

Court File No. CV-21-00657656-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

BRAD DUBY PROFESSIONAL CORPORATION

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O 1990 C. C.43, AS AMENDED

**SUPPLEMENTARY REPORT TO THE FIRST REPORT TO THE COURT  
SUBMITTED BY MNP LTD., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER  
OF BRAD DUBY PROFESSIONAL CORPORATION  
September 21, 2022**

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- Appendix “B”      Draft consent protocol document
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- Appendix “D”      Copy of email response to the draft consent protocol from Naimark Law Firm, sent September 6, 2022
- Appendix “E”      Copy of email response to the draft consent protocol from Somogyi Law Group, sent September 7, 2022

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RECEIVER OF BRAD DUBY PROFESSIONAL CORPORATION  
September 21, 2022**

**INTRODUCTION AND BACKGROUND**

1. On February 25, 2021, on application made by TD Bank, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an Order (the “**Receivership Order**”) appointing MNP as court-appointed receiver of the assets, undertakings, and properties (the “**Property**”) of the Company (in this capacity, the “**Receiver**”).
2. On June 20, 2022, the Honourable Mr. Justice Osborne of this Court made an endorsement (the “**June 20 Endorsement**”) setting a timetable for the hearing of the

matter (the “**Timetable**”). Attached hereto as Appendix “A” to this Supplementary Report is a copy of the June 20 Endorsement.

3. On June 28, 2022, the Receiver filed its first report to the Court (the “**First Report**”), wherein it provided the Court with information in support of, *inter alia*, seek directions from the Court in relation to the Sliding Fee Structure (as such term is defined in the First Report), clarifying/expanding the Receiver’s authority with respect to the Receiver’s right to and the requirement of New Counsel (as such term is defined in the First Report) to disclose the Determinable Information (as such term is defined in the First Report) with respect to the Client Files (as such term is defined in the First Report).
4. This supplementary report (the “**Supplementary Report**”) is to be read in conjunction with the First Report.

#### **PURPOSE OF THIS REPORT**

5. The purpose of the Supplementary Report is to:
  - (a) update the Court on the activities of the Receiver and its counsel since the date of the First Report, including with respect to seeking the consent of the New Counsel to a consent protocol for the Determinable Information and the Receiver’s Fees and Disbursements collection efforts; and
  - (b) consider the responding materials filed by Naimark, Somogyi, (as such terms are defined in the First Report) and Chorney Sidhu Injury Lawyers (“**Chorney Sidhu**”).

## TERMS OF REFERENCE

6. In preparing this First Report, and making the comments herein, the Receiver has been provided with, and has relied upon, information (the “**Information**”) contained in or obtained:
- (a) the materials filed with the Court by TD Bank in connection with these proceedings and particularly, the affidavit of Michelle Benoy (the “**Benoy Affidavit**”), sworn February 24, 2021;
  - (b) the materials filed with the Court by the LSO in connection with its application to be appointed as Trustee of the Business and particularly, the affidavit of Linh Hoang (the “**Hoang Affidavit**”), sworn February 24, 2021;
  - (c) information obtained from the Company’s available books and records;
  - (d) information obtained from the TD Bank, the Bank of Montreal (“**BMO**”), BridgePoint Financial Services Inc. (“**BridgePoint**”), ARAG Services Corporation (“**ARAG**”)<sup>1</sup>, Canada Revenue Agency (“**CRA**”) and other third-party sources;
  - (e) information from the LSO, the Lawyers' Professional Indemnity Company (“**LawPRO**”), the Clients, and the lawyer and law firms who have now been retained by the Clients (the “**New Counsel**”);
  - (f) the responding materials filed by Naimark, Somogyi, and Chorney Sidhu; and,
  - (g) other publicly available information sources.

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<sup>1</sup> ARAG, formerly DAS Legal Protection Inc., is a provider of ATE (as defined below) legal expense insurance coverage.

7. Except as described in this Supplementary Report, the Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada Handbook.
8. All currency references contained herein are in Canadian Dollars, unless otherwise specified.
9. All capitalized terms not otherwise defined herein shall have the meanings as defined in the First Report and/or the Receivership Order, unless otherwise specified.

