

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

RECEIVED / REÇU
Date: October 25, 2024
CT- 2024-007

Badih Abboud for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

13

From: M. Kim Anderson, K.C.
Direct: (306) 933-1334
Email: mk.anderson@rslaw.com
File #: 62076.5

**ROBERTSON
STROMBERG**

VIA EMAIL

October 25, 2024

Competition Tribunal
Registry Officer
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON
K1P 5B4
tribunal@ct-tc.gc.ca
Badih.Abboud@tribunal.gc.ca

Attention: Badih Abboud

Dear Mr. Abboud:

**RE: Goshen Professional Care Inc. ("Goshen")
v The Saskatchewan Health Authority ("SHA")
and The Ministry of Health (the "Ministry")
File No. CT-2024-007 (the "Proceeding")**

By way of an order made pursuant to s. 243(1) of the *Bankruptcy and Insolvency Act*, as well as s. 10-15(1) of *The King's Bench Act* (Saskatchewan), and s. 64(8) of *The Personal Property Security Act, 1993* (Saskatchewan), MNP Ltd. was appointed receiver over all of the assets, undertakings and properties of Goshen by the Court of King's Bench for Saskatchewan (in Bankruptcy and Insolvency) (the "**Bankruptcy Court**"). For your convenience, we attach a copy of that order (the "**Receivership Order**").

We are legal counsel to the court-appointed receiver (the "**Receiver**").

This letter is to advise of the existence of the Receivership.

It also intended to advise that the Receiver believes that the Proceeding has been commenced by the applicant in contravention of the terms and conditions of the Receivership Order.

The first issue arises with respect to the the standing of the directors of Goshen to commence an action in its name.

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Paragraph 2 of the Receivership Order appoints the Receiver as receiver over all of the assets, undertakings and properties of Goshen. As in several similar statutes, s. 9-2 of *The Business Corporations Act, 2021* (Saskatchewan) provides:

9-2 If a receiver-manager is appointed by the court or under an instrument or Act, the powers of the directors of the corporation that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged.

The construction of the statute admits to some residual power remaining in the hands of the directors; however, the Receiver is of the view that it does not extend to the ability to authorize the Proceeding.

Second, there are also issues respecting restrictions on the bringing of actions in contravention of the stay of proceedings as provided for in sections 7 through 9 of the Receivership Order.

As a court-appointed officer, the Receiver is empowered to whatever steps may be necessary to enforce the Receivership Order and to protect the interests of the stakeholders in the receivership, but the Receiver believes that it would be appropriate to place the matter of these proceedings before the Bankruptcy Court for consideration and for further direction regarding the matter before making submissions to the Tribunal.

Following a report to the Bankruptcy Court by the Receiver (appended), that Court has been working to schedule the matter. As of this morning, counsel for the applicant in this matter has indicated they will not be available until November 20 - 22. Several counsel, including our office, have indicated availability those and other dates proposed by the Bankruptcy Court. We await availability from several counsel and further direction from that Court.

The Receiver stands prepared to provide its submissions within the timeframes provided by for by the Rules, however, as an officer of the court, has identified the desirability of completing the pending court appearance in Saskatchewan, so its position may better reflect, and have the benefit of the Bankruptcy Court's determinations with respect to this matter, and any direction and guidance provided by that Court.

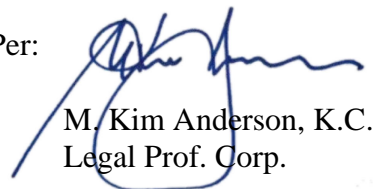
We accordingly write in support of the request by SHA for an extension of the time to file. We too would ask for additional time to obtain guidance but find ourselves in the difficult position of not knowing when we will have the benefit of that guidance. We undertake to provide the Tribunal with prompt notification once a date has been set by the Bankruptcy Court.

We respectfully submit the foregoing for your consideration.

Yours truly,

Robertson Stromberg LLP
Barristers and Solicitors

Per:



M. Kim Anderson, K.C.
Legal Prof. Corp.

Enclosures

cc:

Runyowa Law, counsel for the Applicant, attention Tavengwa Runyowa and Brandon Cain

McDougall Gauley LLP, counsel for Canadian Western Bank, attention Michael W. Milani, K.C. and Paul Fedoroff

McDougall Gauley LLP, counsel for Westridge Construction, attention: Murray Sawatzky and Matthew Schmeling

Max Bilson, Deputy Attorney General for Saskatchewan

Miller Thomson LLP, counsel for Saskatchewan Health Authority, attention: Devin Persaud, Eric Dufour and Ryan Kitzul

Competition Bureau Canada, attention Krista McWhinnie and Miriam Verelalizardi

MNP, Ltd., attention Eric Sirrs

Robertson Stromberg LLP, attention Tom Baldry

COURT FILE NUMBER **KBG-RG-01228 of 2023**

**COURT OF KING'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY**

JUDICIAL CENTRE **REGINA**

IN THE MATTER OF THE RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE INC.

Before the Honourable Justice P.T. Bergbusch in Chambers the 24th day of November, 2023.

Upon the application of Canadian Western Bank ("CWB" or the "Applicant") in respect of Goshen Professional Care Inc. (the "Debtor"); and upon having read the Originating Application dated May 24, 2023, the First Report of the Interim Receiver dated October 17, 2023, the Affidavit of Cameron Kerr sworn October 19, 2023, the Supplement to the First Report of the Interim Receiver dated October 23, 2023, the Notice of Application dated November 9, 2023, and the pleadings and proceedings herein; and upon reading the consent of MNP Ltd. ("MNP") dated November 9, 2023 to act as receiver ("Receiver"), all filed; and upon hearing counsel for CWB and counsel for the Debtor;

The Court Orders:

SERVICE

1. To the extent required, the time for service of notice of the application for this order is hereby abridged and service thereof is deemed good and sufficient.

APPOINTMENT

2. Pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA"), section 10-15(1) of *The King's Bench Act*, SS 2023, c 28, and section 64(8) of *The Personal Property Security Act*, 1993, SS 1993, c P-6.2 (the "PPSA"), MNP is hereby appointed Receiver, without security, of all of assets, undertakings and properties of the Debtor acquired for, or used in relation to the business carried on by the Debtor, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

3. The Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property, and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve, protect and maintain control of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
 - (c) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a

temporary basis, to assist with the exercise of the Receiver's powers and duties including, without limitation, those conferred by this Order;

- (d) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (e) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (f) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (g) to contact and obtain information from governmental entities, including (without limitation) any local, provincial or federal authority, ministry or agency, for the purposes of obtaining any information and documentation that the Receiver deems appropriate;
- (h) to utilize money borrowed by the Receiver to fund payment of any employee payroll obligations, wages, salaries, rent, insurance, utilities and other obligations determined by the Receiver to be integral to the preservation of the Property;
- (i) to market any or all the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause, and in each such case notice under section 59(10) of the PPSA shall not be required;
- (k) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (l) to report to this Court and to the creditors of the Debtor regarding the status of the business and financial affairs of the Debtor, including as to its assets and liabilities and other matters deemed relevant by the Receiver; and
- (m) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto provided, however, that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.
6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require, including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. No proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. No Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement, if such Proceeding is not commenced before the expiration of the stay provided by this paragraph; or (ii) affect a Regulatory Body's investigation in respect of the Debtor or an action, suit or proceeding that is taken in respect of the Debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "Regulatory Body" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province.

NO EXERCISE OF RIGHTS OR REMEDIES

9. All rights and remedies (including, without limitation, set-off rights) against the Debtor or the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that nothing in this paragraph shall: (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on; (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a mortgage or security interest; or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect a lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further steps shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Debtor and the Receiver. The stay and suspension shall not apply in respect of any "Eligible Financial Contract" as defined in section 65.1 of the BIA.

NO INTERFERENCE WITH THE RECEIVER

10. No Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, including, without limitation, insurance coverage, without written consent of the Receiver or leave of this Court. Nothing in this Order shall prohibit any party to an Eligible Financial Contract with the Debtor from terminating such contract or exercising any rights of set-off, in accordance with its terms.

CONTINUATION OF SERVICES

11. All Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including, without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. All funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale or disposition of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

13. Subject to the employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-

related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5), 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, SC 2005, c 47.

14. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
- (i) before the Receiver's appointment; or
 - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.
- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
- (i) if, within such time as is specified in the order, within ten (10) days after the order is made if no time is so specified, within ten (10) days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
 - A. complies with the order, or
 - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
 - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within ten (10) days after the order is made or within ten (10) days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,

- A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
- B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
- (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

Nothing in this Order shall derogate from the protection afforded to the Receiver by section 14.06 of the BIA or any other applicable legislation.

LIMITATION ON THE RECEIVER'S LIABILITY

- 16. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Sections 14.06, 81.4(5) or 81.6(3) of the BIA.

RECEIVER'S ACCOUNTS

- 17. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements and the Receiver and counsel to the Receiver shall be entitled to, and are hereby granted, a charge (the "Receiver's Charge") on the Property as security for such fees and disbursements both before and after the making of this Order in respect of these proceedings, and the Receivers' Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.
- 18. The Receiver and its legal counsel shall pass their accounts from time to time.
- 19. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

- 20. The Receiver shall be at liberty and is hereby empowered to borrow, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not at any time exceed \$50,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges set out in sections 14.06(7), 81.4(4) and 81.6(2) of the BIA.

21. Neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
22. The Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.
23. The monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

ALLOCATION

24. Any interested party may apply to this Court, on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and Receiver's Borrowings Charge amongst the various assets comprising the Property.

GENERAL

25. The Receiver may, from time to time, apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
26. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
27. Unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence.
28. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.
29. The Receiver shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and for the recognition that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
30. The Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
31. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

NOTICE AND SERVICE

32. The Applicant shall, within ten (10) days of the date of this Order, cause a true copy of this Order to be served by prepaid ordinary mail on all Persons to whom the Receiver is required to send notice pursuant to section 245(1) of the BIA (the "Notice").
33. The Notice shall be deemed to have been received on the seventh day after mailing.
34. The Notice served pursuant to paragraph 32 above shall be accompanied by a cover letter in the form attached as Schedule "B" to this Order.
35. The Electronic Case Information and Service Protocol attached as Schedule "C" hereto (the "Protocol") is approved and adopted for these proceedings. Terms which are capitalized herein but otherwise not defined shall bear the respective meanings ascribed to them in the Protocol. Service of documents made in accordance with the Protocol shall (subject to review by the Court at the time of any application) constitute valid and effective service. A Case Website shall be established in accordance with the Protocol with the following URL: <https://mnpdebt.ca/en/corporate/corporate-engagements>. Applications in respect of this matter may be made upon three days notice.
36. The failure of any Person to forward a Request for Electronic Service or a Request for Facsimile Service to the Service List Keeper shall release the Receiver, the Applicant, and any other interested Person serving court materials in this matter from any requirement to provide further notice in respect of these proceedings to any such Person until such time as a properly completed request for such service is received from such Person by each of the counsel for the Receiver and the Applicant.
37. The Applicant and the Receiver shall be at liberty to serve the Notice on any other interested Person by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to such Persons at their respective addresses as last shown on the records of the Applicant.

ISSUED at the City of Regina, in the Province of Saskatchewan, this 11 day of January, ~~2023~~ 2024


DEPUTY LOCAL REGISTRAR

This document was delivered by:

McDougall Gauley LLP

Lawyers: Michael W. Milani, K.C. and Paul Fedoroff
Address: 1500-1881 Scarth Street
Regina, SK S4P 4K9
Telephone: (306) 565-5117 / (306) 665-5405
Fax: (306) 652-1323

E-mail: mmilani@mcdougallgauley.com / pfedoroff@mcdougallgauley.com

TO: Attached Service List

SCHEDULE "A"

RECEIVER'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that MNP Ltd., the receiver (the "Receiver") of the assets, undertakings and properties of Goshen Professional Care Inc. (the "Debtor") acquired for, or used in relation to the Debtor's business, including all proceeds thereof (the "Property") appointed by Order of the Court of King's Bench of Saskatchewan (the "Court") issued the ____ day of _____, 20__ (the "Order") made in action KBG-RG-01228-2023, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the ____ day of each month] after the date hereof at a notional rate per annum equal to the rate of ____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act* (Canada) and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at *.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake any personal liability to pay any sum in respect of which It may issue certificates under the terms of the Order.

DATED the _____ day of _____, 20__.

MNP Ltd., solely in its capacity as Receiver of the
Property, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B"

COVER LETTER OF DEMAND FOR NOTICE

[Date]

[Address]

[Address]

[Address]

[Address]

Attention:

RE: IN THE MATTER OF THE RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE INC.

A Receiver has been appointed by Order of the Court of King's Bench for Saskatchewan over the property, assets and undertaking of Goshen Professional Care Inc. A copy of the Court Order appointing MNP Ltd. as Receiver is posted on the Case Website at: <https://mnpdebt.ca/en/corporate/corporate-engagements>.

You may wish to monitor these proceedings. If you wish to do so, you may obtain up to date information respecting all court matters, including court applications and Receiver's reports by accessing the Case Website at <https://mnpdebt.ca/en/corporate/corporate-engagements>.

If at any time, you would like to be served with court documents relating to further proceedings in relation to this matter, please review the Electronic Case Information and Service Protocol (the "Protocol") set forth in Schedule "C" to the Order and complete and transmit a Request for Electronic Service (or where permitted a Request for Facsimile Service) to each of the following persons:

1. Canadian Western Bank

c/o

McDougall Gauley LLP
1500-1881 Scarth Street
Regina, SK S4P 4K9
Attention: Shelby Braun
Email: sbraun@mcdougallgauley.com
Fax: (306) 652-1323

2. MNP Ltd.

c/o

Robertson Stromberg LLP
Suite 600, 105 – 21st Street East
Saskatoon, SK S7K 0B3
Attention: Kim Anderson, K.C./Travis Kusch/Eric Sirrs
Email: mk.anderson@rslaw.com/t.kusch@rslaw.com/Eric.Sirrs@mnp.ca

If you do not properly complete a request for service and forward that request by email to each of the above-referenced persons indicating that you require to be served with court documents in

these proceedings, then you will not receive, nor will you be entitled to receive, any further notice of the proceedings.

DEMAND FOR NOTICE

TO:

1. Canadian Western Bank

c/o McDougall Gauley LLP
1500-1881 Scarth Street
Regina, SK S4P 4K9
Attention: Shelby Braun
Email: sbraun@mcdougallgauley.com
Fax: (306) 652-1323

2. MNP Ltd.

c/o Robertson Stromberg LLP
Suite 600, 105 – 21st Street East
Saskatoon, SK S7K 0B3
Attention: Kim Anderson, K.C./Travis Kusch/Eric Sirrs
Email: mk.anderson@rslaw.com/t.kusch@rslaw.com/Eric.Sirrs@mnp.ca

Re: In the Matter of the Receivership of Goshen Professional Care Inc.

I hereby request that notice of all further proceedings in the above Receivership be sent to me in the following manner:

(a) by email, at the following email address:

_____, or

(b) I do not have the ability to receive electronic mail, and am therefore eligible to request, and do hereby request, notice by facsimile at the following facsimile number:

_____.

Signature: _____

Name of Creditor: _____

Address of Creditor: _____

Phone Number: _____

SCHEDULE "C"

Electronic Case Information and Service Protocol

APPLICATION

1. This Electronic Case Information and Service Protocol shall apply to this proceeding except as otherwise ordered by the Court.

DEFINITIONS

2. For the purposes of this Protocol, the following capitalized terms shall have the meanings ascribed below:
 - (a) "Case Website" means the website referenced in paragraph 35 of the Implementation Order;
 - (b) "Court" means the Court of King's Bench for Saskatchewan, sitting in bankruptcy if applicable;
 - (c) "Court Document" means a document in this proceeding which must be served for the purposes of this proceeding and/or is to be filed, or has been filed or issued in the Court, including:
 - (i) originating applications;
 - (ii) notices of application;
 - (iii) affidavits;
 - (iv) reports of a Court Officer;
 - (v) briefs of law;
 - (vi) books of authorities;
 - (vii) draft orders;
 - (viii) fiats; and
 - (ix) issued orders;
 - (d) "Court Officer" means the receiver, monitor or proposed trustee appointed by or reporting to the Court in this proceeding;
 - (e) "Creditor List" means the list of creditors to be compiled in accordance with the terms of the Implementation Order;
 - (f) "Email" means electronic mail transmitted to a specified addressee or addressees;
 - (g) "Email Address List" means the Word Format list provided for in paragraph 23 of this Protocol;

- (h) **"Hyperlink"** means an active link located within an Email message or on a website, by which means an interested person can click to be linked to a document or part of a document on the Case Website;
- (i) **"Implementation Order"** means the order of the Court to which this Protocol is scheduled, and by which this Protocol is implemented;
- (j) **"PDF Format"** means the Portable Document Format compatible with a number of programs, including Adobe Acrobat and Acrobat Reader;
- (k) **"Protocol"** means this Electronic Case Information and Service Protocol;
- (l) **"Request for Electronic Service" or "RES"** means a request in the form appended to this Protocol as Appendix 1;
- (m) **"Request for Facsimile Service" or "RFS"** means a request in the form appended to this Protocol as Appendix 2;
- (n) **"Request for Removal from Service List" or "RFR"** means a request in the form appended to this Protocol as Appendix 3;
- (o) **"Service List"** means the list to be created pursuant to paragraphs 16 to 19 of this Protocol;
- (p) **"Service List Keeper"** means the person(s) appointed to keep the Service List pursuant to paragraph 16 of this Protocol;
- (q) **"Supplementary Email Address List"** has the meaning given to it in paragraph 26(b) of this Protocol;
- (r) **"Supplementary Service List"** has the meaning given to it in paragraph 26(a) of this Protocol;
- (s) **"URL"** means a Uniform Resource Locator which acts as an address for a webpage or Hyperlink;
- (t) **"Web Host"** means that person or persons appointed by the Court Officer for the purposes of hosting and maintaining the Case Website and receiving and posting case information to the Case Website as provided for in the Implementation Order and in this Protocol; and
- (u) **"Word Format"** means a format compatible with Microsoft Word

