

IN THE SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY
Citation: NovaLIS Technologies Ltd. (Re), 2008 NSSC 222

Date: 20080711
Docket: B-28772
Registry: Halifax

District of Nova Scotia
Division No. 01 - Halifax
Court No. B-28772
Estate No. 51-122097

IN THE MATTER OF: **NovaLIS Technologies Limited**

LIBRARY HEADING

Registrar: Richard W. Cregan, Q.C.

Heard: March 6, 2008

Written Decision: July 11, 2008

Summary: The Atlantic Canada Opportunities Agency (ACOA) made contributions to NovaLIS Technologies Limited to help it in the business of developing commercial land records software.

NovaLIS experienced financial difficulty and went out of business.

It filed a Proposal under the *Bankruptcy and Insolvency Act* which would be funded by tax credits its parent corporation would be entitled to receive so long as it did not become bankrupt. ACOA has indicated it would vote against the proposal. Its position has been that it is owed a certain sum

which is enough to defeat the proposal and thus put NovaLIS into bankruptcy. NovaLIS says that it owes ACOA a significantly smaller amount and therefore cannot put it into bankruptcy by ACOA's vote. With bankruptcy the tax credits which were to fund the proposal would be lost leaving nothing for unsecured creditors. However, bankruptcy would relieve the Canada Revenue Agency (CRA) of the need to grant the credits. This will be all to the net benefit of Her Majesty in the right of Canada. NovaLIS further says that it would be a wrongful use of the *Bankruptcy and Insolvency Act* for ACOA to vote against the proposal, because its vote is intended for the benefit of the CRA.

Issue: What is the correct amount owing by NovaLIS to ACOA? This is a matter of interpretation of certain clauses in the agreements covering the contributions.

If ACOA votes against the proposal so as to result in bankruptcy and the unavailability of the tax credits, will that be an improper use of the *BIA*?

Held: The contribution agreements are interpreted with the result that ACOA was found to be owed the greater amount and it was found that voting against the proposal would not be improper.

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