## **ACTIVITIES OF THE RECEIVER AND ITS COUNSEL SINCE THE FIRST REPORT**

### **Fees and Disbursements Collection Efforts**

10. Since the First Report, the Receiver Fees and Disbursements collection efforts can be summarized as follows:
  - (a) Collected additional Disbursements totaling approximately \$11,570, plus applicable HST, and are awaiting receipt of a further \$3,250, plus applicable HST;
  - (b) Collected additional Fees totaling approximately \$40,320, plus HST, and are awaiting receipt of a further \$6,920, plus HST.
11. The above-noted Fees received and awaiting to be received relate to eight (8) Client Files that the Receiver has settled with the New Counsel. The nature of the Fee settlements on these files are as follows:
  - (a) One (1) was for zero fees as Fees on the Sliding Fee Structure would have been nominal (under \$500) and Naimark had incurred additional costs in order to preserve the claim;
  - (b) One (1) was a payment received from Naimark of approximately \$5,750, plus HST, previously noted in Paragraph 71(a) of the First Report as a settlement for a

lump sum amount of \$5,000, which was at the time of the filing of the First Report still outstanding;

- (c) One (1) was for approximately \$3,200, plus HST, which was a file that was transferred to Chorney Sidhu before Mr. Duby's death and where the Company had rendered an account. Due to identified issues on the file, the Receiver agreed to accept a lower amount than that shown on the rendered account;
- (d) One (1) was negotiated with Naimark totaling approximately \$5,000, plus HST, on another one-time exception basis to address certain concerns raised as to the conduct of Mr. Duby and to provide certainty to the client as to his recovery in his settlement negotiations;
- (e) Three (3) were in accordance with the Sliding Fee Structure totaling approximately \$28,700, plus applicable HST, as agreed to with Preszler, Krylov Lam & Company LLP and D'Alessio Romero Law Firm; and
- (f) One (1) was negotiated with Naimark, where it has been necessary for the Receiver to expend significant time reviewing the file in order to rebut Naimark's position that BDPC's efforts and fee entitlement on such file was only worth \$500, plus HST. The Receiver sought and ultimately received fees of \$4,500, plus HST, which was consistent with the Sliding Fee Structure.

### **Consent Protocol**

- 12. In addition to setting a timetable for this Motion, the June 20, 2022 endorsement of the Honourable Mr. Justice Osborne stated that "*Counsel for all parties are going to work cooperatively towards agreeing on a consent protocol for the sharing of relevant information relating to fees and disbursements while protecting privilege as appropriate.*"
- 13. Further to Justice Osborne's endorsement, the Receiver and HP drafted a document outlining a protocol for the Determinable Information sought by the Receiver (the



“**Draft Protocol**”). Attached hereto as **Appendix “B”** to this Supplementary Report is the Draft Protocol.

14. The Draft Protocol set-out the information that the Receiver believed it required from New Counsel in order to discharge its duties and established how the Receiver would handle such Determinable Information once received.
15. On July 14, 2022, HP circulated via email the Draft Protocol to the LSO, the Opposing Law Firms, Chorney Sidhu and counsel to TD Bank and Bridgepoint in order to solicit comments and input for consideration prior to circulating the document to all New Counsel.
16. On July 14, 2022 Chorney Sidhu responded to HP’s email as follows:

*It is our position that the “Determinable Information” propose that we produce is only relevant if the sliding scale approach is adopted by the Court.*

*Unless and until the sliding scale is approved, which we vigorously oppose, nothing related to our retainer, fees, disbursements or negotiated settlements is relevant to the question of what Mr. Duby or his estate is owed on a quantum meruit basis.*

17. On September 6, 2022, HP sent a follow-up email to the Opposing Law Firms in connection with the Draft Protocol. In response to this follow-up email sent by HP, HP received responses from Naimark and Somogyi, but nothing from MK Legal. The responses from Naimark and Somogyi indicated that they agreed with and echoed Chorney Sidhu’s comments. Attached hereto as **Appendices “C”, “D” and “E”** to this Supplementary Report are the emails responses to the Draft Protocol from Chorney Sidhu, Naimark and Somogyi, respectively.

18. The Receiver agrees in part that certain of the Determinable Information would only be relevant should the Court determine that the Sliding Fee Structure is appropriate. However, other of the information, including details on the quantum of any settlement and New Counsel's accounts, would still be necessary for the Receiver to discharge its duties in ascertaining that the information conveyed by New Counsel is complete and accurate during any fee settlement discussions.
19. Given the above the Receiver requires the Court's advice and direction on appropriateness and application of the Draft Protocol on New Counsel.