CASE WEBSITE

- 3. The Case Website shall be established in accordance with the Implementation Order.
- 4. The Case Website shall be hosted by the Web Host.
- 5. The Case Website shall be designed to ensure easy public access thereto and to any documents posted thereon. The Case Website shall be specifically devoted to the posting, organization, storage and display of electronic versions of Court Documents and other related documents as provided for herein.
- 6. The Web Host shall post the following categories of documents, as served or to be served:
 - (a) originating applications;

- (b) notices of application;
 - (c) affidavits, including exhibits, and other material filed by a moving or responding party with respect to an application;
 - (d) briefs and written arguments filed by any party with respect to an application;
 - (e) books of authorities (where the Web Host, in its discretion, determines that a book of authorities should be posted);
 - (f) reports filed by the Court Officer;
 - (g) orders, fiats, endorsements and judgments;
 - (h) the current version of the Service List and Email Address List;
 - (i) the name and Email address of each of the Service List Keeper(s) and the Web Host(s); and
 - (j) any document that requires dissemination to interested parties, such as summaries of claims processes, proof of claim forms, notices of creditor meetings, plan disclosure statements, plans of reorganization and voting letters, as requested by a party or the Court Officer.
7. Documents that have been sealed by Court order and documents in respect of which sealing orders have been or are being requested shall not be posted on the Case Website.
 8. The Web Host may post other case-related information to the Case Website in its discretion. Nothing in this Protocol shall affect any requirements set out in any legislation or regulations with respect to the posting of documents to a website by the Court Officer.
 9. To the extent practicable, the Web Host shall post links to foreign proceedings related to this proceeding on the Case Website.
 10. If the Web Host is uncertain whether a document should be posted on the Case Website, the Web Host may seek directions from the Court.
 11. Any party intending to bring an application in this proceeding shall, if reasonably practicable, provide an electronic copy of Court Documents to be served to the Web Host for posting on the Case Website prior to service to facilitate service by use of Hyperlink.
 12. The Web Host shall use its best efforts to post documents provided to it by a party to these proceedings in PDF Format on the Case Website as soon as practicable.
 13. The Web Host shall maintain the Case Website for a period of at least six months after the earlier of the completion of this proceeding or the discharge of the Court Officer.
 14. The Web Host is entitled to charge for the time spent maintaining the Case Website at its usual hourly rates. No additional charges or fees may be claimed with respect to the establishment and maintenance of the Case Website.
 15. The Web Host shall use its best efforts to maintain the Case Website in a current and complete state. In addition to any other protection that may be available to the Web Host by statute or court order the Web Host shall incur no liability or obligation in carrying out the provisions of this Protocol and, in particular, with respect to the creation and maintenance of the Case Website, except as a result of any gross negligence or wilful misconduct on the part of the Web Host.

SERVICE LIST

16. Prior to serving notice of the Implementation Order, the Court Officer shall designate and identify, in conjunction with service thereof, a person or persons who shall be responsible for keeping the Service List in this proceeding (the "Service List Keeper").
17. Following service of the Implementation Order, the Service List Keeper shall prepare the initial Service List for this proceeding, which shall include:
 - (a) counsel for the applicant in the proceeding;
 - (b) the Court Officer appointed in the matter and counsel for the Court Officer; and
 - (c) counsel for any party who appeared at the application giving rise to the Implementation Order.
18. Thereafter, the Service List Keeper shall add to the Service List in a timely manner:
 - (a) any person completing and delivering to the Service List Keeper a Request for Electronic Service (or RES) in the form contained in Appendix 1;
 - (b) any person (other than legal counsel, who are required to receive service by Email) completing and delivering to the Service List Keeper a Request for Facsimile Service (or RFS) in the form contained in Appendix 2, in which they certify that they do not have access to Email; and
 - (c) any other person as the Court may order.
19. The Service List shall list names, addresses, Email addresses, facsimile numbers (where permitted pursuant to this Protocol) and telephone numbers (if available) of the persons thereon.
20. Upon adding a person to the Service List, the Service List Keeper shall send an Email (or where permitted, facsimile) message to that person identifying themselves as the Service List Keeper and advising that:
 - (a) the person has been placed upon the Service List,
 - (b) Court Documents will be validly served upon the person by Email (or where permitted, facsimile); and
 - (c) any person on the Service List may serve Court Documents on any other person on the Service List in accordance with this Protocol.
21. Any person on the Service List may request in writing that the Service List Keeper remove that person by delivering a Request for Removal from Service List (or RFR) in the form contained in Appendix 3. Upon receipt of any such request, the Service List Keeper shall comply with the request. Subject to order of the Court, upon removal, any such person will no longer be entitled to service of documents or notice of further proceedings.
22. Those persons who are interested in monitoring a proceeding but are not required to be served with Court Documents are not to be placed on the Service List. Such persons should monitor this proceeding by accessing the Case Website.

23. In addition to the Service List, the Service List Keeper shall create and maintain a document, capable of being copied in Word Format, which contains the up to date Email addresses of all persons on the Service List (the "Email Address List"). The purpose of the Email Address List is to allow persons on the Service List to copy and paste the Email addresses of the persons listed on the Service List into Emails for the purpose of serving Court Documents. This process is designed to avoid service of Court Documents using out of date or inaccurate Service Lists, and to discourage the undesirable practice of serving Court Documents by a "reply to all" on a previous Email.
24. The Service List Keeper shall, on a timely and periodic basis, provide an updated copy of the Service List and of the Email Address List to the Web Host for posting on the Case Website.
25. The Service List Keeper shall use its best efforts to maintain the Service List and Email Address List in a current and accurate state. In addition to any other protection that may be available to the Service List Keeper by reason of statute or court order, the Service List Keeper shall incur no liability in carrying out the provisions of this Protocol and, in particular, with respect to the creation or maintenance of the Service List and Email Address List, except for any gross negligence or wilful misconduct on its part.
26. During the course of this proceeding, certain applications may require service of Court Documents on respondents with an interest in that particular application only (for example, service on lien claimants with an interest only in a specific property which is the subject of a proposed sale approval and vesting order). In such circumstances:
 - (a) the party bringing the application shall prepare a service list identifying only the respondents that the applicant is required to serve or otherwise wishes to serve (a "Supplementary Service List");
 - (b) the party bringing the application shall prepare an Email address list corresponding to the Supplementary Service List (a "Supplementary Email Address List");
 - (c) the body of the original service Email shall note that the entire Service List has not been served;
 - (d) the party bringing the application shall append the Supplementary Service List and Supplementary Email Address List to the original service Email; and
 - (e) the affidavit of service with respect to that application shall include the Supplementary Service List.

SERVICE OF DOCUMENTS

27. Unless otherwise ordered by the Court, and except as provided herein, Email shall be the required mechanism to serve Court Documents on those persons referenced on the Service List.
28. All Court Documents shall be served by Email by way of a PDF Format file attached to, or by Hyperlink to such Court Document(s) embedded in, a service Email.
29. Any party wishing to serve a Court Document in this proceeding shall serve them upon the recipients listed in the current the Email Address List posted on the Case Website, as well as any recipients listed in the Service List entitled to service other than by e-mail pursuant to this Protocol. If possible, the serving party shall first make enquiries of the Service List Keeper to determine if the Service List Keeper is aware of any person who has filed a request to be added to the Service List or the Email Address List who has not yet been added.

30. Originating Applications, Notices of Application and any other document specified by court order shall be appended in PDF Format to the service Email.
31. All other documents shall, unless it is impracticable to do so by reason of time constraints or otherwise, be served by way of a Hyperlink embedded in the service Email, in accordance with the following:
- (a) Any party filing material with the Court in these proceedings may request that the Web Host post documents (including Court Documents) to the Case Website. Any such document shall be provided in PDF Format. The Web Host shall post such documents as soon as practicable. The Web Host shall retain the discretion to refuse documents which do not appear to comply with the requirements of this Protocol. The Web Host shall inform the party providing documents immediately upon posting, and provide Hyperlink information for each such document.
 - (b) Where a party is serving more than one document by Email by way of Hyperlink, the service Email shall specify each document being served and shall include a separate Hyperlink for each such document being served.
32. A service Email shall:
- (a) clearly state in the subject line of the Email:
 - (i) notification that a Court Document is being served;
 - (ii) a recognizable short form name of this proceeding; and
 - (iii) the nature of this proceeding or the order being served;
 - (b) identify the document(s) being served and:
 - (i) where the document(s) is/are attached, so indicate, with the identified documents attached in PDF Format with identifying filenames;
 - (ii) where the document(s) is/are being served by Hyperlink, so indicate and link the document(s) by Hyperlink to the Case Website. Where a party is serving more than one document in this manner, the service Email shall specify each document being served and shall include a separate Hyperlink for each such document being served;
 - (c) identify the party serving the Court Document; and
 - (d) provide the date of the proceeding and any other specific information with respect to the proceeding such as, for example, a specific commencement time or court location if known, in substantial accordance with format set forth in Appendix 4.
33. Where service by facsimile is authorized:
- (a) the transmission shall contain a copy of the service Email and of any document attached thereto;
 - (b) the facsimile cover sheet shall contain the following notation:

You are being served by fax with court documents, pursuant to the Order of the Court of King's Bench for Saskatchewan made <insert date> and in particular, the provisions of paragraphs <insert paragraph numbers> thereof. You may view that Order at the Case

Website, and this transmission and reference to that document constitutes service of that Order upon you.

