SUPREME COURT OF NOVA SCOTIA
IN BANKRUPTCY AND INSOLVENCY

Citation: *HealthHub Patient Engagement Solutions Inc. (Re)*, 2025 NSSC 261

Date: 20250805
Docket: Hfx No. 46157
Registry: Halifax
Estate Number: 51-3241989

In the Matter of: The Notice of Intention to Make a Proposal of HealthHub Patient Engagement Solutions Inc.

DECISION

Registrar:	Raffi A. Balmanoukian, Registrar in Bankruptcy
Heard:	July 25, 2025, in Halifax, Nova Scotia
Final Written Submissions:	July 28, 2025
Counsel:	Darren D. O'Keefe and Essber Essber, for the applicant, HealthHub Patient Engagement Solutions Inc. Joshua J. Santimaw, for the Proposal Trustee, Grant Thornton Limited Harvey G. Chaiton, for the creditor and proposed DIP lender, 1001285202 Ontario Inc.

Balmanoukian, Registrar:

[1] The applications before the Court were characterized as mundane. How they got to me and how they were administered were not. They provide several opportunities to provide jurisdictionally-specific guidance on process and procedure.

[2] The applicant ("HealthHub") provides televisions and electronic tablets to patients in about 180 hospitals. Its equipment and assets are far-flung and appear only to have material value if and when in use. HealthHub, as will appear, is for all intents and purposes out of cash; if not given more time and cash flow, the equipment will "go dark" immediately. Patients won't be able to watch TV or access various online services, including experiencing the joy of ordering hospital food. Any prospects for continuity of operations and enterprise viability will be severely impaired.

[3] HealthHub's principal creditor was The Toronto-Dominion Bank ("TD"), whose debt was recently purchased at a currently-undisclosed discount by 1001285202 Ontario Inc. ("5202" or the "DIP Lender"). 5202 is related to HealthHub's next-largest creditor, Rally Enterprises & Communications Corporation, which is HealthHub's video/ISP provider. HealthHub filed a Notice

of Intention to Make a Proposal on June 28, 2025. It now seeks a series of orders, under circumstances I take this occasion to discuss.

[4] On Friday, July 25, 2025 I issued an order extending time to file a proposal, pursuant to subs. 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 as amended (the "*BIA*"). I declined to issue an administrative charge under s. 64.2 of the *BIA*. On July 28, 2025 I issued a charging order, approving Debtor-in-Possession ("DIP") financing under s. 50.6(1) of the *BIA*, after counsel agreed on amendments to terms the Court had found unacceptable. I indicated that reasons would follow. These are they.

[5] I will, in the hope of future avoidance of some of the administrative and logistical problems this file raised, discuss the following issues:

- The proper filing of applications such as these, and with whom
- The scope of application, and on whom served
- Means of attendance
- The presumption against sealed material
- Exclusivity as a condition of DIP financing, and the Court's oversight role in providing DIP approval

- The merits of extending time under subs. 50.4(9) of the *BIA*

Whence came you: *BIA* General Rule 9(5)

[6] This proceeding was originally filed with the Supreme Court with a cover letter to the attention of Justice Jamieson. The Court issued a directive in February 2024 on insolvency matters, advising the public that Supreme Court matters are to be so channelled.[1]

[7] That directive states:

> Please note that the following process applies only to insolvency matters filed in Supreme Court in Halifax and is subject to periodic review. This notice does not affect the processes for matters filed with the Registrar of Bankruptcy.

[8] In turn, Rule 9(5) of the *Bankruptcy and Insolvency General Rules*, CRC c. 368 states:

> **(5)** Unless the Chief Justice, Associate Chief Justice or Commissioner, as the case may be, referred to in section 184 of the Act otherwise directs, every document that is required to be filed in court must first be filed at the office of the registrar.

[9] There has been no contrary directive issued by the Chief Justice or Associate Chief Justice in Nova Scotia.

[10] The file was accordingly redirected to me.

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[1] https://courts.ns.ca/resources/notices/process-scheduling-bankruptcy-and-insolvency-matters
Retrieved August 1, 2025

[11] In reply, one of the counsel wrote to the Court as follows:

> Based on the prevailing practice in Ontario, our motion was filed in Nova Scotia Supreme Court as there was some concern whether the Registrar could issue an order granting a debtor in possession ("**DIP**") loan and related DIP charge, which are crucial to the conduct of this proceeding… (emphasis added)

[12] This is not Ontario. With a hat tip to Jim Bennet, "us Maritimers don't do things like other people do." Notably, the email's author was not Ontario counsel. And this Court has regularly issued DIP charges, both uncontested and in files where I had the consent of the parties to hear and decide the matter.