## **RESPONDING MOTION MATERIALS FILED**

### **General**

20. As of the date of this Supplementary Report, there are approximately two hundred and fifty-six (256) Client Files transferred to over fifty (50) New Counsel.
21. There are three (3) counsel representing approximately thirty-seven (37) former clients of BDPC who have consented to the adoption of the Sliding Fee Structure.
22. There are four (4) counsel, which includes Naimark, Somogyi and Chorney Sidhu (collectively the "**Responding New Counsel**"), who have indicated their opposition to the Sliding Fee Structure, who represent approximately one hundred and twenty-two (122) of the former clients of BDPC.

### **Service of Motion Materials**

23. On June 28, 2022, HP on behalf of the Receiver served its motion materials on all New Counsel, in accordance with the Timetable.

24. On June 15, 2022 and in accordance with the Timetable, the Receiver was served with responding motion materials by the Responding New Counsel.

**Sliding Fee Structure**

25. Based on a review of the responding motion materials served by the Responding New Counsel, it is the Receiver's understanding that the basis for their opposition to the Sliding Fee Structure can be summarized as follows:

- (a) There are no transfer accounts with respect to the fees owing on the Client File from BDPC or the Receiver;
- (b) On certain Client Files it is asserted that there was fraud and/or negligence perpetrated by Mr. Duby;
- (c) There is no Retainer Agreement between the Client and BDPC in the file;
- (d) That under the Retainer Agreements in the Client Files, the Fees would be based on the time and effort expended and at the hourly rates set-out in Tariff A for solicitors' fees under Rule 58.05 of the *Rules of Civil Procedure* or the BDPC's usual hourly rates;
- (e) The Fees payable are subject to the Client's right of an assessment under the *Solicitors Act*; and the Sliding Fee Structure runs contrary to this right;
- (f) Neither the Retainer Agreements nor other arrangement between the Client and BDPC contemplate the application of a "sliding fee structure";
- (g) That the Sliding Fee Structure would create a fee disproportionate to any settlement amount;

- (h) The Sliding Fee Structure prejudices the New Counsel, and in particular given that such was not contemplated when they were retained and given that they have had expended increased time and money on the Client Files;
- (i) The Sliding Fee Structure would not enhance access to justice or serve the client's best interest, and only serves the interest of the Receiver;

26. In regard to the above issues raised by the Responding New Counsel, the Receiver's comments are as follows:

- (a) On the issues noted in Paragraphs 23(a), (d) and (f) above, the Receiver cannot utilize hourly rates and provide or create transfer accounts from what it does not have. The Sliding Fee Structure was developed as a practical, simple, and efficient method to calculate the fees to be paid give the situation;
- (b) On the issue noted in Paragraph 23(b) above, the Receiver is not seeking payment of Fees on Client Files where there are bona fide fraud and/or negligent claims;
- (c) On the issue noted in Paragraph 23(c) above, there is evidence by the existence of the file that the Company was retained, notwithstanding that there is no retainer agreement found in the Client File;
- (d) On the issue noted in Paragraph 23(e) above and notwithstanding the Clients' right to assess, the proposed Sliding Fee Structure contemplates that the fees to be paid for BDPC's interest are to come out of the fees of New Counsel. Accordingly, the Receiver is uncertain as to the applicability of the Clients' right to assess since the total fees paid by the Clients are part of those agreed to as per the new retainer agreement entered into between the Client and New Counsel;

- (e) On the issue noted in Paragraph 23(g) above, the Receiver does not comprehend how the Sliding Fee Structure would create a fee disproportionate to any settlement amount, since the Fees contemplated to be paid are simply a percentage of the fees of New Counsel, which are in turn are a percentage of the net settlement funds as per the new retainer agreement;
- (f) On the issue noted in Paragraph 23(h) above, the Receiver accepts that the Fees are being burdened by New Counsel. Notwithstanding, and as stated in Paragraph 76(b) of the First Report, the Sliding Fee Structure allows New Counsel to benefit greater on larger and more mature client matters with a rate of only twenty percent (20%), which is contemplated to offset additional efforts and costs, if any, on smaller and less mature matters which have scaled at a lower fee rate. Additionally, the decision of New Counsel to accept a former client of BDPC as a client is a business decision of such firm, which includes accepting the risks (e.g. increased time and costs) and rewards associated thereto; and
- (g) On the issue noted in Paragraph 23(i) above, the Sliding Fee Structure does not financially prejudice the Clients as the fees being paid come out of the fees to be otherwise be paid to and received by the New Counsel. Further on the issue of access to justice and as noted in Paragraph 78 of the First Report, the Receiver has made arrangements with Preszler, another reputable personal injury firm, to represent a client, should any New Counsel not wish to maintain carriage of the Client File under the Sliding Fee Structure.

