

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

B E T W E E N:

CANADIAN WESTERN BANK

Applicant

and

INDEX HOLDING GROUP INC., INDEX GROUP OF COMPANIES INC., INDEX INTERNATIONAL INC., INDEX FOODS INC., 2640179 ONTARIO INC., 11030434 CANADA LTD., 2700774 ONTARIO INC., 2700767 ONTARIO INC., 2683960 ONTARIO LTD., 11030418 CANADA INC., 2723710 ONTARIO INC., 2718366 ONTARIO INC., 2737332 ONTARIO INC., 2737334 ONTARIO INC., 2723714 ONTARIO INC., 2723716 ONTARIO INC., 2737338 ONTARIO INC., 2790760 ONTARIO INC., 2775290 ONTARIO INC., 2775296 ONTARIO INC., 421 WHARNCLIFFE LTD. and 425 WHARNCLIFFE ROAD INC.

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, RSC 1985, c. B-3, AS AMENDED;
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, RSO 1990, c. C.43, AS
AMENDED**

FACTUM OF THE COURT-APPOINTED RECEIVER, MNP LTD.
(Motion returnable by Zoom on September 21, 2023 at 10:30 a.m.)

September 18, 2023

DICKINSON WRIGHT LLP
Barristers & Solicitors
199 Bay Street, Suite 2200,
Commerce Court Postal Station
Toronto, Ontario M5L 1G4

JOHN D. LESLIE (29956P)
Email: jleslie@dickinsonwright.com
Tel: (416) 646-3801

LISA S. CORNE
Email: lcorne@dickinsonwright.com
Tel: (416) 646-4608

Lawyers for the Court-appointed Receiver,
MNP Ltd.

TO: **SERVICE LIST**

TABLE OF CONTENTS

	PAGE
PART I - OVERVIEW	1
PART II - FACTS.....	2
A. The Appointment Order	2
B. The Receiver's Activities to Date	3
C. The Denny's APA and Operations	4
D. Reviewable Transactions	5
PART III - ISSUES	7
PART IV - LAW AND ARGUMENT	7
A. The Denny's AVO Should be Granted	7
i. Soundair Framework for Approval of Asset Sales by Receiver	7
ii. The Denny's APA Satisfies the Soundair Test	8
B. Third Report Approval.....	9
C. Muqet Should be Order to Attend an Examination Under Oath	10
D. The Sealing Order Should be Granted.....	11
i. Legal Framework for Sealing Orders.....	11
ii. Confidential Appendices A through D Should be Sealed	11
PART V - ORDER REQUESTED	13
SCHEDULE "A" LIST OF AUTHORITIES	14
SCHEDULE "B" RELEVANT STATUTES	15

PART I - OVERVIEW

1. The Court-appointed appointed receiver and manager of the respondents, MNP Ltd. (in such capacities, the “**Receiver**”), seeks an order, among other things:

- (a) Approving of the Receiver’s third report dated September 15, 2023 (the “**Third Report**”) and the activities and recommendations of the Receiver described therein;
- (b) Approving the transaction (the “**Transaction**”) contemplated by the Offer to Purchase made by 100058120 Ontario Inc. (the “**Denny’s Purchaser**”) and accepted by the Receiver on September 11, 2023 (the “**Denny’s APA**”) for the purchase and sale of the Purchased Assets (as defined in the Denny’s APA), and vesting all of the right, title and interest of the respondents (the “**Companies**”) in the Purchased Assets in and to the Denny’s Purchaser (collectively, the “**Denny’s AVO**”);
- (c) Requiring Abdul Muqet (“**Muqet**”) (the Companies’ sole director and officer), to attend before an authorized person to be examined under oath by the Receiver, and to produce all documents and records in his possession or under his control relating to the assets, property and undertakings of the Respondents, including without limitation, all personal electronic devices and computers, iPads, tablets, magnetic tapes or discs, USB devices, and cellular phones;
- (d) Sealing Confidential Appendices A through C, being the Denny’s APA, the summary of offers received, and the summary of key business terms of the Denny’s APA to the Third Report, until the earlier of the closing of the Denny’s Transaction or further order of this Court;
- (e) Sealing Confidential Appendix D, including Confidential Tabs I through IV, being the Receiver’s discussion of the Reviewable Transactions (as defined below) to the Third Report until further order of this Court; and
- (f) Approving the Receiver’s interim statement of receipts and disbursements for the period of May 8 to September 8, 2023.

