, and property of Norcon pursuant to section 243 of the BIA (a Receiver). The appointment of GTL as Receiver by this Court is necessary to immediately protect and preserve the property of Norcon, to more effectively deal with and sell the property of Norcon in a manner that will maximize the value for the

creditors of Norcon and to provide a more efficient forum for creditors of Norcon to resolve priority issues.

12. Such further and other grounds as counsel may advise.

The following documentary evidence will be used at the hearing of the application:

1. The Affidavit of Robert Prince, Director of Business Restructuring with BDC.
2. Such further and other material as counsel may advise and this Court may permit.



Cox & Palmer
Solicitors for Business Development Bank
of Canada
Suite 1100, Scotia Centre
235 Water Street
St. John's, NL A1C 1B6
for **Attention: Darren D. O'Keefe**
Phone: 709.738.7800
Email: dokeefe@coxandpalmer.com

TO: SERVICE LIST

ISSUED at St. John's, Newfoundland and Labrador, this 5 day of Dec, 2019.



COURT OFFICER

2019 01G 7735
**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF the
Receivership of Norcon Marine
Services Ltd.

AND IN THE MATTER of the
Bankruptcy and Insolvency Act, RSC
1985, c B-3, as amended

Estate No.
Court No.

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

AND:

APPLICANT

NORCON MARINE SERVICES LTD.

RESPONDENT

NOTICE TO THE RESPONDENT

You are hereby notified that the foregoing application will be made to the judge presiding in
Chambers at the Court House, Duckworth Street, at St. John's, Newfoundland and Labrador on
Tuesday, the 17 day of December, 2019 at 10:00 A.m.

TO: SERVICE LIST

2019 01G
SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the
Receivership of Norcon Marine
Services Ltd.

AND IN THE MATTER of the
Bankruptcy and Insolvency Act, RSC
1985, c B-3, as amended

Estate No.
Court No.

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

AND:

APPLICANT

NORCON MARINE SERVICES LTD.

RESPONDENT

RECEIVERSHIP ORDER

BEFORE THE HONOURABLE JUSTICE

UPON APPLICATION by the Applicant for an order, under subsection 243(1) of the *Bankruptcy and Insolvency Act* (the "BIA") to appoint Grant Thornton Limited as receiver (the "Receiver") without security, of all of the assets, undertakings and property of Norcon Marine Services Ltd. (the "Respondent");

AND UPON HEARING Darren O'Keefe, of counsel for the Applicant, and other counsel appearing; and

AND UPON READING the Application and the Affidavit of Robert Prince, Director of Business Restructuring with Business Development Bank of Canada.

THIS COURT HEREBY ORDERS AS FOLLOWS:

Service

1. The time for service of the Application is hereby abridged and validated, and the service of the Application on the Respondent is hereby validated, so that this application is properly returnable today and further service of the Application is hereby dispensed with.

Appointment

2. Pursuant to subsection 243(1) of the BIA, and Rule 25(1) of the *Rules of the Supreme Court, 1986* the Receiver is hereby appointed receiver, without security, of all of the assets, undertakings, and property of the Respondent, acquired for, or used in relation to a business carried on by the Respondent, including any bank accounts/trust accounts in the name of the Respondent or in the name of the Receiver on behalf of the Respondent, and including all proceeds thereof (the "**Property**").

Receiver's Powers

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession and control of the Property and any proceeds or receipts arising from the Property but, while the Receiver is in possession of any of the Property, the Receiver must preserve and protect it;
 - (b) to change locks and security codes, relocate the Property to safeguard it, engage independent security personnel, take physical inventories, and place insurance coverage;

- (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Respondent, or any part or parts thereof;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to any one of the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent;
- (f) to settle, extend, or compromise any indebtedness owing to any one of the Respondent;
- (g) to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondent, for any purpose pursuant to this Order;
- (h) to undertake environmental or workers' health and safety assessments of the Property and operations of the Respondent;
- (i) to initiate, prosecute, and continue the prosecution of any proceedings and to defend proceedings now pending or hereafter instituted with respect to the Property or the Receiver, and to settle or compromise any such proceedings, which authority extends to appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to make payment of any and all costs, expenses, and other amounts that the Receiver determines, in its sole discretion, are necessary or advisable to preserve, protect, or maintain the Property, including, without limitation taxes, municipal taxes, insurance premiums, repair and maintenance costs, costs or charges related to security, management fees, and any costs and disbursements incurred by any manager appointed by the Receiver;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case the notice and sale provisions under the *Conveyancing Act* or under section 60 of the *Personal Property Security Act* shall not be required.
- (m) to sell the right, title, interest, property, and demand of the Respondent in and to the Property at the time the Respondent is granted a security interest or at any time since, free of all claims including the claims of subsequent encumbrancers;
- (n) to report to, meet with, and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (o) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals, or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any one of the Respondent;
- (r) to exercise any shareholder, partnership, joint venture, or other rights which the Respondent may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps it shall be authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, and without interference from any other Person.