### **Provision of the Determinable Information**

- 27. Based on a review of the responding motion materials served by the Responding New Counsel, it is the Receiver's understanding that the basis for their opposition to the

provision of the Determinable Information to the Receiver is that the protection of solicitor-client privilege is sacrosanct and such protections were affirmed at Paragraph 5 of the Receivership Order.

28. For the reasons set-out in Paragraphs 82 of the First Report, it is the Receiver's position there are reasonable justifications for the Receiver to receive the Determinable Information.

29. The Draft Protocol to govern the release of the Determinable Information recognizes, keeps confidential and protects all privileged documents and information.

All of which is respectfully submitted this 21<sup>st</sup> day of September, 2022

**MNP LTD.,**  
in its capacity as Court-appointed Receiver of  
Brad Duby Professional Corporation and  
not in its personal or corporate capacities  
Per:



Matthew Lem, CIRP  
Licensed Insolvency Trustee

# APPENDIX A



SUPERIOR COURT OF JUSTICE  
**COUNSEL SLIP/ENDORSEMENT**

COURT FILE NO.: CV-21-00657656-00CL

DATE: JUNE 20 2022

1

TITLE OF  
PROCEEDING

THE TORONTO-DOMINION BANK v. BRAD DUBY PROFESSIONAL  
CORPORATION

BEFORE MR. JUSTICE OSBORNE

**NAMES OF COUNSEL AND PARTY: KYLE PLUNKETT**

~~APPLICANT(S)~~

PHONE \_\_\_\_\_

APPLICANT(S) *TD BANK*

EMAIL kplunkett@airdberlis.com

**NAMES OF COUNSEL AND PARTY:**

DEFENDANT(S)

PHONE \_\_\_\_\_

RESPONDENT(S)

EMAIL \_\_\_\_\_

**NAMES OF COUNSEL AND OTHER PARTIES: 1. TIM HOGAN  
SHAHEN ALEXANIAN, A SOMOGYI, NERGIZ SINJARI, ADAM  
FEDERICO, SAVANNAH CHORNEY, ELAINE PERITZ,  
MATTHEW LEM**

PHONE \_\_\_\_\_

EMAIL 1. thogan@harrisonpensa.com

1. *MNP LTD (Receiver)*

**ENDORSEMENT OF OSBORNE, J.**



[1] Counsel present at this case conference included the following:

Timothy C. Hogan <a href="mailto:thogan@harrisonpensa.com">thogan@harrisonpensa.com</a>	<b>HARRISON PENZA LLP</b> <i>Lawyers for the Receiver, MNP Ltd.</i>
<b>Kyle Plunkett</b> <a href="mailto:kplunkett@airdberlis.com">kplunkett@airdberlis.com</a>	<b>AIRD &amp; BERLIS LLP</b> <i>Lawyers for the Applicant, The Toronto-Dominion Bank</i>
<b>Matthew Lem</b> <a href="mailto:Matthew.Lem@mnp.ca">Matthew.Lem@mnp.ca</a>	<b>MNP LTD.</b> <i>Receiver</i>
<b>Elaine Peritz</b> <a href="mailto:eperitz@jaffeperitz.com">eperitz@jaffeperitz.com</a>	<b>JAFFE PERITZ LLP</b> <i>Lawyers for Bridgepoint Financial Services, secured creditor</i>
<b>Adam Di Federico</b> <a href="mailto:AFederic@lso.ca">AFederic@lso.ca</a>	<b>LAW SOCIETY OF ONTARIO</b> <i>Lawyers for Law Society of Ontario</i>
<b>Adam A. Somogyi</b> <a href="mailto:adam@slglegal.ca">adam@slglegal.ca</a>	<b>SOMOGYI LAW GROUP</b> <i>New Counsel</i>
<b>Nergiz Sinjari</b> <a href="mailto:nsinjari@naimarklaw.com">nsinjari@naimarklaw.com</a>	<b>NAIMARK LAW FIRM</b> <i>New Counsel</i>