2. The requested order should be granted for the following reasons:

- (a) The Denny’s Transaction contemplates the sale of a Denny’s franchise restaurant operation in Brantford and certain removable assets from a non-operating Denny’s franchise restaurant in Burlington, which operations the Receiver recently terminated. The Denny’s APA represents the culmination of the extended Sales Process (as defined below) and the highest and best offer received. For these reasons, and others as discussed below, the Receiver recommends that it be approved.

- (b) The requested order compelling an examination of Muqet is necessary for the Receiver to exercise its powers under the Appointment Order and carry out its mandate, including to take possession of the Property and obtain all books and records relating to the Companies' affairs.
- (c) The requested order to seal Confidential Appendices A through C to the Third Report is necessary to preserve the value of the assets of the Companies' insolvent estate. The requested order to seal Confidential Appendix D is necessary to preserve the integrity of the Receiver's ongoing investigation into the Reviewable Transactions and to protect private and confidential information of third parties. This Court has repeatedly recognized a public interest in maximizing recoveries in an insolvency and for the protection of private third party interests, and has granted sealing orders in similar circumstances.

PART II - FACTS

A. The Appointment Order

3. By Order of Justice Penny dated May 8, 2023 (the "**Appointment Order**"), the Receiver was appointed as receiver of all of the Companies' assets, property, and undertakings (collectively, the "**Property**").¹

4. The Appointment Order was obtained on the application of the Companies' first-ranking secured creditor, Canadian Western Bank ("**CWB**"). As at April 11, 2023, the Companies were indebted to CWB in the amount of \$8,141,405.08. It is expected that CWB will suffer a significant shortfall in its indebtedness.²

5. The Companies include entities that operated certain Popeye's Louisiana Kitchen ("**Popeye's**") and Denny's ("**Denny's**") restaurant franchises and had commenced construction of three Denny's restaurant franchises. The Property includes leases,

¹ Appointment Order dated May 8, 2023, Appendix A, Third Report of the Receiver dated September 15, 2023 (the "Third Report"), Motion Record, p. 28, Caselines Current E43.

² Third Report at paras. 2-3, Motion Record, p. 11, Caselines Current E24.

equipment and furniture situated in the leased premises where the Companies operated or were constructing Popeye's and Denny's franchises.³

6. The particulars of the franchised restaurants, as at the date of the Receiver's appointment, are summarized below:⁴

	Entity	Franchisee	Location	Status
1.	2775290 Ontario Inc.	Denny's	Brantford	Operating
2.	11030434 Canada Ltd.	Denny's	Burlington	Operating
3.	2790760 Ontario Inc.	Denny's	Newmarket	Under construction
4.	2775296 Ontario Inc.	Denny's	Rexdale	Under construction
5.	2723716 Ontario Inc.	Denny's	Woodbine Markham	Under construction
6.	2700774 Ontario Inc.	Popeye's	Oshawa	Operating
7.	Index Foods Inc.	Popeye's	Dundas St. W., Whitby	Operating
8.	Index International Inc.	Popeye's	Dundas St. E. Whitby	Operating
9.	11030418 Canada Inc.	Popeye's	Baldwin St. Brooklyn	Lease terminated pre receivership – closed
10.	2723710 Ontario Inc.	Popeye's	Popeyes Liberty St.	Closed due to pre- receivership fire – Lease terminated
11.	2700767 Ontario Inc.	Popeye's	Napanee	Lease terminated pre receivership – equipment sold permanently closed
12.	2683960 Ontario Ltd.	Popeye's	Uxbridge	Lease terminated pre- receivership – equipment sold permanently closed

B. The Receiver's Activities to Date

7. Since its appointment, the Receiver's activities have included:

- (a) Obtaining court approval and completing a transaction for the sale of a vacant parcel of land owned by the respondent, 421 Wharncliffe Ltd.;⁵
- (b) Taking steps to continue the operations of the three Popeye's operating in Oshawa and Whitby (the "**Operating Popeye's**") and the two Denny's operating in Brantford and Burlington (the "**Operating Denny's**"), including through retaining a manager to manage the Operating Popeye's,

³ Third Report at para. 5, Motion Record, p. 11, Caselines Current E24.