Particulars of the documents to be served and other information related to the associated Court matter are contained in the message following.

Please note that documents referenced in the following message but which are not attached to this transmission may be viewed at the Case Website located at <insert a list of documents and the URL for each document>.

34. Upon serving documents not already posted on the Case Website, the serving party shall immediately send an electronic copy of each to the Web Host, with a request to post the documents.
35. If a serving party receives notification of an Email or facsimile transmission failure, they shall make reasonable efforts to ensure that successful transmission of the Court Document occurs or that the Court Documents and related information come to the attention of the intended recipient or his or her firm.
36. Even though a Court Document has been served in accordance with this Protocol, a person may show that the Court Document:
 - (a) did not come to the person's notice;
 - (b) came to the person's notice later than when it was served or effectively served; or
 - (c) was incomplete or illegible.
37. Each party serving a Court Document in accordance with this Protocol shall prepare an affidavit of service containing the particulars of the service including the Service List served, the Email addresses to which Court Documents were sent and the time of the Emailing. A copy of the affidavit of service shall be filed with the Court.
38. Where, by the nature of the matter before the Court, it is appropriate to serve persons that are not on the Service List, any Court Document may be served as follows:
 - (a) if the person is listed on the Creditor List, by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to such person at their respective addresses as last shown on the Creditor List, in which case service shall be deemed to have been effected if sent by personal delivery, on the date of delivery; if sent by courier, facsimile or other electronic transmission, on the next business day following the date of forwarding thereof; or if sent by prepaid ordinary mail, on the seventh day after mailing;
 - (b) if the person is not listed on the Creditor List, by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to such persons at their respective addresses as last shown on the records of the applicant or the Court Officer or as otherwise publicly available; and
 - (c) otherwise, by service effected in accordance with *The Court of King's Bench Rules*.

APPENDIX 1

REQUEST FOR ELECTRONIC SERVICE ("RES")

Please refer to important notes below.

COURT OF KING'S BENCH FOR SASKATCHEWAN	
In Bankruptcy and Insolvency	
In the Matter of the	
<input type="checkbox"/> CCAA <input type="checkbox"/> Receivership <input type="checkbox"/> BIA Proposal <input type="checkbox"/> Other _____	
of:	
Goshen Professional Care Inc. (the "Debtor")	
https://mnpdebt.ca/en/corporate/corporate-engagements	
Legal Counsel to Person listed below:	Law Firm Name: _____
(please provide firm name, lawyer's name, address and Email address)	Lawyer Name: _____
	Address: _____

Please indicate your preference (by checking applicable box below):	Email address: _____
<input type="checkbox"/> Serve counsel only	
<input type="checkbox"/> Serve counsel & person listed below	
Name of Person requesting Service:	Name: _____
(please provide full legal name, address, Email address and describe legal relationship to the Debtor)	Address: _____

	Email address: _____
Date: (insert current date)	Date: _____

I acknowledge having read the Saskatchewan Court of King's Bench Electronic Case Information and Service Protocol. I hereby request to be placed on the Service List. By so doing, I agree that the person(s) named above that each accepts service by electronic means in this matter and will be bound by that service:

Name and Position of Person Making Request

PLEASE RETURN SIGNED COPY OF FORM TO *McDougall Gauley LLP*
 <sbraun@mcdougallgauley.com>

IMPORTANT NOTES

1. The Service List is intended to provide a timely and efficient method for effecting service in bankruptcy and insolvency in accordance with the Electronic Case Information and Service Protocol, a copy of which has been posted at <https://mnpdebt.ca/en/corporate/corporate-engagements>.
2. Persons interested solely in monitoring the proceedings should do so by reference to the Case Website noted above and should not request to be placed on the Service List.
3. By filing this RES form, you hereby agree that that you and any other person referenced herein accepts service by facsimile transmission as the sole means of service and will be bound by that service.
4. Parties residing outside of Saskatchewan should consider whether, based on substantive law, the delivery of an RES constitutes an attornment to the Saskatchewan proceedings.

APPENDIX 2

REQUEST FOR FACSIMILE SERVICE ("RFS")

(only available to parties not having access to Email)

Please refer to important notes below.

<p>COURT OF KING'S BENCH FOR SASKATCHEWAN</p> <p>In Bankruptcy and Insolvency</p>	
<p>In the Matter of the</p> <p><input type="checkbox"/> CCAA <input type="checkbox"/> Receivership <input type="checkbox"/> BIA Proposal <input type="checkbox"/> Other _____</p> <p>of:</p> <p>Goshen Professional Care Inc. (the "Debtor")</p> <p>https://mnpdebt.ca/en/corporate/corporate-engagements</p>	
<p>Name of Person requesting Service:</p> <p>(please provide full legal name, address, Email address and describe legal relationship to the Debtor)</p>	<p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Facsimile number: _____</p>
<p>Date: (insert current date)</p>	<p>Date: _____</p>

I acknowledge having read the Saskatchewan Court of King's Bench Electronic Case Information and Service Protocol. I hereby request to be placed on the Service List.

I hereby certify that I do not have access to Email, and that I require to be given notice of and to be served with documents by way of facsimile transmission.

By so doing, I agree that I accept service by facsimile in this matter and will be bound by that service:

Name and Position of Person Making Request

**PLEASE RETURN SIGNED COPY OF FORM TO McDougall Gauley LLP
<sbraun@mcdougallgauley.com>**

IMPORTANT NOTES:

1. The Service List is intended to provide a timely and efficient method for effecting service in bankruptcy and insolvency in accordance with the Electronic Case Information and Service Protocol, a copy of which has been posted at <https://mnpdcbt.ca/en/corporate/corporate-engagements>.
2. Persons interested solely in monitoring the proceedings should do so by reference to the Case Website noted above and should not request to be placed on the Service List.
3. By filing this RFS form, you hereby agree that you accept service by facsimile transmission as the sole means of service and will be bound by that service.
4. Parties residing outside of Saskatchewan should consider whether, based on substantive law, the delivery of an RFS constitutes an attornment to the Saskatchewan proceedings.

APPENDIX 3

REQUEST FOR REMOVAL FROM SERVICE LIST ("RFR")

Please refer to important notes below.

<p>COURT OF KING'S BENCH FOR SASKATCHEWAN</p> <p>In Bankruptcy and Insolvency</p> <p>In the Matter of the</p> <p><input type="checkbox"/> CCAA <input type="checkbox"/> Receivership <input type="checkbox"/> BIA Proposal <input type="checkbox"/> Other _____</p> <p>of:</p> <p>Goshen Professional Care Inc. (the "Debtor")</p> <p><u>https://mnpdebt.ca/en/corporate/corporate-engagements</u></p>	
<p>Name of Person or Counsel requesting Removal from Service List:</p> <p>(please provide full legal name, address, Email address (or facsimile number))</p>	<p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Email address: _____</p>
<p>Date: (insert current date)</p>	<p>Date: _____</p>

I wish to opt out of all further notice of these proceedings, and hereby request to be removed from the Service List.

I understand and acknowledge that delivery of this request to any party to this proceeding relieves all parties to this proceeding from any requirement to provide further notice of any steps in these proceedings to me.

I hereby represent that I am the person named above or have authority to deliver this request on behalf of such person.

Name and Position of Person Making Request

PLEASE RETURN SIGNED COPY OF FORM TO *McDougall Gauley LLP*
<sbraun@mcdougallgauley.com>

APPENDIX 4

FORMAT FOR SERVICE EMAILS

TO: <Email addresses of parties to be served>
FROM: <Email address of party serving documents>
SUBJECT: Service of Court Documents – KBG-RG-_____ of * (<Name of Judicial Centre>) -
<Nature of Proceeding or Order Being Served>
ATTACHMENTS: <Documents Attached to Email>

You are hereby served with the Court Documents referenced below by <Name of Counsel> of <Name of Firm>, legal counsel for <Name of Party Represented> <Email address for service of counsel serving>.

The following Court Documents for service are attached to this Email:

<u>Name of Document</u>	<u>Filename</u>
-------------------------	-----------------

<enumerated list of documents and filenames>

The following Court Documents for service are posted on the Case Website and can be accessed by way of the links embedded in the filenames below:

<u>Name of Document</u>

<enumerated list of documents with embedded Hyperlinks>

[If required] This matter will be heard on <day>, <date> at <time> before <Justice of the Court if known> at the courthouse at <City>, located at <address>.

This Email is effecting service of court documents pursuant to the Order of the Court of King's Bench made <insert date > and in particular, the provisions of paragraphs <insert paragraph numbers> thereof. You may view that Order by clicking <here (with embedded link)>, and this Email constitutes service of that order upon you.

You are receiving this Email because you have filed a request for service of documents in this proceeding with <Name of Service List Keeper>. If you do not wish further notice of these proceedings (which includes service of all court documents) you may contact McDougall Gauley LLP at sbraun@mcdougallgauley.com, and ask to be removed.

COURT FILE NUMBER KBG-RG-01228 of 2023
COURT OF KING'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL CENTRE REGINA
APPLICANT CANADIAN WESTERN BANK

RESPONDENTS GOSHEN PROFESSIONAL CARE INC.