<b>Savannah Chorney</b> <a href="mailto:savannah@chorneylawyers.com">savannah@chorneylawyers.com</a>	<b>CHORNEY SIDHU INJURY LAWYERS</b> <i>New Counsel</i>
<b>Shahen A. Alexanian</b> <a href="mailto:shahen@mklegal.ca">shahen@mklegal.ca</a>	<b>MK LEGAL SERVICES PROFESSIONAL CORPORATION</b> <i>New Counsel</i>
<b>Paul Adam</b> <a href="mailto:p.adam@wiselaw.net">p.adam@wiselaw.net</a>	<b>WISE LAW</b> <i>New Counsel</i>
<b>Alissa Winicki</b> <a href="mailto:alissa@rvlaw.ca">alissa@rvlaw.ca</a>	<b>RV LAW</b> <i>New Counsel</i>

[2] This was a Case Conference scheduled at the request of MNP Ltd. in its capacity as Court-appointed Receiver of the Property [as defined in the Appointment Order] of the Respondent, Brad Dube Professional Corporation. The purpose of the Case Conference was to schedule a motion for approval of the First Report of the Receiver, it's activities and fees, seek direction with respect to a proposed sliding fee structure for carriage of the files of the Respondent assumed by new counsel, and for related relief.

[3] The Law Society was served with the materials related to this case conference and its counsel, Mr. Di Federico, was present in Court. All New Counsel, as that term is defined in the materials [those new counsel taking over carriage of matters on which the respondent professional corporation had been acting] were also served with the materials related to this Case Conference. Some but not all were present in court.

[4] On the consent of all parties present, this motion is scheduled for a two-hour appointment before any judge of the Commercial List on October 13, 2022 commencing at 10:00 AM.

[5] Pre-motion materials shall be served and delivered in accordance with the timetable set out below, also on the consent of all parties present:

1. Receiver's Motion record served by June 29, 2022;
2. Responding materials served by September 15, 2022;
3. Receiver's Reply materials (if any) and Receiver's Factum served by September 22, 2022;
4. Responding Facta served by September 29, 2022; and,
5. Receiver's Reply Factum (if any) served by October 6, 2022.

[6] This scheduling Endorsement is without prejudice to the right of any party on the substantive issues to be determined at the motion. Counsel for all parties are going to work cooperatively towards agreeing on a consent protocol for the sharing of relevant information relating to fees and disbursements while protecting privilege as appropriate.

[7] Counsel for the Receiver will serve a copy of this Endorsement on counsel for all parties.

[8] No costs sought or awarded regarding this Case Conference.

Olson, J.

## APPENDIX B

**To: New Counsel**

**From: MNP Ltd., Court Appointed Receiver of Brad Duby Professional Corporation**

**Re: Determinable Information**

On February 25, 2021, on application made by The Toronto-Dominion Bank, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in Court File No: CV-21-00657656-00CL (the "**Receivership Proceedings**") granted and issued an Order (the "**Appointment Order**") appointing MNP Ltd. (in this capacity, the "**Receiver**") as Court-appointed receiver of the assets, undertakings, and properties (the "**Property**") of the Brad Duby Professional Corporation ("**BDPC**"), formerly Hanson Duby Lawyers.

It's the duty and obligation of the Receiver to maximize the recovery on the Property for the benefit of the estate under the terms of the Appointment Order, which recovery steps include collecting the fees and disbursements owing to BDPC associated with active files (the "**Client Files**") of former clients of BDPC (the "**Clients**" or in the singular the "**Client**") which have been transferred to a counsel retained by the Clients (collectively the "**New Counsel**").

To permit the Receiver to administrate the estate and realize on the fees and disbursements owing to BDPC on Client Files (the "**Purpose**"), the Receiver requires the disclosure of certain information concerning the Client Files that are in the possession and control of the New Counsel. This information includes but is not limited to:

- a) New Counsel retainer/fee agreements on Client Files;
  - b) full particulars of any finalized settlement monies paid or to be paid to the Client associated with the Client Files ("**Settlement Funds**") and/or monies collected or to be collected from named Defendants on any judgment or order or ruling granted by a court or arbitrator in favour of the Client ("**Awarded Funds**");
  - c) details or a statement(s) of the disbursement of the Settlement Funds and/or Awarded Funds from New Counsel to the Client;
  - d) New Counsel's account(s) on Client Files;
  - e) Supporting documentation for all other disbursements, including but not limited to invoices of suppliers and service providers, insurance premiums, loan payments, repayment of benefits received, court and other filing fees, account(s)/charging order of former counsel; and
  - f) any relevant information reasonably required by the Receiver associated the BDPC's interest in the Client Files
- (a) through f) collectively, the "**Determinable Information**").

