

Form 4.02A

2021



Hfx No.

5 0 3 3 6 7

Supreme Court of Nova Scotia

Between:

**CANADIAN IMPERIAL BANK OF COMMERCE, a**  
chartered bank

Plaintiff

and

**3304051 NOVA SCOTIA LIMITED, a body corporate**

Defendant

### Notice of Action

**To: 3304051 Nova Scotia Limited**  
c/o Michael Simms, Recognized Agent  
McInnes Cooper  
Purdy's Wharf Tower II  
1300-1969 Upper Water Street  
Halifax NS B3J 2V1

### Action has been started against you

The Plaintiff takes action against you.

The Plaintiff started the Action by filing this Notice with the Court on the date certified by the Prothonotary.

The Plaintiff claims the relief described in the attached Statement of Claim. The claim is based on the grounds stated in the Statement of Claim.

### Deadline for defending the action

To defend the Action, you or your counsel must file a Notice of Defence with the Court no more than the following number of days after the day this Notice of Action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada

- 45 days if delivery is made anywhere else.

### **Judgment against you if you do not defend**

The Court may grant an order for the relief claimed without further notice, unless you file the Notice of Defence before the deadline.

### **You may demand notice of steps in the action**

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a Demand for Notice.

If you file a demand for notice, the Plaintiff must notify you before obtaining an order for the relief claimed and, unless the Court orders otherwise, you will be entitled to notice of each other step in the Action.

### **Rule 57 - Action for Damages Under \$150,000**

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This Action is not within Rule 57.

### **Filing and delivering documents**

Any documents you file with the court must be filed at the Office of the Prothonotary 1815 Upper Water Street, Halifax, Nova Scotia (telephone # (902) 424-6900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

### **Contact information**

The Plaintiff designates the following address:

**Burchells LLP**  
1800-1801 Hollis Street  
Halifax NS B3J 3N4

Documents delivered to this address are considered received by the Plaintiff on delivery.

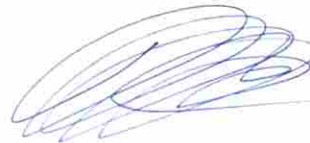
Further contact information is available from the Prothonotary.

**Proposed place of trial**

The Plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

**Signature**

Signed        January 18 , 2021

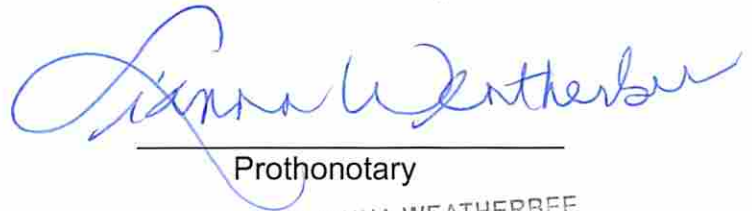


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**D. Bruce Clarke, QC**  
**Burchells LLP**  
1800-1801 Hollis Street  
Halifax NS B3J 3N4  
Phone: (902) 423-6361  
Fax: (902) 420-9320  
As Counsel for the **Plaintiff**

**Prothonotary's certificate**

I certify that this Notice of Action, including the attached Statement of Claim, was filed with the court on January 18, 2021.



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Prothonotary

LIANNA WEATHERBEE  
Deputy Prothonotary

## **Statement of Claim**

1. This statement is made by the Plaintiff, Canadian Imperial Bank of Commerce ("CIBC").
2. CIBC is a Canadian chartered bank, with a head office located at Toronto, in the Province of Ontario, and is registered to and does carry on business in the Province of Nova Scotia.
3. 3304051 Nova Scotia Limited is company incorporated pursuant to the laws of Nova Scotia, with a registered office at 4 Macdonald Avenue, Dartmouth, Nova Scotia, and which has Michael Simms, with offices at 1300-1969 Upper Water Street Halifax, Nova Scotia, as its Recognized Agent.
4. 3304051 Nova Scotia Limited carries on business under the name "Hefler Forest Products" ("Hefler").
5. Hefler operates a saw mill and biomass power generation plant from lands at 230 Lucasville Road, Middle Sackville, Municipality of Halifax, Nova Scotia, PID 40014862.
6. CIBC lent money to Hefler under the terms of a Letter of Agreement. Hefler owes CIBC an aggregate amount of \$6,646,978.45 as of January 14, 2021 under the following credit facilities ("Credit Facilities"):
  - a. \$5,104,506.29 under a term loan facility, with interest at 3.7% and a per diem of \$516.76, plus accruing legal and professional costs;
  - b. \$1,535,509.62 under an operating line of credit, with interest at 3.7% and a per diem of \$158.93; and
  - c. \$6,962.54 owing on a corporate Visa, with a maximum facility of \$10,000.00.
7. The Credit Facilities are secured by various security instruments given to CIBC by Hefler, including a real property mortgage, a general security agreement and an assignment of material contracts.
8. Hefler has ceased payments to CIBC, is in default of financial covenants required by the Letter of Agreement, and is insolvent.
9. The officers and directors of Hefler resigned on or about January 14, 2021, leaving it without effective governance. This constitutes an oppression of its creditors.

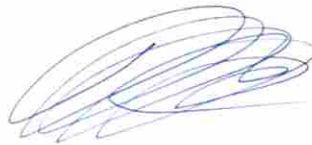
10. CIBC has demanded payment of its debt and has delivered to Hefler a Notice of Intention to Enforce Security under subsection 244(1) of the Bankruptcy and Insolvency Act. The time for responding to the demand has expired.

### **RELIEF SOUGHT**

11. CIBC repeats the forgoing and claims an order providing the following remedies:
- a. A declaration that Hefler is in breach of its obligations pursuant to the Letter of Agreement;
  - b. An order for judgment in the total amount of \$6,646,978.45;
  - c. Pre-judgement interest;
  - d. Costs; and
  - e. Such further relief as this Honourable Court deems just.

### **Signature**

Signed, January 18, 2021



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**D. Bruce Clarke, QC**  
As Counsel for the Plaintiff