[13] If counsel seek to have a matter that comes within the scope of Rule 9(5) moved to a Justice of the Supreme Court, for jurisdictional or other reasons, they may avail themselves of subss. 192(6) or (7) of the *BIA*, which read:

> **(6)** A registrar may refer any matter ordinarily within his jurisdiction to a judge for disposition.
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> **(7)** A judge may direct that any matter before a registrar be brought before the judge for hearing and determination.

[14] Subsection 192(6) allows a party to ask me to escalate a file otherwise within my jurisdiction to a Justice, or for me to do so on my own motion. Subsection 192(7) allows a Justice to take a file from me. In either case, the decision is made by a juridical official, not by counsel. I note that when a motion is filed with me for which I do not appear to have non-consensual jurisdiction, I review the jurisdictional aspects with counsel as soon as it is brought to my

attention. If I have consent, I proceed. If not, it is transferred to a Justice either in whole or in part depending on the circumstances. More often than not, and as turned out to be the case here, counsel consent to my hearing and deciding the matter pursuant to Para. 192(1)(j) of the *BIA*.

[15] This is not mere procedural or semantic hair-splitting. In *Re Terra Firma Development* 2023 NSSC 16, Justice Bodurtha discussed Rule 9(5) and some of its implications in detail. In addition to the Registrar's ability to alleviate the workload on Justices, within the Registrar's statutory or consensual jurisdiction, Rule 9 avoids forum-shopping and preserves the normal chain of appeal. As he pointed out, since appeals from the Registrar are heard by a Justice of the Supreme Court, bypassing the Registrar eliminates one level of appellate review. He stated, at paragraphs 24 and 26:

> [24] There is no dispute that a judge of the Supreme Court of Nova Scotia has jurisdiction to decide an appeal under s. 135(4), or any other matter assigned to the registrar under s. 192(1), in certain circumstances. Section 192(2) makes that abundantly clear. In my view, however, s. 192(2) cannot be interpreted to mean that parties have an unrestricted choice of forum at first instance. The interpretation proposed by RII would make the registrar redundant and would allow Supreme Court dockets to be overrun with routine bankruptcy matters. It would also accommodate judge shopping. I find that appeals under s. 135(4) are to be heard by the registrar at first instance, unless leave is obtained from a judge. The registrar's decision may then be appealed to a judge.
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> …
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> [26] In addition, the proofs of claim filed by RII and S+C relate to a debt worth more than $40 million. With such a substantial sum at stake, a party who is dissatisfied with the outcome of the appeal at first instance might wish to file a further appeal. If this Court

> decides the appeal at first instance, allowing RII to bypass the registrar, MNP Ltd will be deprived – without its consent – of one level of appeal available under the BIA (see ss. 192(4) and 193). In my view, the burdens created by this Court deciding the appeal at first instance outweigh the benefits. [emphases added]

[16] His Lordship also recited, with apparent approval, the submissions of Terra Firma's Trustee that the forum of *filing* and the overall jurisdiction to *hear and decide* are different things. The Trustee submitted:

> Rule 9(5) of the General Rules relates to the administrative role of the Office of the Registrar as opposed to the judicial role of the Registrar. While it does not directly relate to the issue of jurisdiction, the provision emphasizes, in our submission, the central role played by the Registrar in the administration of bankruptcy and proposal proceedings. The Registrars have, much like administrative tribunals, developed a particular expertise in dealing with the matters assigned to them by s. 192(1).

[17] I conclude by observing that this is not the first time a disregard of Rule 9(5) has unnecessarily encumbered a Justice. It causes delay and confusion, which benefits nobody; particularly where, as here and with many *BIA* situations, time is of the essence. If counsel seeks to have a Justice hear a matter that comes within Rule 9(5) instead of me, the proper procedure is to ask one of us, and to explain why.

What was I asked to do, and who knew about it?

[18] The notices of motion seek an extension of time to file a proposal pursuant to subs. 50.4(9) of the *BIA*; an abridgement of time to file the motion; and a motion for Debtor-in-Possession financing pursuant to subs. 50.6(1) of the *BIA*.

[19] At 4:01 pm on July 24, 2025 (the day before the hearing and just before close of Court business), I was emailed a draft amended order adding an administrative charge pursuant to s. 64.2 of the *BIA*. There was no prior motion to this effect. The amount sought was $200,000.