IN THE MATTER OF THE RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE INC.

THIRD REPORT OF THE RECEIVER, MNP LTD.,

DATED OCTOBER 23, 2024

Introduction and Purpose of the Report

1. MNP Ltd. was appointed Interim Receiver of Goshen Professional Care Inc. ("**Goshen**" or the "**Company**") by the Court of King's Bench for Saskatchewan (the "**Court**") by order dated August 2, 2023 (the "**Interim Receivership Order**"). The Interim Receivership Order, in accordance with paragraph 2A, expired on September 16, 2023 (45 days from pronouncement).
2. MNP Ltd. was appointed Receiver of Goshen by the Court by order dated November 24, 2023 (entered January 11, 2024) (the "**Receivership Order**").
3. Goshen is the owner/operator of a personal care home located in Emerald Park, Saskatchewan with capacity for eighty residents (the "**Care Home**").
4. This is the Receiver's Third Report to Court (the "**Third Report**") and its purpose is to advise the Court with respect to the following matters:
 - Breach of Undertaking by Directors of Goshen; and
 - Filing of a Notice of Application under the *Competition Act*.
5. The Third Report should be read in conjunction with the Receiver's First Report to Court dated July 10, 2024 (the "**First Report**") and the Receiver's Second Report to Court dated August 19, 2024 (the "**Second Report**").
6. In preparing the Third Report and making comments herein, the Receiver has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information of the Company,

the Company's books and records, and information from other third-party sources (collectively, the "Information"). 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 or other standards established by the Chartered Professional Accountants of Canada.

7. Further information relating to the receivership proceedings can be located on the Receiver's website at <https://mnpdebt.ca/en/corporate/corporate-engagements/>

Breach of Undertaking - Admitting New Residents to the Care Home

8. As referenced in paragraph 13 of the First Report on January 22, 2024 the Receiver instructed Management that no further residents were to be admitted to the Care Home. Management had continued to solicit and admit new residents to the Care Home despite the Receiver's instructions.

9. As referenced in paragraph 13 of the Second Report, on July 15, 2024, Management provided the Receiver with an undertaking (through counsel) that no further residents would be admitted to the Care Home without the approval of the Receiver. A copy of the July 15 Undertaking is attached as **Schedule 1**.

10. On September 18, 2024, the Receiver was advised that Management had admitted a new resident to the Care Home. Management provided the Receiver with a copy of the September 10, 2024 admission agreement.

11. The admission of the new resident on September 18, 2024 is in direct violation of the undertaking provided to the Receiver by Management. The Receiver raised this matter with counsel for Goshen by way of a letter dated September 27, 2024. Against the possibility of mitigating factors, Counsel for the Receiver awaited a response, but no explanation of the situation having been provided, the matter was again raised by Counsel for the Receiver on October 16, 2024. No substantive response or explanation has been received.

12. While Management accordingly continues to act in direct violation of the instructions of the Receiver, as at the time of this report, the Receiver has borrowed up to the limit of its borrowing charge, and accordingly is no presently able to engage independent management to provide oversight of the Care Home.

Filing of a Notice of Application for Leave – *Competition Act*

13. On October 8, 2024, counsel for Goshen served the Receiver with a copy of a Notice of Application for Leave pursuant to section 103.1 of the *Competition Act* (the “**Competition Act Notice**”). A copy of the Competition Act Notice is attached as **Schedule 2**.

14. On October 16, 2024, counsel for the Receiver issued correspondence to counsel for Goshen seeking clarity on the following three matters:

- a) Does the Competition Act Notice seek relief from the Receiver?
- b) Does Goshen have the authority to bring the Competition Act Notice without the approval or consent of the Receiver?
- c) Can your client explain the breach of undertaking with respect to admitting new residents?

15. A copy of the October 16, 2024, correspondence to Goshen's counsel is attached as **Schedule 3**.

16. On October 17, 2024 counsel for Goshen responded to the Receiver advising the following:

- a) For the purposes of the Competition Act Notice the Receiver is an “interested party.”
- b) One of the objects of the proceeding is to prevent the Receiver from proceeding with the sale order through the process underway in the Receivership proceedings.
- c) Goshen does have the authority to initiate the Competition Act Notice without the consent and/or approval of the Receiver.
- d) Any legal costs awarded against Goshen in relation to the Competition Act Notice could be dealt with in the receivership process and as such there would be need for security for costs.

17. A copy of the email from Goshen's counsel on October 17, 2024, is attached as **Schedule 4**.

18. On October 18, 2024, counsel for the Receiver provided a further response to the October 17, 2024, email from counsel for Goshen. In the October 18, 2024, correspondence counsel for the Receiver notified Goshen to immediately adjourn all proceedings under the Competition Act. A copy of the October 18, 2024, correspondence is attached as **Schedule 5**.

19. Counsel for the Receiver has received no response to the substance of its October 18 letter.

20. However, as the Third Report was being finalized, counsel for the Receiver received a copy of correspondence from Counsel for the Saskatchewan Health Authority ("**SHA**"), seeking an extension of time to file material before the Competition Tribunal. This letter effectively marks the starting point for the potential that a costs award against Goshen may arise resulting in a diminution of the anticipated receivership estate. A copy of that correspondence is attached as **Schedule 6**.

New Proceeding

21. Counsel for Canadian Western Bank has commenced an action to preserve its rights against an impending limitation period, pursuant to paragraph 8 of the Receivership Order. Canadian Western Bank has advised that it intends to hold the matter in abeyance and has provided an undertaking not to take further steps without notice to the Receiver.

Conclusion

22. The Receiver will be seeking the Court's advice and direction, and such orders as the Court may consider appropriate, with respect to:

- a. the breach of undertaking by the Directors of Goshen; and
- b. the entitlement of Goshen to advance an application under the Competition Act without the consent and/or approval of the Receiver.

DATED at the City of Edmonton, in the Province of Alberta, this 23rd day of October, 2024.

MNP Ltd.

In its capacity as Receiver of
Goshen Professional Care Inc.
And not in its personal capacity



Per: Eric Sirrs, CIRP, Licensed Insolvency Trustee
Senior Vice President

Goshen Professional Care Home Inc. – In Receivership
Receiver's Third Report to Court
October 23, 2024

ADDRESS FOR SERVICE AND

Robertson Stromberg

CONTACT INFORMATION OF

Attention: M. Kim Anderson, K.C.

PARTY FILING THIS DOCUMENT

Suite 600 – 105 21st Street East
Saskatoon, SK S7K 0B3
Email: mk.anderson@rslaw.com/
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Phone: 306.933.1373
Fax: 306.652.2445
Solicitors for the Receiver, MNP Ltd.

RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE HOME INC.
RECEIVER'S THIRD REPORT TO COURT

SCHEDULE 1

RUNYOWA LAW PROFESSIONAL CORPORATION

A Regina-Based Civil Litigation
and Dispute Resolution Firm

July 15th, 2024

SENT BY EMAIL

M. Kim Anderson K.C.
Robertson Stromberg LLP
Phone: 306-933-1344
Email mk.anderson@rslaw.com
Your File #: 62076.5

CC: Eric Sirrs
MNP Ltd
Senior VP – Court Appointed Registrar
Phone: 780-969-1491
Email: Eric.Sirrs@mnp.ca

Attn: Mr. Eric Sirrs – Receiver in KBG-RG-1228-2023,

RE: Undertaking of Goshen Professional Care Inc. to not admit any residents without explicit permission; Made in response to July 10, 2024, Letter from Counsel of Receiver.

On behalf of Goshen Professional Care Inc. for the above noted matter, as legal counsel, I confirm that my client and its principals have been provided a copy of your legal counsel's letter of July 10, 2024, which requests an undertaking which states that no further residents will be admitted to the Emmanuel Villa homecare facility without the explicit preapproval of the Receiver.

To this end, my client provides the attached undertaking in order to provide a satisfactory response to your request.

Please feel free to contact my office if there are any issues with the wording or nature of the undertaking so provided.

Thank you,

Tavengwa Runyowa

Mr. Tavengwa Runyowa

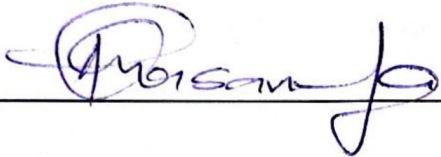
WWW.RUNYOWA.COM

Royal Bank Building
7th Floor 2010 - 11th Avenue
Regina, Saskatchewan, Canada S4P 0J3

Phone. (306) 206-2800
Fax. (306) 206-2701
Email. law@runyowa.com

Undertaking of Goshen Professional Care Inc – July 15, 2024

Goshen Professional Care Inc and its principals hereby undertake pursuant to the instruction of the Court-Appointed Receiver, Mr. Eric Sirrs, not to admit any residents to Emmanuel Villa Personal Care Home (77 Aspen Village Dr, Emerald Park, Regina, SK S4L 0E4, Canada) without prior written permission.



Signed by: Mrs. Adebunmi Onasanya, Director of Goshen Professional Care Inc.



Witnessed by: Mr. Tavengwa Runyowa, Counsel to Goshen Professional Care Inc.

RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE HOME INC.
RECEIVER'S THIRD REPORT TO COURT

SCHEDULE 2

COMPETITION TRIBUNAL

IN THE MATTER OF the Competition Act, R.S.C. 1985, c. C-34 (the “Act”);

AND IN THE MATTER OF an application by [Goshen Professional Care Inc.] for an order pursuant to section 103.1 of the Act granting leave to bring an application under sections 75 and 79 of the Act;

AND IN THE MATTER OF an application by [Goshen Professional Care Inc.] for an order pursuant to sections 75 and 79 of the Act;

BETWEEN:

GOSHEN PROFESSIONAL CARE INC.

Applicant

– and –

THE SASKATCHEWAN HEALTH AUTHORITY and THE MINISTRY OF HEALTH

Respondents

**NOTICE OF APPLICATION FOR LEAVE
(Pursuant to section 103.1 of the *Competition Act*).**

TAKE NOTICE THAT:

1. The Applicant will make an application to the Competition Tribunal (“Tribunal”) pursuant to section 103.1 of the Competition Act (the “Act”) seeking leave to bring an application:
 - a. Pursuant to Sections 1.1, 78(1), 79(1), 79(2), and 79(3.1) of the *Competition Act*, requesting that the Tribunal bars the proposed sale of the Applicant, Goshen Professional Care Inc.’s (“Goshen”) assets, including Emmanuel Villa personal care home, to the Saskatchewan Health Authority (“SHA”);
 - b. Pursuant to Sections 1.1 and 75(1) of the *Competition Act*, requesting that as long as the conditions in the applicable market subsist, the Competition Tribunal orders the SHA to reinstate the Pilot Project, or in the alternative, enters into a new agreement with Goshen requiring the SHA to supply Goshen with public sector Long-term Care residents seeking residential care home services in Saskatchewan.

- c. Any such further action that this Tribunal deems appropriate.

AND TAKE NOTICE THAT:

2. The entity against whom the orders are sought is the Respondent, the Saskatchewan Health Authority ("SHA").
3. The Applicant seeks leave, under section 103.1 of the *Act* to bring an application for an order pursuant to sections 75 and 79 of the *Act*.
4. The Applicant will rely on the Statement of Grounds and Material Facts attached hereto, and the Affidavit of Mrs. Onasanya sworn October 1, 2024.
5. If leave is granted, the Applicant will bring the Proposed Notice of Application before the Tribunal challenging the proposed sale of their Goshen's assets and business (Emmanuel Villa) to the SHA. Attached is the Applicant's Proposed Notice of Application and the Applicant's Memorandum of Fact and Law.
6. In total, the Applicant will rely on the following materials which accompany this Application:
 - a. This Notice of Application for Leave with the attached Statement of Material Facts and Grounds;
 - b. The Affidavit of Mrs. Adebunmi Onasanya sworn October 1, 2024 (with attached exhibits).
 - c. The Applicant's Proposed Notice of Application; and
 - d. The Applicant's Memorandum of Fact and Law accompanying this Application.
7. The Applicant requests that the documents for this Application be filed in electronic form.

Dated at Regina, Saskatchewan, this 2nd day of October 2024.

Tavengwa Runyowa

Tavengwa Runyowa
Counsel for Goshen Professional Care Inc.

Runyowa Law Professional Corporation
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2010 11th Ave,
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TO:

The Registrar

Competition Tribunal

Thomas D'Arcy McGee Building

90 Sparks Street, Suite 600

Ottawa, ON

K1P 5B4

Tel: 613-957-7851

Fax: 613-952-1123

AND TO:

Commissioner of Competition

Mr. Matthew Boswell

Competition Bureau

50 Victoria Street Gatineau, QC K1A 0C9 Tel:

819-997-4282

Fax: 819-997-0324

AND TO:

The Saskatchewan Health Authority

As represented by

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Mr. Ryan Kitzul and Mr. Eric Dufour

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Regina, Saskatchewan, S4P 3Z8

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rkitzul@millerthomson.com

AND TO:

Canadian Western Bank

As represented by:

McDougall Gauley LLP

AND TO:

The Ministry of Health of Saskatchewan

Deputy Minister Tracey Smith

3rd Floor, 3475 Albert Street,

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AS REPRESENTED BY:

The Attorney General of Saskatchewan

The Honorable Bronwyn Eyre

Minister and Attorney General

and Max Bilson, Assistant Deputy Attorney General

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AND TO:

Westridge Construction Ltd.

As represented by:

McDougall Gauley LLP

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Schmeling

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msawatzky@mcdougallgauley.com

mschmeling@mcdougallgauley.com

AND TO:

**MNP Ltd. (Court Appointed Receiver to
Goshen Professional Care Inc.)**

As represented by:

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STATEMENT OF GROUNDS AND MATERIAL FACTS.

I. Summary of Notice of Application.

1. The Applicant, Goshen Professional Care Inc. ("Goshen"), seeks leave, under section 103.1 of the *Competition Act* to bring an application for an order pursuant to sections 75 (Refusal to Deal) and 79 (Abuse of Dominant Position) of the *Competition Act*.
2. Goshen submits that its personal care business (Emmanuel Villa) was directly and substantially affected by the actions of the Saskatchewan Health Authority (the "SHA"), and as additionally facilitated by those of the Saskatchewan Ministry of Health (as contemplated under Rule 103.1(7)). As elaborated in Goshen's Memorandum of Fact and Law, the SHA wrongfully, deliberately, and prematurely terminated its agreement with Goshen for the SHA to supply care home contracts and residents from the SHA's public waiting list to Emmanuel Villa (private care home).
3. The SHA's actions vis-a-vis Goshen amounted to a Refusal to Deal, as contemplated under section 75 of the *Competition Act*, and an Abuse of Dominant Position, as contemplated under section 79 of the *Competition Act*.
4. As a result of the SHA's actions, and as facilitated by the Saskatchewan Ministry of Health, Canadian Western Bank ("CWB"), which had loaned Goshen the funds to build Emmanuel Villa, forced Goshen into receivership. Under the receivership, Goshen has been prohibited from filling the vacancies in its care home (Emmanuel Villa) and from generating the maximum possible revenue and commercial certainty that could resolve the receivership.
5. On April 1st, 2024, the Receiver initiated a process to sell Goshen's assets pursuant to Section 3(l) of the Receivership Order. On June 14, 2024, during a teleconference, the Receiver informed Goshen's principals and legal counsel that the Receiver had received a bid from the SHA, and that the Receiver had accepted it. On July 11th, 2024, the Receiver filed an application with the Saskatchewan Court of the King's Bench seeking judicial approval of

the sale of Goshen's business to the SHA. The Court convened a hearing on August 26th, 2024.

6. During the hearing, Goshen vehemently opposed the Receiver's sale application on various grounds, including conflict of interest on the part of the Receiver, and grounds based in the *Competition Act*. Based on the sparse available caselaw, the Court may have concurrent or overlapping jurisdiction over *Competition Act* issues that arise in insolvency sale proceedings under the *Bankruptcy and Insolvency Act*. Goshen informed the Court of Goshen's intention to file for leave to challenge the proposed sale before the Competition Tribunal. Justice Bergbusch reserved his decision, which remains outstanding.
7. If granted leave, Goshen will make a fulsome application regarding the violations of section 75 and section 79 of the *Competition Act*. Suffice to say that allowing the SHA to benefit from its refusal to deal and its abuse of its dominant position would greatly undermine the interests of a competitive market for care home services and would be inconsistent with S. 1.1 of the *Competition Act*.

II. Summary of Material Facts.

8. The Applicant, Goshen, runs a personal care home, Emmanuel Villa, in Emerald Park, Saskatchewan. Emmanuel Villa is a newly constructed 80-bed personal care home. Emmanuel Villa's construction was complete in February 2019. When construction was complete, Goshen licensed the home with the Ministry of Health and opened its home to residents.
9. In January 2020, Goshen entered into an "Accountability Agreement" with the SHA regarding a pilot project whereby the SHA would house 40 long-term care (publicly funded) residents in Goshen's 80-bed home (Emmanuel Villa).
10. In June 2022, the SHA unilaterally terminated their agreement part way through the renewed contractual period, arguing that the SHA would be transferring its residents to Goshen's

competitor in Regina under a new pilot project. The SHA informed Goshen that it was ineligible for the new pilot project because that new project was limited to homes “in Regina”. This was despite the fact that, a) the Saskatchewan Minister of Health had approved Emmanuel Villa for the initial pilot project for the “Regina area”, b) that Emmanuel Villa is located in Emerald Park which is within 5 kilometer or 10 minutes of the Regina city limits and forms part of the Regina metropolitan area, c) given that Emerald Park has only 1,500 residents, many if its residents work, access services, and have family and social links in Regina, d) about 95% of Emmanuel Villa’s resident had moved there from the Regina area, which was proximal to their family and support bases, and e) the Saskatchewan Minister of Health had previously acknowledged that Emmanuel Villa’s location and proximity to Regina was ideal in that it allowed the 40 SHA residents to be close to their homes, and presumably families in Regina.

