

2018

Hfx No. 474742

IN THE SUPREME COURT OF NOVA SCOTIA  
(In Bankruptcy and Insolvency)



BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORATION and  
FIRST NATIONAL FINANCIAL LP

Applicants

-and-

3291735 NOVA SCOTIA LIMITED

Respondent

AFFIDAVIT

I, Sharon MacLeod, Legal Assistant with Burchells LLP, of Halifax, in the Halifax Regional Municipality, Province of Nova Scotia, make oath and say as follows:

1. The Application in this matter is scheduled to be heard before The Honourable Justice Christa Brothers on **Friday, May 11, 2018, at 9:30 a.m.**
2. The Notice of New Counsel and Amended Application were filed with this Court on May 3, 2018, and were sent to the parties listed in the Service List attached as **Exhibit "A"**.
3. All the parties on the Service List except for N. L. Bryson received the Notice of New Counsel and Amended Application by email on May 3, 2018, at 4:47 p.m. and May 4, 2018, at 10:31 a.m. A copy of my email is attached as **Exhibit "B"**.
4. N. L. Bryson received a copy of the Notice of New Counsel and Amended Application by courier on May 4, 2018, at 4:15 p.m.

**DATED** at Halifax, in the Halifax Regional Municipality, Province of Nova Scotia,  
this 11<sup>th</sup> day of May, 2018.

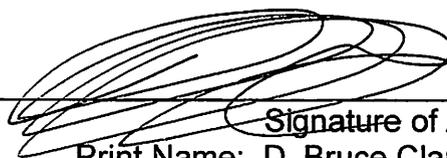
**SWORN** before me at Halifax, )  
Halifax Regional Municipality, )  
Province of Nova Scotia, )  
this 11<sup>th</sup> day of May, 2018. )

  
\_\_\_\_\_  
A Barrister of the Supreme Court of  
Nova Scotia

  
\_\_\_\_\_  
**SHARON MACLEOD**

D. BRUCE CLARKE, Q.C.  
A Barrister of the Supreme  
Court of Nova Scotia

THIS IS **EXHIBIT "A"** referred to in the Affidavit of  
Sharon MacLeod sworn before me this 11<sup>th</sup> day  
of May, 2018.

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Signature of Authority  
Print Name: D. Bruce Clarke, Q.C.  
Official Capacity: Barrister

**D. BRUCE CLARKE, Q.C.**  
A Barrister of the Supreme  
Court of Nova Scotia

## SERVICE LIST

### FIRST NATIONAL FINANCIAL GP CORPORATION and FIRST NATIONAL FINANCIAL LP

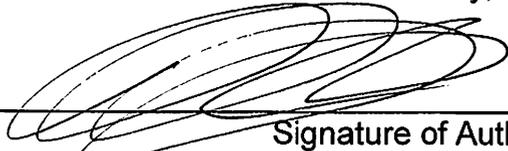
Party	Contact Info
First National Financial GP Corporation and First National Financial LP	Burchells LLP 1800-1801 Hollis Street Halifax NS B3J 3N4  Attention: D. Bruce Clarke, Q.C. Email: <a href="mailto:bclarke@burchells.ca">bclarke@burchells.ca</a>
3291735 Nova Scotia Limited	1021 Beaufort Avenue Halifax NS B3H 3Y1  Attention: E. David Bryson, President Email: <a href="mailto:davidbryson77@gmail.com">davidbryson77@gmail.com</a>
Canadian Western Trust Company	BoyneClarke LLP 600-99 Wyse Road Dartmouth NS B2Y 3Z5  Attention: Lauren Randall Email: <a href="mailto:lrandall@boyneclarke.ca">lrandall@boyneclarke.ca</a>
N.L. Bryson	1021 Beaufort Avenue Halifax NS B3H 3Y1
Halifax County Condominium Corporation	1021 Beaufort Avenue Halifax NS B3H 3Y1  Attention: E. David Bryson, President Email: <a href="mailto:davidbryson77@gmail.com">davidbryson77@gmail.com</a>
KSV Kofman Inc.	2308-150 King Street West Toronto ON M5H 1J9  Attention: Noah Goldstein, Managing Director Email: <a href="mailto:ngoldstein@ksvadvisory.com">ngoldstein@ksvadvisory.com</a>  Attention: Robert Kofman, President Email: <a href="mailto:bkofman@ksvadvisory.com">bkofman@ksvadvisory.com</a>