[20] When I pointed out the scope of the as-filed motion at hearing, counsel for HealthHub sought to make the motion verbally. He pointed out that counsel for 5202, the purported only secured creditor and who is also the proposed DIP lender, was at the hearing and consented. Counsel submitted this was all that is required. Counsel also argued that the DIP charge and Administration charge are effectively the same thing – a remedy giving priority of payment to those in whose favour it is issued, ahead of current creditors.

[21] I respectfully disagree.

[22] Section 64.2 reads:

> **64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of
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> **(a)** the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
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> **(b)** any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

> **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division. [emphasis added]

[23] At present, 5202 is only said to be a secured creditor – a security opinion has not yet been obtained. The scope and enforceability of that security is not before the Court. More importantly, paragraph 84 of the Proposal Trustee's report reads:

> The only potential priority claims as known by the Proposal Trustee is
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> (a) The Canada Revenue Agency ("CRA") for and [sic] outstanding GST/HST liability to CRA of $448k which may be considered a deemed trust claim, in addition to any source deductions, if also outstanding, and
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> (b) Outstanding liabilities to various provincial governments for PST and workers compensation of 101k which may constitute a priority claim dependent on respective provincial legislation.

[24] There is no indication that these public creditors received notice of an application for an administrative charge. I do not accept that a reference to it in the Trustee's report supporting such a charge, or provision of a draft order to effect it (both distributed the day before the hearing), is adequate notice of the relief sought. I also disagree that DIP charges and Administration Charges are related. They are different statutory provisions, with somewhat different tests, in favour of different stakeholders.

[25] At present, we do not know that there are not other affected secured creditors, or even conclusively that 5202 is a secured creditor.

[26] A further application may be filed and served on proper notice.

Come for the application, stay for the proceedings: appearances before the Registrar

[27] On July 22, 2025, Mr. O'Keefe's assistant wrote to the Court as follows:

> It is my understanding that we will need to arrange for video conference access for Mr. Chaiton, could you please advise the best point of contact for this inquiry. Thank you for your assistance in this matter.

[28] In the circumstances, I allowed Mr. Chaiton to appear virtually. However, I replied, through the Deputy Registrar, as follows:

> I will create the link and send to you. Please note to counsel that our default protocol is in-person attendance and is expected going forward, absent prior leave….

[29] This deserves repeating. The default in this Court is in-person attendance, unless given prior dispensation for special reasons. Location of counsel or trustee is not generally a special reason; they have chosen to act on a Nova Scotia file and are expected in person, individually or by local counsel or trustee familiar with the file. Virtual attendance is a dispensation to be sought, not taken.

[30] In these circumstances, the file evolved at this Court's level in real time, partly due to the meandering path it took to get to me. However, this Court circulates tip-to-tail in Nova Scotia in its efforts to bring access to justice to all. It

expects ‘boots on the ground’ by its officers (Trustees and Counsel) unless there are compelling reasons otherwise, and *prior* dispensation is had and obtained. This is part of this Court’s jurisdiction over its process and procedure pursuant to Paras. 192(1)(k) and 192(1)(m) of the *BIA*.

[31] HealthHub owes approximately $34,000,000. This is not a corner store insolvency. Counsel sought a $200,000 administration charge. It is reasonable to expect Court officers, in Court.

[32] It may be that remote counsel was unaware of this practice in Nova Scotia. That has now been addressed.

Sealing orders are the exception, not the Rule

[33] At the hearing, as I discuss below, I had significant concerns respecting certain terms in the DIP lending conditions. These were primarily respecting an obligation of the debtor to negotiate with, *and only with*, the DIP lender for a sale of its business or undertaking. I questioned how I could be satisfied, on any ratification application, that such a sale represented the highest and best return. While I will return to that in more detail, for current purposes my concern is with DIP lender’s response that I would be provided with evidence “under seal” to that end in due course, including the cost base of the DIP lender’s acquired debt.

[34] This Court recognizes that interim or interlocutory sealing orders *can* be appropriate in commercial files (for a very recent example see *Re Blue Lobster Capital Limited et al.* 2025 NSSC 243 at para. 165; for examples to the contrary, see *Hong v. Lavy*, 2019 NSSC 271 and *Re Haring*, 2018 NSSC 241). But they are an exception to the open court principle, to be applied sparingly and only to the extent and for so long as necessary.

[35] It is presumptuous to assume that such an order would be made as of rote. Such an application must be made under Nova Scotia's Civil Procedure Rule 85 (which applies by virtue of Rule 3 of the *Bankruptcy and Insolvency General Rules*) and on proper notice. And it is then up to the decision-maker as to what if any information is kept confidential, from whom, and for how long. Once again, counsel should not presume that the Court will automatically be *ad idem* with their proposed pathway. I make no further comment until and unless such an application is made.