Duty to Provide Access and Co-Operation to the Receiver

4. The Respondent, all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (collectively, **Persons**, and each a **Person**) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control or of which they have knowledge of the existence

thereof, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondent, and any computer programs, tapes, disks, or other data storage media containing any such information (collectively, the **Records**) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall, subject to their right to seek a variation of this Order, forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper, making copies of computer disks, or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase, or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

No Proceedings Against the Receiver

7. No proceeding or enforcement process in any court or tribunal (each, a **Proceeding**) shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

No Proceedings Against the Respondent or the Property

8. No Proceeding against or in respect of the Respondent or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Respondent or the Property are hereby stayed and suspended pending further order of this Court.

No Exercise of Rights or Remedies

9. All rights and remedies of any individual, firm, corporation, governmental body or agency or any other entities against the Respondent, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Respondent to carry on any business which the Respondent is not lawfully entitled to carry on; (ii) exempt the Receiver or the Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence to same as the further prosecution of any such claim is stayed except with the written consent of the Applicant or the Receiver, or leave of this Court.

Personal Property Lessors

10. All rights and remedies of any Person pursuant to any arrangement or agreement to which the Respondent is a party for the lease or other rental of personal property of any nature or kind are hereby restrained except with consent of the Receiver in writing or leave of this Court. The Receiver is authorized to return any Property which is subject to

a lease from a third party to such Person on such terms and conditions as the Receiver, acting reasonably, considers appropriate and upon the Receiver being satisfied as to the registered interest of such Person in the applicable Property. The return of any item by the Receiver to a Person is without prejudice to the rights or claims of any other Person to the property returned or an interest therein.

No Interference with the Receiver

11. Subject to paragraph 16 of this Order related to the Respondent's employees, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Respondent, without written consent of the Receiver or leave of this Court.

Continuation of Services

12. All Persons having oral or written agreements with the Respondent, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.
13. The Receiver, in its sole discretion, may, but shall not be obligated to, establish accounts or payment on delivery arrangements with suppliers in its name on behalf of the Respondent for the supply of goods or services, including without limitation, all computer software, communication and other data services, centralized banking

services, payroll services, insurance, transportation services, utility, or other services to the, if the Receiver determines that the opening of such accounts is appropriate.

14. No creditor of the Respondent shall be under any obligation as a result this Order to advance or re-advance any monies or otherwise extend any credit to the Respondent.

Receiver to Hold Funds

15. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts opened by the Receiver or to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

Employees

16. All employees of the Respondent shall remain employees until such time as the Receiver, on the Respondent's behalf, may terminate the employment of such employees or they resign in accordance with their employment contract. The Receiver shall not be liable as a result of this Order for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, such amounts as may be determined by a court or tribunal of competent jurisdiction.

PIPEDA

17. Pursuant to paragraph 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable

individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale") as permitted at law. Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. A prospective purchaser or bidder requesting the disclosure of personal information shall execute such documents to confirm the agreement of such Person to maintain the confidentiality of such information on terms acceptable to the Receiver. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

Limitation on Environmental Liabilities

18. Nothing herein contained shall require or obligate the Receiver to occupy or to take control, care, charge, occupation, possession, or management (separately or collectively, "Possession") of any of the Property that might, or any part thereof, which may be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial, or other legislation, statute, regulation or, rule of law or equity respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *the Canadian Environmental Protection Act, 1999, SC 1999 c. 33*, as amended, the *Environmental Protection Act, SNL 2002 c. E-14.2*, as amended, the *Water Resources Act, SNL 2002 c. W-4.01*, as amended, or the *Occupational Health and Safety Act, RSNL 1990 c. O.3*, as amended, and any regulations made thereunder (collectively, the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation.

Limitation on Liability

19. The Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

Receiver's Accounts

20. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge to a maximum of \$100,000.00 (the "**Administrative Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and the Administrative Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
21. The Receiver and its legal counsel shall pass its accounts from time to time before a judge of this Court or a referee appointed by a judge.
22. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees, expenses and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

Receiver's Indemnity Charge

23. The Receiver shall be entitled to and is hereby granted a charge (the "**Receiver's Indemnity Charge**") upon all of the Property as security for all of the obligations

incurred by the Receiver including obligations arising from or incident to the performance of its duties and functions under this Order, under the Bankruptcy and Insolvency Act, or otherwise, saving only liability arising from negligence or actionable misconduct of the Receiver.