The Office of the Superintendent of  
Bankruptcy Canada

Room 1605, Maritime Centre  
1505 Barrington Street  
Halifax NS B3J 3K5

Email: [ic.osbhalifax-bsfhalifax.ic@canada.ca](mailto:ic.osbhalifax-bsfhalifax.ic@canada.ca)

THIS IS EXHIBIT "B" referred to in the Affidavit of  
Sharon MacLeod sworn before me this 11<sup>th</sup> day  
of May, 2018.



Signature of Authority  
Print Name: D. Bruce Clarke, Q.C.  
Official Capacity: Barrister

D. BRUCE CLARKE, Q.C.  
Barrister of the Supreme  
Court of Nova Scotia

## Sharon M. MacLeod

---

**From:** Sharon M. MacLeod  
**Sent:** Friday, May 04, 2018 10:31 AM  
**To:** 'ngoldstein@ksvadvisory.com'; 'bkofman@ksvadvisory.com'  
**Cc:** Bruce Clarke  
**Subject:** FW: First National Financial LP - 3291735 Nova Scotia Limited  
**Attachments:** Notice of New Counsel.pdf; Amended Notice of Application - May 11, 2018, at 9.30 a.m.pdf

Mr. Goldstein,

I apologize for the oversight in not sending these documents late yesterday. I am also resending them to Robert Kofman at his correct email address.

Regards,  
Sharon

**From:** Sharon M. MacLeod  
**Sent:** Thursday, May 03, 2018 4:47 PM  
**To:** 'David Bryson'; 'crandall@boyneclarke.ca'; 'bkofman@ksadvisory.com'; 'ic.osbhalifax-bsfhalifax.ic@canada.ca'  
**Cc:** Bruce Clarke  
**Subject:** First National Financial LP - 3291735 Nova Scotia Limited

Parties,

Please find enclosed a Notice of New Counsel which was filed with the Court today. D. Bruce Clarke, Q.C., will be representing the Applicants in this matter.

We were advised by the Court today that we had a conflict with the Judge Presiding in Chambers on May 9, 2018. The Judge used to be a lawyer in our firm. Therefore, an Amended Notice of Application was filed with the Court this afternoon, a copy of which is enclosed. The new Court date is **Friday, May 11, 2018, at 9:30 a.m.** I was advised that Justice Christa M. Brothers is presiding in Court on that day.

Regards,

**BURCHELLS** LLP

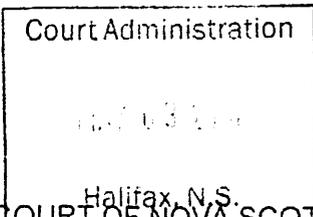
Sharon MacLeod  
Legal Assistant to D. Bruce Clarke, Q.C. and Meaghan A. Strum  
[smacleod@burchells.ca](mailto:smacleod@burchells.ca)  
[www.burchells.ca](http://www.burchells.ca)

1801 Hollis Street Suite 1800  
Halifax, Nova Scotia  
Canada B3J 3N4

Phone 902 423-6361  
Fax 902 420-9326

This e-mail message may contain confidential information and privileged communications. Any unauthorized retention, review or disclosure is prohibited by law. If you are not the intended recipient of this message, please notify Burchells immediately and delete the message from your computer systems and records. Thank you.

2018



Hfx No. 474742

IN THE SUPREME COURT OF NOVA SCOTIA  
(In Bankruptcy and Insolvency)

BETWEEN:

FIRST NATIONAL FINANCIAL GP CORPORATION and  
FIRST NATIONAL FINANCIAL LP

Applicants

-and-

3291735 NOVA SCOTIA LIMITED

Respondent

**Notice of New Counsel**

**New counsel**

The plaintiffs, First National Financial GP Corporation and First National Financial LP, who was represented by Stephen P. Kingston, is now represented by D. Bruce Clarke, Q.C., of Burchells LLP.