⁴ Third Report at para. 7, Motion Record, p. 12, Caselines Current E25.

⁵ Wharncliffe AVO, Appendix C, Third Report, Motion Record, p. 62, Caselines Current E75.

meeting with employees, consulting with landlords and food and other service providers;⁶

- (c) Reviewing the circumstances surrounding the landlord's distraint of the assets at the non-operating Popeye's in Napanee (the "**Napanee Popeye's**");⁷
- (d) Corresponding with the insurer regarding settling the insurance claim for the fire at the non-operating Popeye's on Liberty St.;⁸
- (e) Conducting a marketing and sale process (the "**Sale Process**") for the sale of the Property, including the Operating Popeye's, the Operating Denny's, and assets at the non-operating Popeye's and Denny's restaurants;⁹
- (f) Pursuant to the Sale Process, entering into, and obtaining court approval of, an agreement of purchase and sale, to sell the Operating Popeye's (the "**Popeye's Transaction**") to the purchaser, Varun Kakkar (the "**Popeye's Purchaser**");¹⁰
- (g) Attending at the premises where the Denny's restaurants are under construction and investigating and reviewing transactions (the "**Reviewable Transactions**") by the Companies in relation to the construction of the Denny's restaurants;¹¹
- (h) With CWB's consent, extending the Sale Process offer deadline for the Denny's franchise operations and other Property beyond July 4, 2023, and negotiating the Denny's APA;¹² and
- (i) Engaging in ongoing consultations with CWB.

C. The Denny's APA and Operations

8. The Receiver and CWB did not consider the offers for the Operating Denny's received by the Sale Process offer deadline of July 4, 2023 as reasonable in the circumstances. Accordingly, with CWB's consent, negotiations of the proposed

⁶ First Report of Receiver dated May 23, 2023 at para 10, Appendix B, Third Report, Motion Record, p. 51, Caselines E64.

⁷ Third Report at para. 23, Motion Record, p. 19, Caselines Current E32.

⁸ Third Report at para. 31, Motion Record, p. 20, Caselines Current E33.

⁹ Second Report of Receiver dated July 19, 2023 at para 40, Appendix D, Motion Record, p. 86, Caselines Current E99.

¹⁰ Popeye's AVO, Appendix E, Motion Record, p. 94, Caselines Current E107.

¹¹ Third Report at paras. 48-49, Motion Record, p. 24, Caselines Current E37.

¹² Third Report at para. 42, Motion Record, p. 22, Caselines Current E35.

purchase price continued with the parties that submitted offers for the Operating Denny's. Concurrently, the Receiver approached other prospective purchasers that expressed an interest in acquiring the Operating Denny's.¹³

9. On or about August 15, 2023, the Receiver reached an agreement on the key business terms with the Denny's Purchaser for the purchase of the Operating Denny's in Brantford, as well as the Denny's Purchaser entering into a new lease for the Denny's Newmarket location that was under construction. As part of these business terms, the Denny's Purchaser advised it would only acquire certain assets at the Operating Denny's in Burlington and would not continue operations at that location.¹⁴

10. The Denny's APA was entered into on September 11, 2023. Pursuant to the Denny's APA, the Denny's Purchaser will acquire the Denny's Brantford location on a going-concern basis, the removable assets at the Denny's Burlington location (which the Receiver closed on August 8, 2023), the assets still located at the Denny's Newmarket location, should the Denny's Purchaser enter into a new lease for that location, and a first right of refusal to purchase any other Denny's fixtures and equipment acquired by the Companies that the Receiver recovers.¹⁵

D. Reviewable Transactions

11. The Receiver has inspected the premises in Newmarket, Rexdale and Markham, where the Companies purported to be constructing new Denny's restaurants. The

¹³ Third Report at para. 42, Motion Record, p. 22, Caselines E35.

¹⁴ The Receiver was incurring cash flow shortfalls averaging approximately \$25,000 per month to maintain the location as a going concern, which is more than just the monthly rent of \$14,443.90 for the Burlington Denny's. Because the Denny's Purchaser would acquire certain removable assets from that location, and to limit its losses, the Receiver closed the operations at the Burlington location on August 8, 2023; Third Report at para. 43-44, Motion Record, pp. 22-23, Caselines Current E35 and E36; Summary of Key Business Terms, Confidential Appendix C, Third Report, Motion Record, p. 231.