11. Effectively, the SHA’s subsequent rationale for excluding Emmanuel Villa from the new pilot project on the basis that Emmanuel Villa is not “in Regina” was arbitrary and/or designed to wrongfully deprive Goshen of the supply for residents from the public system. By so doing, the SHA, alongside the Ministry of Health, abused its dominant position and access to the extensive public waiting list in the elder care market to deprive Goshen of the supply of care contracts and residents, and to substantially undermine Goshen’s financial and operational viability.
12. Shortly after the SHA prematurely terminated the pilot project, Canadian Western Bank (“CWB”), the lender that financed the construction of Emmanuel Villa, became aware of this development. On November 30th, 2022, CWB deemed the SHA’s premature termination to be a material change under the loan agreement and demanded full repayment of the outstanding loan amount, which at the time was approximately \$12.5 million. Goshen was unable to repay the entirety of the loan, which reached maturity several months later. Upon CWB’s application, the Saskatchewan Court of the King’s Bench declared Goshen insolvent and approved the appointment of MNP Debt as the interim receiver on August 2nd, 2023. Subsequently, on January 10th, 2024, the Court granted CWB full receivership over Goshen.

13. Since CWB recalled its loan, Goshen has been attempting to secure refinancing. However, potential lenders have persistently expressed their primary concern that since the SHA withdrew its residents, Emmanuel Villa has not exceeded 25% of capacity. Initially, it was a challenge for Goshen to quickly replace the 40 residents that the SHA had suddenly withdrawn. Over time, Goshen gradually began to make up for the sudden loss of residents. However, Goshen's ability to fill Emmanuel Villa and improve its chances of a successful refinancing despite emergent and accelerating interest from potential residents over the past few months has been hampered by the fact that the Saskatchewan Ministry of Health is refusing to expand the licencing capacity of the home to all 80-beds, and is keeping the licencing number capped at 20 residents.
14. Further, the Receiver, MNP, has prohibited Goshen from admitting more residents to Emmanuel Villa. Unfortunately, the Receiver and Ministry cite each other as the reason for denying Goshen the ability to fill the home, while neither takes any responsibility of this limitation. Despite Goshen's persistent requests for clarification, both have refused to explain which of them is responsible for the decision. This has placed Goshen in limbo, effectively impeding its ability to secure refinancing.
15. On July 11th, 2024, the Receiver (MNP) filed an application seeking the Saskatchewan King's Bench's approval of the SHA's offer to purchase Emmanuel Villa. Justice Bergbusch heard the application on August 26, 2024, and reserved his decision. That decision is still pending. However, Goshen informed the Court that notwithstanding the Court's decision, Goshen was filing a parallel challenge to the sale with the Competition Tribunal.
16. Goshen opposes the sale of Emmanuel Villa to the SHA, as it was the direct actions of the SHA, alongside those of the Saskatchewan Ministry of Health, which pushed Goshen into insolvency, and triggered the receivership and the Receiver's authority to initiate sale proceedings. Now, the SHA seeks to benefit from its anti-competitive practices by submitting a bid that is well below Emmanuel Villa's market value, but which the Receiver was prepared to accept.

17. The SHA's actions amount to refusal to deal (Section 75) and abuse of a dominant position in the market for the care of the elderly and infirm in Saskatchewan (Section 79).

BASIS FOR APPLICATION PURSUANT TO SECTION 103.1.

18. Section 103.1(1) of the *Competition Act* provides that:

103.1 (1) Any person may apply to the Tribunal for leave to make an application under section 75, 76, 77 or 79.

19. The test the Tribunal must apply to leave applications is laid out in section 103.1(7):

(7) The Tribunal may grant leave to make an application under section 75, 77 or 79 if it has reason to believe that the applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section.

20. The Competition Tribunal defined the test for section 103.1(7) in *National Capital News Canada v. Canada (Speaker, House of Commons)*, [2002] C.C.T.D. No. 38 (Competition Tribunal), aff'd [2004] F.C.J. No. 83 (C.A.) ("National Capital News"):

Accordingly on the basis of the plain meaning of the wording used in subsection 103.1(7) of the Act and jurisprudence referred to above ... the appropriate standard under subsection 103.1(7) is whether the leave application is supported by sufficient credible evidence to give rise to a bona fide belief that the applicant may have been directly and substantially affected in the applicant's business by a reviewable practice, and that the practice in question could be subject to an order.¹

21. This test is satisfied as:

¹ *National Capital News Canada v. Canada (Speaker, House of Commons)*, [2002] C.C.T.D. No. 38 (Competition Tribunal), aff'd [2004] F.C.J. No. 83 (C.A.) ("National Capital News"), para 14. <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/464444/index.do>.

- a. The Applicant, Goshen, has tendered sufficient and credible evidence that gives rise to a bona fide belief that Goshen has been directly and substantially affected by a reviewable practice, as outlined in section 75 (Refusal to Deal) and section 79 (Abuse of Dominant Position); and
- b. That practice could be subject to an order from the Tribunal.

22. In *Allan Morgan and Sons Ltd. v. La-Z Boy Canada Ltd.*, 2004 Comp. Trib. 4, the Competition Tribunal stated that at the leave stage, the applicant is not required to meet any higher standard of proof threshold:

[21] The data provided by Morgan's Furniture is sufficient to convince me the applicant may have been directly and substantially affected by the actions of La-Z-Boy. Morgan's Furniture, at the leave stage, is not required to meet any higher standard of proof threshold.²

I. Section 75(1) of the *Competition Act*.

23. In this matter, the Applicant seeks leave to bring an application for an order pursuant to Section 75(1) of the *Act* which states:

Section 75- Refusal to Deal

Jurisdiction of Tribunal where refusal to deal

75 (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

(a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,

(b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,

² *Allan Morgan and Sons Ltd. v. La-Z Boy Canada Ltd.*, 2004 Comp. Trib. 4, para 21, <https://decisions.ct-tc.gc.ca/ct-tc/cdo/en/item/464360/index.do>

(c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,

(d) the product is in ample supply, and

(e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.

24. Applying the test under S. 103.1 to the facts and evidence underlying Goshen's Section 75 application, the SHA's conduct amounts to a refusal to deal because:

- (a) Goshen was substantially affected in its business by:
 - i. the SHA suddenly, unilaterally, arbitrarily, and wrongfully cancelling the Accountability Agreement with Goshen under the pilot project, and withdrawing SHA residents from Emmanuel Villa;
 - ii. the SHA refusing to deal with Goshen by denying Goshen the ability to participate in the new pilot project for the Regina area, and doing so on an arbitrary and illogical basis; and
 - iii. the Ministry of Health refusing to lift the cap on licensing capacity of Emmanuel Villa.
- (b) Goshen struggled to obtain adequate replacement supply of residents for Emmanuel Villa (with the SHA controlling such a large share of the market), and was subsequently rendered unable to expand the number of residents due to the Ministry of Health's cap on the intake of new residents, and the Receiver's prohibition on such additions.

- (c) Goshen is willing and able to meet the usual terms of providing services to residents in the market for the elderly and infirm in Saskatchewan;
- (d) There is a high and increasing demand for long-term care/personal care beds in the Regina area and the province of Saskatchewan, as demonstrated by the long waitlists, especially in the public sector (long-term care homes);
- (e) The SHA's refusal to deal with Goshen is having an adverse effect on the competitive market and an adverse effect on the consumers in the relevant market. Many consumers are sitting on the SHA's long waitlist for care home services, in dire need of special care, while many of Goshen's beds are available.

25. All of these substantial effects to Goshen's business are also "direct" as set forth in the applicable legal test. There is no doubt that the SHA has acted in a manner which is directly targeted towards Goshen, specifically given the fact that Goshen's pilot project was terminated (without cause) while other private care homes were allowed to continue providing care to long-term care patients provided by the SHA. To this end, the effects felt by Goshen satisfy the requirements of Section 103.7 for leave regarding an application under Section 75.

II. Section 79 of the *Competition Act*.

26. The Applicant, Goshen, also seeks leave to bring an application for an order pursuant to Section 79 of the *Act*:

Abuse of Dominant Position

Definition of *anti-competitive act*

78 (1) For the purposes of section 79, *anti-competitive act* means any act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition, and includes any of the following acts:

- (a) squeezing, by a vertically integrated supplier, of the margin available to an unintegrated customer who competes with the supplier, for the purpose of impeding or preventing the customer's entry into, or expansion in, a market;
- (b) acquisition by a supplier of a customer who would otherwise be available to a competitor of the supplier, or acquisition by a customer of a supplier who would otherwise be available to a competitor of the customer, for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
- (c) freight equalization on the part of a competitor for the purpose of impeding or preventing the competitor's entry into, or eliminating the competitor from, a market;
- (d) use of fighting brands introduced selectively on a temporary basis to discipline or eliminate a competitor;
- (e) pre-emption of scarce facilities or resources required by a competitor for the operation of a business, with the object of withholding the facilities or resources from a market;
- (f) buying up of products to prevent the erosion of existing price levels;
- (g) adoption of product specifications that are incompatible with products produced by any other person and are designed to prevent his entry into, or to eliminate him from, a market;
- (h) requiring or inducing a supplier to sell only or primarily to certain customers, or to refrain from selling to a competitor, with the object of preventing a competitor's entry into, or expansion in, a market;
- (i) selling articles at a price lower than the acquisition cost for the purpose of disciplining or eliminating a competitor;
- (j) a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market; and
- (k) directly or indirectly imposing excessive and unfair selling prices.