Buying (into) the DIP – the proposed conditions

[36] The Trustee, quite rightly, highlighted the following at para. 57 of its report:

> Based on its review of the DIP Agreement, the Proposal Trustee notes that there are certain unusual condition [sic] in the DIP Agreement being:

> (a) Is that the Company is not to engage in a sales or investment solicitation process and is obligated to enter into a purchase and sale agreement solely with 5202 Ontario
>
> …
>
> (d) [the Company may not] enter into or present for approval by the Court any sale or transaction other than the Sale Transaction contemplated in the DIP agreement. (emphasis added)

[37] These are embodied in paragraphs 24(h) and (k) of the DIP agreement drafted (and by the time of hearing, signed) before the Court.

[38] As I observed in *Re Chester Basin Seafood Group Inc*. 2023 NSSC 388 at para. 26, the Court's jurisdiction to approve, or refuse, a DIP agreement is binary – I can take it or leave it, based on the non-exhaustive factors outlined in subs. 50.6(5). I cannot rewrite the deal; but I can decline to ratify it.

[39] My quarrel is not with the DIP loan's financial terms. The rate of interest is the same as it had been paying TD (prime plus 3%). There is a $25,000 commitment fee, which is meaningful given the proposed term of the loan (about three weeks, which based on a full drawdown immediately and to maturity is an effective combined interest rate of about 40%); however, given the contemplated credit bid and the balance sheet I have in evidence, this is essentially 5202 "stacking" more credit for which it is unlikely to be repaid in full.

[40] Turning to the subs. 50.6(5) factors, I am accordingly satisfied of the lack of material prejudice under para. 50.6(5)(f). The balance sheet and operations (*cf.* para. 50.6(5)(e)) are such that even on the existing evidence I am satisfied that this is the only commercially viable option at present, and thus the only prospect for enhancing a viable proposal under para. 50.6(5)(d). My review of the report tells me that HealthHub has only about $30,000 in the bank with a substantial cash burn and its "business and financial affairs" (para 50.6(5)(b)) are such that this burn is immediate and non-deferable.

[41] The financial terms are not what caught my attention. The exclusivity provisions did. As subs. 50.6(5) is not exhaustive as to what I should consider in deciding whether or not to approve the DIP charge, I can and should turn my mind to these terms.

[42] At hearing, I was presented with various arguments that the time would come for the Court to address whether the proposed sale is appropriate and optimal, and that now is not that time.

[43] Among these, I was told I would get "sealed" information down the road, discussed above. I was told that it would reveal that TD took a substantial haircut on its debt. The inference is that if they were prepared to do so, the realizable

value must be less than what 5202 can now submit as a credit bid, and 5202 is far and away now the largest creditor. I rejected that submission as (a) TD is a commercial lender, not related to a player in the marketplace; (b) another competitor in that marketplace may well be prepared to pay for a business *in situ* in some 180 hospitals, either independently or as a bolt-on to existing operations, which is not the case with TD; and (c) perhaps most importantly, I will have no way of knowing what may have happened if other marketplace participants did not have the opportunity even to know of this enterprise being in play, much less being able to look under the hood at its financial affairs.

[44] It is also possible, if 5202 bought the debt at a deep discount, that it may change its views in light of a significant cash bid, take its profit, and call it a day. The ability of a bidder – which would probably be a competitor to Rally – to do so on an informed basis is nonexistent under the DIP terms as drafted.

[45] I was also urged to leave the sales approval application to another day, for when it is made. I disagree that I should disregard what is to come next, as the approval process cannot fairly take place before the Court in a vacuum. It is true, as counsel urged, that "not all sales go to market," but I can see no reason why this should be one of them. Effectively "pre-chilling" the marketplace in favour of a DIP lender who is related to a marketplace player is highly concerning.

[46] The Trustee, correctly, pointed out that although the DIP financing would be binding between HealthHub and 5202, it is not binding on the Trustee. However, I remained concerned that the Proposal Trustee would be hampered in any marketing and evaluation efforts and invited draft language to address this.

[47] At the conclusion of the hearing, I reserved decision on the DIP financing, and invited counsel to have further discussion. The following day (Saturday) I advised the parties that I was not prepared to approve the terms with the exclusivity provisions intact. Counsel agreed to remove these offending paragraphs, and provided me with order language by which:

> The Proposal Trustee shall make reasonable efforts to evaluate any contemplated transaction that the Applicant may place before this Court, which may include, but is not limited to the following: obtaining valuation(s), appraisals, market data regarding similar transactions; and pole [sic] the market place with respect to the Applicant's transaction, whatever that may be, in order for the Proposal Trustee to make a recommendation to the Court regarding the transaction.