The Receiver appreciates and confirms its understanding that all of the Determinable Information is of a confidential and sensitive nature and may contain details that are subject to solicitor-client privilege. Accordingly, the Receiver agrees as follows:

1. Subject to section 2 below, the Receiver covenants that it (which, for the purposes of such covenant shall include any and all of its officers and employees, as well as those of its independent

legal counsel, Harrison Pensa LLP, all of which are collectively referred to hereafter as “**Permitted Persons**”) shall not use the Determinable Information other than in accordance with the Purpose.

2. For greater certainty, but without limiting the covenants herein to keep the Determinable Information confidential, the Receiver agrees that all privilege over the Determinable Information and all related protections and confidences shall continue to apply to the Determinable Information, and that the Receiver shall be bound by same and shall take all reasonable steps to prevent the disclosure of the Determinable Information, by ensuring that:
  - a) Only Permitted Persons whose duties require them to review the Determinable Information shall have access thereto, and they shall be instructed and required to treat the Determinable Information as confidential;
  - b) Proper and secure storage is provided for all written Determinable Information or any Determinable Information which is stored on any computer or data retrieval system; and,
  - c) Should the Receiver determine that it is necessary that any of the Determinable Information be before the Court in the Receivership Proceedings, it shall only file same subject to it seeking a Sealing Order pursuant to section 137 of the *Courts of Justice Act* (Ontario).
3. In the event that the Receiver or any Permitted Person becomes legally compelled to disclose any of the Determinable Information outside of the Receivership Proceedings, the Receiver, to the extent legally permissible, shall provide the New Counsel and/or the Client with prompt notice of this disclosure requirement. In addition, the Receiver will exercise its best efforts to obtain a protective or Sealing Order with respect to the Determinable Information. In the event that no such protective or Sealing Order is obtained, the Receiver shall furnish only that portion of the Determinable Information which it is legally required to provide.
4. In the event that the Receiver becomes aware of any unauthorized disclosure of the Determinable Information, or that the Determinable Information has been or is being used for any reason other than the Purpose, which was as a direct result of the New Counsel furnishing the Determinable Information to the Receiver, the Receiver shall immediately notify the New Counsel and/or the Client of the unauthorized disclosure, and shall assist the New Counsel and/or the Client in attempting to prevent any further unauthorized disclosure and shall, if requested, assist the New Counsel and/or the Client in any legal proceedings that may be commenced in that regard, including by providing affidavit evidence in any such legal proceeding.

## APPENDIX C

## Matthew Lem

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**From:** Melissa Sidhu <melissa@chorneylawyers.com>  
**Sent:** July 14, 2022 6:05 PM  
**To:** Tim Hogan; kplunkett@airdberlis.com; eperitz@jaffeperitz.com; AFederic@lso.ca; adam@slglegal.ca; nsinjari@naimarklaw.com; shahen@mklegal.ca  
**Cc:** Matthew Lem  
**Subject:** RE: Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

**CAUTION:** This email originated from outside of the MNP network. Be cautious of any embedded links and/or attachments.  
**MISE EN GARDE:** Ce courriel ne provient pas du réseau de MNP. Méfiez-vous des liens ou pièces jointes qu'il pourrait contenir.

Good afternoon Mr. Hogan,

It is our position that the "Determinable Information" propose that we produce is only relevant if the sliding scale approach is adopted by the Court.

Unless and until the sliding scale is approved, which we vigorously oppose, nothing related to our retainer, fees, disbursements or negotiated settlements is relevant to the question of what Mr. Duby or his estate is owed on a *quantum meruit* basis.

What is required to make that determination is a copy of Mr. Duby's file for the relevant client to the date the client retained new counsel. It is my understanding that the law society is in receipt of Mr. Duby's client files.

---

**From:** Tim Hogan <thogan@harrisonpensa.com>  
**Sent:** July 14, 2022 11:25 AM  
**To:** kplunkett@airdberlis.com; eperitz@jaffeperitz.com; AFederic@lso.ca; adam@slglegal.ca; nsinjari@naimarklaw.com; Melissa Sidhu <melissa@chorneylawyers.com>; shahen@mklegal.ca  
**Cc:** Matthew.Lem@mnp.ca  
**Subject:** Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

Counsel

Further to Justice Osborne's endorsement, we have drafted a document with respect to Determinable Information sought by the Receiver for this group's first review, before sending to all New Counsel.

Can we please have your views on the attached so we can work to resolve this issue?

Once we have your views, we will go to the larger group.

Thank-you.