**Contact information**

The party designates the following address:

1800-1801 Hollis Street  
Halifax NS B3J 3N4  
Phone: 902-423-6361  
Fax: 902-420-9326

Documents delivered to this address are considered received by the party on delivery. Further contact information is available from the Prothonotary.

**Signature**

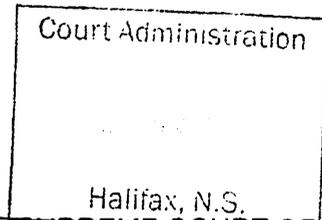
Signed May 3, 2018.

A handwritten signature in black ink, appearing to read "D. Bruce Clarke", written over a horizontal line.

**D. Bruce Clarke, Q.C.**  
**BURCHELLS LLP**  
1800-1801 Hollis St.  
Halifax, NS B3J 3N4  
Tel.: (902) 423-6361  
Fax: (902) 420-9326  
Email: [bclarket@burchells.ca](mailto:bclarket@burchells.ca)

2018

Hfx No. 474742



IN THE SUPREME COURT OF NOVA SCOTIA  
(In Bankruptcy and Insolvency)

BETWEEN:

**FIRST NATIONAL FINANCIAL GP CORPORATION and  
FIRST NATIONAL FINANCIAL LP**

Applicants

-and-

**3291735 NOVA SCOTIA LIMITED**

Respondent

**AMENDED NOTICE OF APPLICATION IN CHAMBERS**

To: 3291735 Nova Scotia Limited

1021 Beaufort Avenue  
Halifax NS B3H 3Y1  
Attn: E. David Bryson, President  
By Email: [davidbryson77@gmail.com](mailto:davidbryson77@gmail.com)

To: Canadian Western Trust Company

c/o Cyril Randall BoyneClarke LLP  
99 Wyse Road, Suite 600 Dartmouth  
Nova Scotia, B3A 4S5  
By Email: [crandall@boyneclarke.ca](mailto:crandall@boyneclarke.ca)

To: N. L. Bryson

1021 Beaufort Avenue  
Halifax NS B3H 3Y1

To: **Halifax County Condominium Corporation No. 412**

1021 Beaufort Avenue Halifax NS B3H 3Y1  
Attn: E. David Bryson, President  
By Email: [davidbryson77@gmail.com](mailto:davidbryson77@gmail.com)

2040795

**To: KSV Kofman Inc.**

150 King Street West, Suite 2308  
Toronto ON M5H 1J9  
Attn: Noah Goldstein, Managing Director  
By Email: [ngoldstein@ksvadvisorv.com](mailto:ngoldstein@ksvadvisorv.com)  
And: Robert Kofman, President  
By Email: [bkofman@ksadvisory.com](mailto:bkofman@ksadvisory.com)

**To: The Office of the Superintendent of Bankruptcy Canada**

Room 1605, Maritime Centre  
1505 Barrington Street  
Halifax, Nova Scotia B3J 3K5  
By Email: [ic.osbhalifax-bsfhalifax.ic@canada.ca](mailto:ic.osbhalifax-bsfhalifax.ic@canada.ca)

**The Applicants, First National Financial GP Corporation and First National LP request and Order, and the Applicant (proposed) Receiver, KSV Kofman Inc., also requests an Order as set forth below**

**Application No. 1**

**TAKE NOTICE THAT** the Applicants, First National Financial GP Corporation and First National Financial LP (collectively, "First National"), make application for an Order appointing KSV Kofman Inc. (the "Receiver") as Receiver of all of the property, assets, and undertaking of the Respondent 3291735 Nova Scotia Limited (the "Company").

(hereinafter, the "Receivership Order")

**Application No. 2**

**AND TAKE NOTICE THAT**, should the Receivership Order be granted, the Receiver shall immediately move for an Order approving its proposed process for the sale of the Respondent's properties situate at 1017-1021 Beaufort Avenue, Halifax, Halifax Regional Municipality, Nova Scotia, being PIO Nos. 41457615; 41457623; 41457631; 41457649; 41457656; and 41457664.

(hereinafter, the "Sale Process Order")

First National started this application by filing this notice on the date certified by the Prothonotary.

**Grounds for Order**

First National is applying for the Receivership Order, and the Receiver is applying for the Sale Process Order on the following grounds:

See Schedule "A" attached.