[48] On that basis, and with the removal of the administrative charge, I approved the modified charging order.

The application for extension of time – Subs. 50.4(9)

[49] In many ways, the most urgent and central part of this application is its easiest.

[50] Subsection 50.4(9) of the *BIA* reads:

> **(9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that
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> **(a)** the insolvent person has acted, and is acting, in good faith and with due diligence;
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> **(b)** the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
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> **(c)** no creditor would be materially prejudiced if the extension being applied for were granted.

[51] This court has considered that provision many times: reported and unreported, contested and not. The Court has been clear that a first extension is not a high threshold; later ones call for more robust progress. Nonetheless, as with other aspects of this case, it is not a catechism to be recited and completed in an autonomic state. The Court must be satisfied on all three parts of the test, and then that it is appropriate to exercise its discretion in favour of the extension.

[52] There have been cases in which I have been unimpressed at the "good faith and due diligence" by the debtor in the time period under review. This is not one of them. Although I received material up to and including the afternoon before hearing, it is clear that much has taken place in the last 30 days to move this insolvency along. I will expect to see materially more in the next 45.

[53] There is no indication of material prejudice to a creditor. Indeed, 5202 and Rally collectively hold somewhere around three-quarters of the debt.

[54] The test for whether there is a likelihood of a viable proposal – the second branch of the test – is an objective one, and also not an especially high bar. In *Re Atlantic Sea Cucumber Limited*, 2023 NSSC 238, I observed:

> [18] In summary, the test for the likelihood of a viable proposal is an objective one: *Nautican v. Dumont*, 2020 PESC 15 at paras. 16-18. Chief Justice Kennedy put it this way (invoking the inimitable Justice Farley in the process) in *Re Scotian Rainbow Ltd. et al*, (2000), 186 NSR (2d) 154 at para. 17 *et seq*.:
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> > [17] As to s. 50.4(9)(b), that the insolvent person would likely be able to make a viable proposal of the extension being applied for were granted. Counsel for the primary creditor Shur Gain, in support of the applicant, has brought to this Court's attention the case of *Re Baldwin Valley Investors Inc*. (1994), 23 C.B.R. (3d) 219. In that matter Justice Farley of the Ontario Court of Justice (General Division) (which it then was), Justice Farley considers the phrase a viable proposal as set out in subsection (b) of s. 50.4(9). He says that that phrase should take on a meaning akin to one that seems reasonable, a proposal that seems reasonable on its face to the reasonable creditor. Reasonable on its face to the reasonable creditor. Justice Farley says this ignores the possible idiosyncrasies of any specific creditor. Justice Farley also examines the meaning of the word 'likely', and refers to the Concise Oxford Dictionary of current English where likely is defined, and I quote:
> >
> > > Might well happen or turn out to be the thing specified.
> >
> > [18] Might well happen or turn out to be the thing specified...I am in agreement with Justice Farley's determinations as to the meaning of these words, and I adopt his findings as to their meanings for our purposes. When I make reference to those words for our purposes, I am adopting Justice Farley's definitions.

[55] I asked counsel whether, given the anticipated (and near-immediate) bid by 5202, the contemplated steps in this file constituted a likely "viable proposal," as opposed to some other kind of restructuring. I was advised that next steps could

take various forms, including seeking a reverse vesting order (RVO), straight sale, or indeed a proposal with or without either of these things. In other words, a proposal "might well happen."

[56] I am therefore satisfied that the test set out in subs. 50.4(9) of the *BIA* has been met, and there is no reason currently before me by which I would not favourably exercise the Court's discretion.

Conclusion

[57] Although the applicant received most of the remedy it sought, this case has provided several nuances which motivate the Court to offer constructive guidance.

[58] It is a caution against applicant complacency, or presumptuous adaptation of processes or procedures. Doing so could delay or hinder the process, result in inimical consequences including as to costs, or impact the Court's ability to assess the merits (and by whom those assessments are made). The application should be filed in the right place (or the appropriate decision maker asked to transfer or take the file). It should be timely. It should clearly set out all of the relief sought, and why. It should be properly served. It should follow the applicable Court's protocols as to attendance. It should not presume which next steps will follow as

an inevitable matter of course. And it should not assume the Court will just sign what is put in front of it, whether “everyone agrees,” or not.

Balmanoukian, R.