

CASE NO.

VOLUME

PAGE

Cite as: NsC Diesel Power Inc. v. Ernst & Young Inc., 1997 NSCA 67

IN THE MATTER OF THE BANKRUPTCY
OF NsC DIESEL POWER INCORPORATED

FREDERICK W.L. BLACK et al

- and -

ERNST & YOUNG INC., et al

(Appellants)

(Respondents)

C.A. No. 127649

Halifax, N.S.

FLINN, J.A.

APPEAL HEARD:

April 10, 1997

JUDGMENT DELIVERED:

May 6, 1997

SUBJECT:

Bankruptcy - Bankruptcy & Insolvency Act, R.S.C. 1985, B-3 - s. 163 examinations - s. 187(5) application to review and rescind prior order.

SUMMARY:

Appellant (Black) was granted leave to appeal two matters to this Court, both involving interlocutory discretionary orders of a Chambers judge.

ISSUES:

- (1) Was the appellant wrongly denied the right to an order for examination of witnesses under s. 163(2) of the **Bankruptcy Act**?
- (2) Does the appellant have a valid appeal from the decision of the Chambers judge rejecting the appellant's application to "review and rescind" a prior Order of the Supreme Court?

RESULT:

Appeal allowed on Issue (1). Appeal dismissed on Issue (2).

Issue (1) - The Chambers judge refused to consider all of the evidence which was before him in support of the application for examinations under s. 163 of the **Bankruptcy Act**. The Chambers judge, therefore, did not exercise his discretion judicially in dismissing the application. The Order is set aside and the appellant is at liberty to make a fresh application, on notice, to a judge of the Supreme Court.

Issue (2) - Immediately prior to the appellants' application to review and rescind a prior Order of the Supreme Court, the appellant's appeal to this Court, of that same Order, had been dismissed because of his failure to post security for costs. The appellant was using s. 187(5) of the **Bankruptcy Act** as a method of launching a further appeal. His application had no merit. Therefore, his appeal from the Chambers judge's refusal to grant the order was dismissed.

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DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE
COVER SHEET. THE FULL COURT DECISION CONSISTS OF 19 PAGES.**