¹⁵ Third Report at para. 45, Motion Record, p. 23, Caselines Current E36; Denny's APA, Confidential Appendix A, Third Report, Motion Record, p. 162.

Receiver's inspections revealed that, other than removal of interior leaseholds, preliminary HVAC and sub-floor plumbing lines installations, there was no evidence of any additional equipment, fixturing or other leaseholds at these sites.¹⁶

12. The Receiver reviewed the above findings with CWB and its counsel. CWB then provided the Receiver with a summary of the advances it made to the Companies for construction of Denny's restaurants at these locations, including invoices issued to the Companies by third parties and copies of the Companies' paid cheques or wires to third parties. CWB's advances and their purported purpose are summarized in the table below:¹⁷

Denny's Location	General Contractor	Equipment	Signage	Other	Total
Newmarket	24,523	788,477	-	-	813,000
Rexdale	14,680	657,219	36,614	-	708,514
Markham	413,170	136,248	132,558	114,504	796,479
Total	452,373	1,581,944	169,172	114,504	2,317,993

13. Following the Receiver's inspection and consultation with CWB and its counsel, Dickinson Wright LLP sent a letter to each of the purported payees to request that they provide, by July 6, 2023, copies of all invoices, contracts, shipping documents and other information considered necessary to locate any assets paid for by the Companies that the Receiver might realize upon or obtain a refund for unperformed services.¹⁸

14. The Receiver is of the view that an examination of Muqet is necessary to assist in its investigation of the Reviewable Transactions.¹⁹

¹⁶ Third Report at para. 48, Motion Record, p. 24, Caselines Current E37.

¹⁷ Third Report at para. 49, Motion Record, pp. 24-25, Caselines Current E37 and E38.

¹⁸ Third Report at para. 50, Motion Record, p. 25, Caselines Current E38.

¹⁹ Confidential Appendix D, Third Report, Motion Record, p. 233.

PART III - ISSUES

15. The following issues are raised on this motion:
- (a) the Denny's AVO should be granted;
 - (b) the Third Report, and the activities and recommendations of the Receiver described therein should be approved;
 - (c) Muqet should be required to attend an examination under oath by the Receiver; and
 - (d) Confidential Appendices A through D should be sealed.

PART IV - LAW AND ARGUMENT

A. The Denny's AVO Should be Granted

i. Soundair Framework for Approval of Asset Sales by Receiver

16. In determining whether to approve a proposed sale of assets by a Court-appointed receiver, Ontario courts have consistently and uniformly applied the following principles set out by the Court of Appeal for Ontario in *Royal Bank v. Soundair*:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.

17. In *Ontario Securities Commission v. Bridging Finance Inc.*, Morawetz C.J. approved the receiver's decision to terminate a sale process. In doing so, re-affirmed the deference owing by the court to the business expertise of a receiver:²⁰

[43] The law is clear that in reviewing a sales process, the court is to defer to the business expertise of the Receiver and should not intervene

²⁰ [Ontario Securities Commission v. Bridging Finance Inc., 2022 ONSC 1857 at paras 43-45.](#)

or “second-guess” the Receiver’s recommendations (see: *Royal Bank of Canada v. Keller and Sons*, 2016, MBCA 46 at para. 11).

[44] RC referenced *Marchant Realty Partners Inc. v. 2407533 Ontario Inc.*, 2021 ONCA 375 at para. 15, where Jamal J.A. (as he then was) quoted the following passage in *Soundair*, “they [courts] rely upon the expertise of their appointed receivers and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless evidence to the contrary is clearly shown”.

[45] Further, as held by the Court of Appeal for Ontario [in *Soundair*] at paras. 14, 21, 29 and 58, it is only in “exceptional” circumstances will a court intervene and proceed contrary to the recommendation of its officer, the Receiver.