**Evidence Supporting Applications**

First National offers the following Affidavits in support of the Application for the Receivership Order:

- (i) Affidavit of Chris Sebben; and
- (ii) Affidavit of Stephen Kingston.

A copy of each Affidavit is to be delivered to you with this notice, and further Affidavits may be delivered before the deadlines provided in Civil Procedure Rule 5 - Application.

**You may participate**

You may file with the Court a notice of contest and any Affidavits upon which you rely, no more than 5 days after this notice is delivered to you or you are otherwise notified of the Applications. Filing the notice of contest entitles you to notice of further steps in the Applications, including notice of, further Affidavits.

**Time, date, and place**

The Applications are to be heard by the judge in chambers at **9:30 am on Friday, May 11, 2018** in the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia. You have the right to be present and to be represented by counsel or to act on your own. If you are not present, the judge may proceed without you.

First National and the Receiver have set these two (2) matters for hearing in a total of a half-hour or less in Chambers. First National and the Receiver say that the Applications will not require more time.

**Possible Orders against you**

The judge may grant a final Order on the Application without further notice to you if you fail to deliver your notice of contest on time, or if you or your counsel fails to appear in Chambers at the above time, date, and place.

### 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 No. 902-424-4900).

When you file a document you must immediately deliver a copy of it to First National, the Receiver and 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

First National and the Receiver designate the following address:

D. Bruce Clarke, Q.C.  
Burchells LLP  
1800-1801 Hollis Street  
Halifax NS B3J 3N4

Documents delivered to this address are considered received by the Applicants. Further contact information is available from the Prothonotary.

### Signature

Signed May 3, 2018



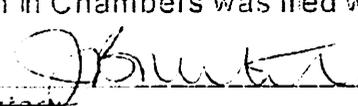

---

D. Bruce Clarke, Q.C.  
Burchells LLP  
1800-1801 Hollis Street  
Halifax NS B3J 3N4  
Tel: (902) 423-6361  
Fax: (902) 420-9326  
Email: [bclarke@burchells.ca](mailto:bclarke@burchells.ca)

Counsel for First National Financial GP Corporation and First National Financial LP, and KSV Kofman Inc. as prospective Court Appointed Receiver for 3291735 Nova Scotia Limited

### Prothonotary's Certificate

I certify that this Amended Notice of Application in Chambers was filed with the Court on May 3, 2018.




---

Prothonotary

JESSICA BOUTILIER  
Deputy Prothonotary

## SCHEDULE "A"

1. The Applicants, First National Financial GP Corporation and First National Financial LP (collectively, "First National") are bodies corporate and are registered to carry on business in the Province of Nova Scotia.
2. The Respondent 3291735 Nova Scotia Limited (the "Company") is a body corporate incorporated pursuant to the laws of the Province of Nova Scotia.
3. The Company is indebted to First National pursuant to a Letter of Offer dated October 19, 2015 as amended by Letters dated January 5, 2016 and April 29, 2016 (collectively "the Commitment Letter"), each of which was accepted by the Company.
4. The Company's obligations to First National pursuant to the Commitment Letter are secured by:
  - (i) A Mortgage (the "Mortgage") granted by the Company to First National dated May 17, 2016 and recorded at the Land Registration Office for Halifax County (the "Registry") as Doc. No. 109006891. The Mortgage by its terms secures a principal debt of \$3,225,000.00 as against the Company's properties at 1017- 1021 Beaufort Avenue, Halifax, Nova Scotia (being PIO Nos. 00052357; 00052340; and 40259095 (the "Properties"). The Properties now comprise Units 1 – 6 of Halifax County Condominium Corporation No. 412, being PIO Nos. 41457615; 41457623; 41457631; 41457649; 41457656; and 41457664;
  - (ii) A Security Agreement (the "GSA") dated October 26, 2015, a Financing Statement for which was recorded pursuant to the *Personal Property Security Act* on May 20, 2016 as Reg. No. 25978636;
  - (iii) A General Assignment of Rents dated May 17, 2016, recorded at the Registry on May 27, 2016 as Doc. No. 109006907;
  - (iv) The joint and several Guarantees of E. David Bryson and E.B.F. Manufacturing Limited, each dated October 26, 2015;
  - (v) A General Assignment Of Material Contracts dated October 26, 2015;
  - (vi) An Assignment of All Present and Future Agreements of Purchase and Sale, dated October 26, 2015; and
  - (vii) A Cost Overrun and Completion Guarantee Agreement dated October 26, 2015. (collectively, the "Security").