**Tim Hogan** | [HARRISON PENSA LLP](#) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](#) | *tel* 519-661-6743  
| *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com) Assistant | Cathy Coleiro | *tel* 519-850-5568 |  
[ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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**From:** Alexander, Jonathon (MAG) <[Jonathon.Alexander@ontario.ca](mailto:Jonathon.Alexander@ontario.ca)>

**Sent:** Monday, June 20, 2022 4:08 PM

**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>; [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com); [Matthew.Lem@mnp.ca](mailto:Matthew.Lem@mnp.ca); [eperitz@jaffeperitz.com](mailto:eperitz@jaffeperitz.com); [AFederic@Iso.ca](mailto:AFederic@Iso.ca); [adam@slglegal.ca](mailto:adam@slglegal.ca); [nsinjari@naimarklaw.com](mailto:nsinjari@naimarklaw.com); [savannah@chorneylawyers.com](mailto:savannah@chorneylawyers.com); [shahen@mklegal.ca](mailto:shahen@mklegal.ca); [p.adam@wiselaw.net](mailto:p.adam@wiselaw.net); [alissa@rvlaw.ca](mailto:alissa@rvlaw.ca)

**Subject:** CV-21-00657656-00CL ENDORSEMENT

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## APPENDIX D

## Matthew Lem

---

**From:** Nergiz Sinjari <nsinjari@naimarklaw.com>  
**Sent:** September 6, 2022 4:55 PM  
**To:** Tim Hogan; Melissa Sidhu; kplunkett@airdberlis.com; eperitz@jaffeperitz.com; AFederic@Iso.ca; adam@slglegal.ca; shahen@mklegal.ca  
**Cc:** Matthew Lem; Elda Kero  
**Subject:** Re: Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

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We agree and echo Ms. Sidhu's comments below.

**Nergiz Sinjari**  
Lawyer

**Tel: 416-366-7246 ext 6150 | Direct: 416-869-0047 | Fax: 416-366-7244**  
**141 Adelaide Street West, Suite 330, Toronto, ON M5H 3L5**  
[www.naimarklaw.com](http://www.naimarklaw.com)

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**From:** Tim Hogan <thogan@harrisonpensa.com>  
**Sent:** Tuesday, September 6, 2022 16:53  
**To:** Melissa Sidhu <melissa@chorneylawyers.com>; kplunkett@airdberlis.com <kplunkett@airdberlis.com>; eperitz@jaffeperitz.com <eperitz@jaffeperitz.com>; AFederic@Iso.ca <AFederic@Iso.ca>; adam@slglegal.ca <adam@slglegal.ca>; Nergiz Sinjari <nsinjari@naimarklaw.com>; shahen@mklegal.ca <shahen@mklegal.ca>  
**Cc:** Matthew.Lem@mnp.ca <Matthew.Lem@mnp.ca>  
**Subject:** RE: Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

Counsel

As we approach the hearing in this matter on October 13, 2022, I am following on the below e-mail exchange.

Can you please advise if any of Mr. Somoogyi, Ms. Sinjari or Mr. Alexanian have any comments on the attached document with respect to Determinable Information?

We will then circulate all comments to the full service list to seek comments from any other counsel.

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Thank-you.

**Tim Hogan** | [HARRISON PENZA LLP](http://HARRISON PENZA LLP) | [130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2](http://130 Dufferin Avenue, Suite 1101, London, ON N6A 5R2) | *tel* 519-661-6743  
| *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com) Assistant | Cathy Coleiro | *tel* 519-850-5568 |  
[ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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**From:** Melissa Sidhu <[melissa@chorneylawyers.com](mailto:melissa@chorneylawyers.com)>

**Sent:** Thursday, July 14, 2022 6:05 PM

**To:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>; [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com); [eperitz@jaffeperitz.com](mailto:eperitz@jaffeperitz.com); [AFederic@lso.ca](mailto:AFederic@lso.ca); [adam@slglegal.ca](mailto:adam@slglegal.ca); [nsinjari@naimarklaw.com](mailto:nsinjari@naimarklaw.com); [shahen@mklegal.ca](mailto:shahen@mklegal.ca)

**Cc:** [Matthew.Lem@mnp.ca](mailto:Matthew.Lem@mnp.ca)

**Subject:** RE: Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

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Good afternoon Mr. Hogan,

It is our position that the “Determinable Information” propose that we produce is only relevant if the sliding scale approach is adopted by the Court.

Unless and until the sliding scale is approved, which we vigorously oppose, nothing related to our retainer, fees, disbursements or negotiated settlements is relevant to the question of what Mr. Duby or his estate is owed on a *quantum meruit* basis.