ii. The Denny’s APA Satisfies the Soundair Test

18. The Denny’s APA satisfies the *Soundair* test and the Denny’s AVO should be granted:²¹

- (a) the Appointment Order authorized the Receiver to market and sell the Property;
- (b) the most likely prospective purchasers were canvassed for approximately four (4) weeks using several marketing techniques, including direct solicitation to prospective purchasers and online advertisements;
- (c) the Denny’s APA represents the highest and best offer received during the Sale Process with the highest likelihood of closing;
- (d) in the event the Denny’s Transaction is not completed, the Receiver will be required to consider offers that are not the highest or otherwise best bids submitted and will incur significant additional costs to continue the Denny’s operations;
- (e) absent the completion of the Denny’s Transaction, a protracted marketing period will continue to be necessary for the remaining Denny’s Brantford location. The ongoing professional fees would likely further erode the proceeds available for distribution with no certainty that a superior transaction could be completed;
- (f) completion of the Denny’s Transaction would provide continued employment for the Denny’s Brantford’s current employees; and,

²¹ Third Report at para. 46, Motion Record, p. 23, Caselines Current E36.

- (g) CWB, the only real stakeholder in the recoveries of the Companies' insolvent estate, has advised that it supports the completion of Denny's Transaction notwithstanding that the proceeds of realization from all the Companies assets are anticipated to be significantly less than the amounts owing to it from the Companies.

19. Overall, the APS represents the best and highest offer for the Purchased Assets in the circumstances. The sale process was fair and reasonable. The Receiver made a sufficient effort to obtain the best price and has not acted improvidently. The Receiver's rationale for its acceptance of the Denny's APA reflects sound business judgment. As such, the requested relief falls within "the general principle that the court will be loathe to interfere with the business judgment of a Receiver and refuse to approve a transaction recommended by the Receiver acting properly in the fulfillment of its obligations as an officer of the court."²²

B. Third Report Approval

20. The Third Report should be approved. The activities and recommendations set out therein are appropriately justified.

21. There are good policy and practical reasons for the Court to approve the activities of a Receiver.²³ The requested order contains the qualifier that "only the Sales Officer, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Third Report."

²² *Soundair* at para 16.

²³ [Triple-I Capital Partners Limited v 12411300 Canada Inc.](#), 2023 ONSC 3400 at paras 65-67, citing Regional Senior Justice G.B. Morawetz (as he then was) in [Target Canada Co. \(Re\)](#), 2015 ONSC 7574 at paras 12 and 23.

C. Muqet Should be Order to Attend an Examination Under Oath

22. Muqet is the principal behind the Companies. It is necessary for the Receiver to examine Muqet under oath in order to carry out its mandate under the Appointment Order.

23. Section 163(1) of the *Bankruptcy and Insolvency Act* permits a trustee in bankruptcy, on the ordinary resolution of the creditors or written request of majority of inspectors, to examine the bankrupt under oath and produce any books, documents, correspondence or papers in the bankrupt's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property.

24. Although this is a receivership, the Receiver submits that section 163(1) provides persuasive authority for the Receiver's request to examine Muqet under oath.

25. In *Montreal Trust Company v. Churchill Forest Industries (Manitoba) Limited*, the Manitoba Court of Appeal upheld an order of the Queen's Bench requiring a defendant to submit to an examination by a court-appointed receiver in circumstances where the examination was necessary to enable to the receiver to exercise its powers pursuant to the order appointing the receiver.²⁴

26. CWB, the fulcrum creditor, supports the Receiver's request. The Receiver has explained its rationale for why it views it necessary to examine Muqet under oath. The proposed examination flows from the terms of the Appointment Order, namely the power to to take possession of the Property, collect monies due to the Companies, and initiate and prosecute proceedings with respect to the Companies and the Property. In

²⁴ [Montreal Trust Company v. Churchill Forest Industries \(Manitoba\) Limited, 1971 CanLII 960 \(MB CA\).](#)

other words, the requested examination falls within the scope of the Receiver's mandate.

D. The Sealing Order Should be Granted

i. Legal Framework for Sealing Orders

27. Section 137(2) of the Courts of Justice Act gives this court jurisdiction to grant the requested sealing order. The test for a sealing order requires the party seeking it to establish that:²⁵

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

ii. Confidential Appendices A through D Should be Sealed

28. The Receiver requests that Confidential appendices A through C be sealed pending the closing of the Denny's Transaction or further Order of this Court. Confidential Appendices A through C consist of the summary of offers, the key business terms that were agreed to for the Denny's APA, and the Denny's APA. The Confidential Appendices contain commercially sensitive information, which may negatively impact realizations on the Purchased Assets if the Denny's Transaction does not close.