5. The Company's outstanding debt to First National totalled **\$2,870,520.62** as of February 26, 2018 and interest accrues thereafter at the daily rate of **\$486.51**. These figures do not include First National's costs on enforcement, which are separate charges.
6. The Company has defaulted in its obligations to First National pursuant to the Commitment Letter, and the Company's principal has advised First National that it is not able to make further payments.
7. On February 26, 2018, First National issued a demand for payment to the Company as regards its indebtedness, as well as a Notice of Intention to Enforce Security pursuant to s. 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (BIA).
8. The deadline for payment as stated in First National's demand for payment upon the Company has expired, without result. The deadline specified in the Notice of Intention to Enforce Security has likewise expired.
9. First National seeks the appointment of KSV Kofman Inc. as Receiver to market the Properties in an orderly fashion to the benefit of all stakeholders and pursuant to the supervision of this Honourable Court. Any eventual sale(s) of the Properties, either *en bloc* or individually, would be subject to the approval of this Honourable Court.
10. First National believes that the appointment of the Receiver is both just and convenient in the current circumstances.
11. First National shall rely upon the following legislation, rules or points of law in respect of the Application:
  - (i) BIA s.243;
  - (ii) Section 43(9) of the *Judicature Act*, R.S.N.S. 1989, c. 240; and
  - (iii) The criteria used by this Honourable Court to assess the merits of Applications made by secured creditors seeking the Court appointment of Receivers.
12. In the *event* that the Court grants the Receivership Order is granted, the Receiver seeks approval of its proposed sale process for the Properties, as set out in the Report to be filed by KSV Kofman Inc. as prospective Receiver in advance of the Application.

THIS IS EXHIBIT "C" referred to in the Affidavit of  
Sharon MacLeod sworn before me this 11<sup>th</sup> day  
of May, 2018.



Signature of Authority

Print Name: D. Bruce Clarke, Q.C.

Official Capacity: Barrister

D. BRUCE CLARKE, Q.C.  
A Barrister of the Supreme  
Court of Nova Scotia

**Sharon M. MacLeod**

---

**From:** R. Forbes Delivery <do\_not\_reply@courier-software.com>  
**Sent:** Friday, May 04, 2018 10:02 AM  
**To:** Sharon M. MacLeod  
**Subject:** Order # 275505 has been confirmed

**Importance:** High

Your order # 275505 has been accepted. The details of the order are as follows:

**Pickup =** Burchell's  
18th Floor  
Halifax (Nova Scotia) B3J 3N4  
**Att. =** D. Bruce Clarke, Q.C.  
**Comments. =** Do not leave in mailbox. Require a name.

**Delivery =** 1021 Beaufort Ave.  
Halifax (Nova Scotia) B

**Att. =:**  
**Comments. =**

**Customer =** Burchells LLP  
**Service =** Regular  
**Placed by =** sharon  
**Equipment =** Car  
**# of item(s) =** 1 (s)  
**Total weight =** 1 lb(s)  
**Accessorials =**  
**Cust. ref. =** 1073322/DBC/sm  
**Pickup date =** 04/05/2018 9:55:00 AM  
**Delivery date =** 04/05/2018 9:55:00 AM  
**Confirm to =** [smacleod@burchells.ca](mailto:smacleod@burchells.ca)  
**Quoted price =** 6.50

**Sharon M. MacLeod**

---

**From:** R. Forbes Delivery <do\_not\_reply@courier-software.com>  
**Sent:** Friday, May 04, 2018 4:18 PM  
**To:** Sharon M. MacLeod  
**Subject:** Order # 275505 has been delivered

**Importance:** High

Order # 275505 to customer Burchells LLP, placed by sharon, was delivered at 04/05/2018 4:15:02 PM. The order was accepted by N Bryson.