24. The Receiver's Indemnity Charge shall form a second charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA and subordinate in priority to the Administrative Charge.

Allocation of Costs

25. The Receiver shall file with the Court for its approval a report setting out the costs, fees, expenses, and liabilities of the Receiver giving rise to the Administrative Charge, the Receiver's Indemnity Charge, and the Receiver's Borrowings Charge, as defined below, and, unless the Court orders otherwise, all such costs, fees, expenses, and liabilities shall be paid as agreed by the senior secured creditors, in the following manner:

- (a) Firstly, applying the costs incurred in the receivership proceedings specifically attributable to an individual asset or group of assets against the realizations from such asset or group of assets;
- (b) Secondly, applying the costs *pro rata* against all of the assets based on the net realization from such asset or group of assets; and
- (c) Thirdly, applying non-specific costs incurred in the receivership proceedings *pro rata* against the assets based on the net realization from such asset or group of assets.

Funding of the Receivership

26. The Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000.00, or such greater amount as this Court may by further order authorize, at any time, at

such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of making payments, including interim payments, required or permitted to be made by this Order, including, without limitation, payments of amounts secured by the Administrative Charge and the Receiver's Indemnity Charge. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Indemnity Charge, the Administrative Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

27. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court on seven days' notice to the Receiver and the Applicant.
28. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
29. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

General

30. The Receiver may from time to time make a motion for advice and directions in the discharge of its powers and duties hereunder.
31. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Respondent.

32. The aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction outside Newfoundland and Labrador is hereby requested to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, and regulatory or administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.
33. The Receiver is hereby authorized and empowered to apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
34. The Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Respondent's estate with such priority and at such time as this Court may determine.
35. Any interested party may make a motion to vary or amend this Order upon such notice required by the *Rules of the Supreme Court, 1986* or on such notice as this Court may order.
36. Any Person affected by this Order which did not receive notice in advance of the hearing may make a motion to vary or amend this Order within five days of such Person being served with a copy of this Order.
37. In addition to the reports to be filed by the Receiver under legislation, the Receiver shall file a report of its activities with the Court when the Receiver determines that a report should be made, when the Court orders the filing of a report on the motion of an interested party or on the Court's own motion, and at the conclusion of the receivership.

38. The Receiver shall not be discharged without notice to such secured creditors and other parties as the Court directs.

DATED AT St. John's, Newfoundland and Labrador this day of , 2019.

2019 01G
SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the
Receivership of Norcon Marine
Services Ltd.

AND IN THE MATTER of the
Bankruptcy and Insolvency Act, RSC
1985, c B-3, as amended

Estate No.
Court No.

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

AND:

APPLICANT

NORCON MARINE SERVICES LTD.

RESPONDENT

CONSENT TO ACT AS RECEIVER

Grant Thornton Limited hereby consents, subject to an Order of this Honourable Court being issued in substantially the same form as the Order attached to the within application, to act as court-appointed receiver of all of the undertakings, property, and assets of Norcon Marine Services Ltd.

Peter Wedlake, FCIRP, LLB, LIT
Grant Thornton Limited

2019 01G 7735
SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the
Receivership of Norcon Marine
Services Ltd.

AND IN THE MATTER of the
Bankruptcy and Insolvency Act, RSC
1985, c B-3, as amended

Estate No.
Court No.

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

AND:

APPLICANT

NORCON MARINE SERVICES LTD.

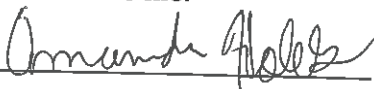
RESPONDENT

AFFIDAVIT

I, Allison Philpott, of the City of St. John's, in the Province of Newfoundland and Labrador, make oath and say as follows:

1. I am a member of the law firm of Cox & Palmer, Solicitors for the Applicant herein, and as such, have knowledge of the matters herein deposed to, except where otherwise stated.
2. The facts contained herein are true to the best of my knowledge, information, and belief.

Affirmed at St. John's, Newfoundland
& Labrador this 5th day of December,
2019 before me:





Allison Philpott

AMANDA HOBBS
A Commissioner for Oaths in and for
the Province of Newfoundland and Labrador.
My commission expires on December 31, 2022.