29. Sealing Confidential Appendices A through C is an important commercial interest that should be protected. The salutary effects of sealing them – namely the protection of commercially sensitive information that could negatively affect the value of the

²⁵ [Sherman State v. Donovan, 2021 SCC 25 at paras. 37-38.](#)

Purchased Assets if the Transaction does not close – outweighs any deleterious effect of restricting the accessibility of certain information.²⁶

30. The Receiver believes that the proposed sealing order is appropriate in the circumstances and is not aware of any party that will be prejudiced if the Confidential Appendices do not form part of the public record.

31. The Receiver requests that Confidential Appendix D be sealed until further Order of this Court. Confidential Appendix D contains the Receiver's discussion of the Reviewable Transaction, including supporting documents. Filing Confidential Appendix D in the public record would prejudice its ongoing investigation into the Reviewable Transactions. Additionally, certain of the supporting documents in Confidential Appendix D contain highly sensitive private and confidential information of third parties.

32. The Receiver has a duty to report to the Court on its activities and to maximize recoveries for the insolvent estate. There is an important public interest in preserving the Receiver's ability to fully report to the Court, without prejudicing its investigation into the Reviewable Transactions and, as a corollary, its duty to maximize recoveries for the insolvent estate.

33. There are no reasonable alternatives to the sealing order in the circumstances, and no stakeholders will be materially prejudiced by sealing the Confidential Appendices and the salutary effects of granting the relief outweigh any deleterious effects.²⁷

²⁶ [Acerus Pharmaceuticals Corporation \(Re\), 2023 ONSC 3314 at para 39.](#)

²⁷ [Acerus Pharmaceuticals Corporation \(Re\), 2023 ONSC 3314 at para 39.](#)

34. The Receiver believes that the proposed sealing order is appropriate in the circumstances and is not aware of any party that will be prejudiced if the Confidential Appendices do not form part of the public record.

PART V - ORDER REQUESTED

35. The Receiver respectfully requests that an order be granted in the form attached as Tab 3 to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of September, 2023.

Per: 

John D. Leslie

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 (ON CA)
2. *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857
3. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
4. *Sherman Estate v Donovan*, 2021 SCC 25
5. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400
6. *Target Canada Co. (Re)*, 2015 ONSC 7574
7. *Montreal Trust Company v. Churchill Forest Industries (Manitoba) Limited*, 1971 CanLII 960 (MB CA).

SCHEDULE "B"
RELEVANT STATUTES

Courts of Justice Act, R.S.O. 1990, c. C.43

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Examination of bankrupt and others by trustee

- **163 (1)** The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the registrar of the court or other authorized person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the bankrupt, respecting the bankrupt or the bankrupt's dealings or property and may order any person liable to be so examined to produce any books, documents, correspondence or papers in that person's possession or power relating in all or in part to the bankrupt or the bankrupt's dealings or property.
- **Marginal note: Examination of bankrupt, trustee and others by a creditor**

(2) On the application to the court by the Superintendent, any creditor or other interested person and on sufficient cause being shown, an order may be made for the examination under oath, before the registrar or other authorized person, of the trustee, the bankrupt, an inspector or a creditor, or any other person named in the order, for the purpose of investigating the administration of the estate of any bankrupt, and the court may further order any person liable to be so examined to produce any books, documents, correspondence or papers in the person's possession or power relating in all or in part to the bankrupt, the trustee or any creditor, the costs of the examination and investigation to be in the discretion of the court.
- **Marginal note: Examination to be filed**

(3) The evidence of any person examined under this section shall, if transcribed, be filed in the court and may be read in any proceedings before the court under this Act to which the person examined is a party.

CANADIAN WESTERN BANK
Applicant

-and- INDEX HOLDING GROUP INC. et al.
Respondents

Court File No. CV-23-00698447-00CL

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

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE RECEIVER

DICKINSON WRIGHT LLP

Barristers & Solicitors
199 Bay Street
Suite 2200, Box 447
Commerce Court Postal Station
Toronto, ON M5L 1G4

JOHN D. LESLIE (29956P)

Email: JLeslie@dickinsonwright.com
Tel: 416-646-3801

LISA S. CORNE (27974M)

Email: lcorne@dickinsonwright.com
Tel: 416-646-4608

Lawyers for the Court-appointed Receiver, MNP Ltd.

Email for parties served:
Service List