What is required to make that determination is a copy of Mr. Duby’s file for the relevant client to the date the client retained new counsel. It is my understanding that the law society is in receipt of Mr. Duby’s client files.

---

**From:** Tim Hogan <[thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)>

**Sent:** July 14, 2022 11:25 AM

**To:** [kplunkett@airdberlis.com](mailto:kplunkett@airdberlis.com); [eperitz@jaffeperitz.com](mailto:eperitz@jaffeperitz.com); [AFederic@lso.ca](mailto:AFederic@lso.ca); [adam@slglegal.ca](mailto:adam@slglegal.ca); [nsinjari@naimarklaw.com](mailto:nsinjari@naimarklaw.com); Melissa Sidhu <[melissa@chorneylawyers.com](mailto:melissa@chorneylawyers.com)>; [shahen@mklegal.ca](mailto:shahen@mklegal.ca)

**Cc:** [Matthew.Lem@mnp.ca](mailto:Matthew.Lem@mnp.ca)

**Subject:** Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

Counsel

Further to Justice Osborne’s endorsement, we have drafted a document with respect to Determinable Information sought by the Receiver for this group’s first review, before sending to all New Counsel.

Can we please have your views on the attached so we can work to resolve this issue?

Once we have your views, we will go to the larger group.

Thank-you.

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| *fax* 519-667-3362 | [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com) Assistant | Cathy Coleiro | *tel* 519-850-5568 |  
[ccoleiro@harrisonpensa.com](mailto:ccoleiro@harrisonpensa.com)

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## APPENDIX E

## Matthew Lem

---

**From:** Adam Somogyi <adam@slglegal.ca>  
**Sent:** September 7, 2022 9:15 AM  
**To:** Tim Hogan; Melissa Sidhu; kplunkett@airdberlis.com; eperitz@jaffeperitz.com; AFederic@Iso.ca; nsinjari@naimarklaw.com; shahen@mklegal.ca  
**Cc:** Matthew Lem  
**Subject:** RE: Brad Duby PC - CV-21-00657656-00CL ENDORSEMENT [IWOV-HPMain.FID544296]

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Mr. Hogan - We adopt the comments by Ms. Sidhu and add the following comments:  
It is acknowledged by the Receiver in the attached document that "all of the Determinable Information is of a confidential and sensitive in nature and may contain details that are subject to solicitor-client privilege."  
Paragraph 5 of the Receivership Order of February 21, 2021 specifically excludes disclosure of privileged and statutory prohibited documents.

In other words, there is currently a Court Order that indicates we must not disclose the Determinable Information to the Receiver. There are also LSO guidelines and confidentiality clause(s) in client release(s). As such, until there is a Court Order overriding same, our position is that we are barred from disclosing the Determinable Information.

Yours very truly,

*Adam A. Somogyi J.D., B.A. (Hons.)*

Somogyi Law Group  
758 Sheppard Avenue West  
Toronto, ON M3H 2S8

Direct Tel: 416.941.2502  
Fax: 416.941.2501  
Email: [adam@slglegal.ca](mailto:adam@slglegal.ca)

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**Sent:** Tuesday, September 6, 2022 4:53 PM  
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**Cc:** [Matthew.Lem@mnp.ca](mailto:Matthew.Lem@mnp.ca)  
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[savannah@chorneylawyers.com](mailto:savannah@chorneylawyers.com); [shahen@mklegal.ca](mailto:shahen@mklegal.ca); [p.adam@wiselaw.net](mailto:p.adam@wiselaw.net); [alissa@rvlaw.ca](mailto:alissa@rvlaw.ca)  
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THE TORONTO-DOMINION BANK

Applicant

-and-

BRAD DUBY PROFESSIONAL CORPORATION

Respondent

Court File No. CV-21-00657656-00CCL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at  
Toronto, Ontario

**SUPPLEMENTARY REPORT TO THE FIRST REPORT OF  
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**HARRISON PENZA** <sup>LLP</sup>  
Barristers and Solicitors  
130 Dufferin Avenue, Suite 1101  
London, Ontario N6A 5R2

**Timothy C. Hogan (LSO #36553S)**  
**Robert Danter (LSO #69806O)**

Tel: (519) 679-9660  
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Email: [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com)  
[rdanter@harrisonpensa.com](mailto:rdanter@harrisonpensa.com)

Solicitors for the Receiver,  
MNP Ltd.