Prohibition if abuse of dominant position

79 (1) On application by the Commissioner or a person granted leave under section 103.1, if the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, it may make an order prohibiting the person or persons from engaging in a practice or conduct if it finds that the person or persons have engaged in or are engaging in

- (a) a practice of anti-competitive acts; or
- (b) conduct

- (i) that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest, and
- (ii) the effect is not a result of superior competitive performance.

Additional or alternative order

(2) If, on an application under subsection (1), the Tribunal finds that a practice of anti-competitive acts amounts to conduct that has had or is having the effect of preventing or lessening competition substantially in a market in which the person or persons have a plausible competitive interest and that an order under subsection (1) is not likely to restore competition in that market, the Tribunal may, in addition to or in lieu of making an order under subsection (1), make an order directing any or all persons against whom an order is sought to take actions, including the divestiture of assets or shares, that are reasonable and necessary to overcome the effects of the practice in that market.

27. As noted previously, Section 103.1(7) requires the Tribunal to make a finding that the Tribunal, “has reason to believe that the applicant is directly and substantially affected in the applicant’s business by any practice referred to in one of those sections that could be subject to an order under that section”.
28. Two conditions must be met for leave to be granted under section 103.1 with respect to Section 79(1) of the *Competition Act*:
- a. the Tribunal finds that one or more persons substantially or completely control a class or species of business throughout Canada or any area of Canada, and
 - b. the person(s) have engaged in or are engaging in
 - (a) a practice of anti-competitive acts; or
 - (b) conduct that had, is having or is likely to have the effect of preventing or lessening competition substantially in a market in which the person(s) have a plausible competitive interest, and the effect is not a result of superior competitive performance.
29. The SHA wields substantial and dominant control over the market for the care of the elderly and infirm in Saskatchewan. This control arises from the SHA statutory mandate as the sole

health authority in Saskatchewan; the SHA's *de facto* jurisdiction over the publicly subsidized waiting list for care beds in Saskatchewan; the SHA's ability to provide publicly subsidized care beds at a cost that would be uneconomical for private sector players; the economies of scale that the SHA enjoys over its private sector competitors; the significant public funding that the SHA receives from the Saskatchewan Ministry of Health; and the fact that the SHA operates more than half of Saskatchewan's care homes. These factors collectively establish the SHA's dominant position in the market for the care of elderly and infirm in Saskatchewan.

30. Specifically, the SHA and Government's dominance over the market for the care of the elderly and infirm in Saskatchewan is evident from the SHA's direct operation of 157 long-term care homes in Saskatchewan, and the SHA/Government's regulatory oversight of, and sub-contracting relationships with some of the approximately 208 privately-owned personal care homes in Saskatchewan. The SHA either owns or controls approximately 61% of the care beds in Saskatchewan and exerts significant compliance and contractual/financial influence over the private sector players via public-private contracts for the care of public care home residents. This affirms the SHA's dominant position in the market for the care of elderly and infirm residents of Saskatchewan.
31. Further, as alluded to above, the Ministry of Health, which funds the SHA in its licensing capacity for private care homes, controls these private homes' ability to operate. In this case, the Ministry of Health funded, guided, endorsed, and has significantly hindered Goshen's ability to operate in the market under the receivership by disallowing Goshen's request to increase Emmanuel Villa's licenced capacity beyond 20 residents. The Ministry of Health has ignored Goshen's application to expand its licensed capacity number to the maximum of 80 beds. As previously stated, this cap has significantly hindered Goshen's ability to obtain refinancing.
32. Section 78(1) of the *Competition Act* provides a non-exhaustive list of actions that amount to "anti-competitive acts". Thus, the list is not closed. The Tribunal can find an unenumerated act to be uncompetitive for the purposes of section 79, if the act is "...intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse

effect on competition.” As elaborated in Goshen’s Memorandum of Fact and Law and highlighted in the Affidavit of Mrs. Onasanya with its supporting evidence, the SHA’s conduct under the Accountability Agreement, and in its subsequent efforts to purchase Goshen’s assets after forcing Goshen into receivership, satisfy this legal test.

33. The SHA’s conduct also meets the test for anti-competitive acts under the enumerated instances of S. 78(1)(e):

- (e) A selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor’s entry into, or expansion in, a market or eliminating the competitor from a market.

This occurred through the SHA’s sudden termination of the pilot project on arbitrary, bad faith, and specious grounds, as abetted by the Ministry’s rejection of Goshen’s requests to expand its licenced operating capacity beyond the current license of 20 residents. In both cases the SHA/Ministry of Health have selectively and discriminatorily responded to Goshen as a competitor for the explicit purpose of driving them out of the long-term care patient care market specifically, and the general market for the care of elderly and infirm in the province of Saskatchewan. As such, Goshen asserts that the SHA individually, and as endorsed and abetted by the Saskatchewan Ministry of Health, engaged in anti-competitive acts as contemplated under S. 79 of the *Competition Act*.

34. In summary, the SHA engaged in anticompetitive acts and substantially, or completely, controls the market for the residential care of the elderly and infirm throughout Saskatchewan. The SHA’s conduct had, is having, and is likely to have the effect of preventing or lessening competition substantially in this market in which Goshen has a plausible competitive interest. This effect is not a result of the SHA’s superior competitive performance but its statutory dominance and access to substantial public resources that private suppliers such as Goshen do not have access to. As such, Goshen asks to be granted leave under section 103.1 to more fulsomely establish this case.

III. Overarching principles regarding Motions for Leave.

35. In regard to the Nature of Motion for Leave, the FCA in *Lukács v. Swoop Inc.*, 2019 held that:

[15] First is the nature of motions for leave to appeal. Motions for leave to appeal are not full determinations of the merits of the matter. Motions for leave to appeal are supposed to be summary—a quick assessment whether a full review of the administrative decision is warranted. Further, parties moving for leave to appeal need only show a fairly arguable issue: *Canadian National Railway Company v. Emerson Milling Inc.*, 2017 FCA 79, [2018] 2 F.C.R. 573 at paras. 13 and 56; *Canadian Pacific Railway Co. v. Canada (Transportation Agency)*, 2003 FCA 271, [2003] 4 F.C.R. 558 at para. 17; *CKLN Radio Incorporated v. Canada (Attorney General)*, 2011 FCA 135, 418 N.R. 198; *Rogers Cable Communications Inc. v. New Brunswick (Transportation)*, 2007 FCA 168, 367 N.R. 78. In this context, a “fairly arguable case” should be seen in a functional and purposive way and can be resolved down into a question: has enough been raised in the motion for leave to appeal to warrant a full review of the administrative decision, a review that will entitle a party to use all of the procedural rights and investigative techniques associated with reviews?³

36. Goshen asserts that its case meets the standard of a “fairly arguable case” and once again asks that leave be granted pursuant to Section 103.1 of the *Competition Act*.

CONCLUSION.

37. Goshen seeks leave, under section 103.1 of the *Competition Act* to bring an application for an order pursuant to section 75 (Refusal to Deal) and 79 (Abuse of Dominant Position) of the *Competition Act*. Goshen’s application satisfies this test as:

- a. the Applicant, Goshen, has been directly and substantially affected by the SHA’s reviewable practices as contemplated under section 75 (Refusal to Deal) and section 79 (Abuse of Dominant Position) of the *Competition Act*, and
- b. the SHA’s practices could be subject to an order from the Tribunal.

³ *Lukács v. Swoop Inc.*, 2019 FCA 145 (CanLII), at para 15 <https://canlii.ca/t/j0ctw#par15>

38. Allowing the SHA to benefit from its Refusal to Deal and Abuse of Dominant Position would also greatly undermine the interests of a competitive market as contemplated under S. 1.1 of the *Competition Act*. Goshen seeks leave under section 103.1 to assert a more fulsome application under section 75 and section 79 of the *Competition Act*.

October 2nd, 2024.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Tavengwa Runyowa

Counsel to the Applicant, Goshen Professional Care Inc.
Runyowa Law Professional Corp.
Tavengwa Runyowa.

COMPETITION TRIBUNAL
IN THE MATTER OF the Competition Act, R.S.C.
1985, c. C-34 (the “Act”);

AND IN THE MATTER OF an application by JAMP
Pharma Corporation for an order pursuant to section
103.1 of the Act granting leave to bring an application
under section 75 and 79 of the Act;

AND IN THE MATTER OF an application by
Goshen Professional Care Inc., for an order pursuant to
section 75 and 79 of the Act;

BETWEEN:

GOSHEN PROFESSIONAL CARE INC.

Applicant

– and –

THE SASKATCHEWAN HEALTH AUTHORITY
and THE MINISTRY OF HEALTH

Respondents

NOTICE OF APPLICATION FOR LEAVE
(Pursuant to section 103.1 of the Competition Act).

Runyowa Law Professional Corporation
RBC Bank Building
2010 11th Ave,
Regina, SK S4P 0J3

Mr. Tavengwa Runyowa (law@runyowa.com)

Tel: 306-206-2800
Fax: 306-700-2430

Counsel for the Applicant, Goshen Professional Care Inc

RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE HOME INC.
RECEIVER'S THIRD REPORT TO COURT

SCHEDULE 3

October 15, 2024

VIA EMAIL

Runyowa Law
Royal Bank Building
7th Floor 2010 - 11th Avenue
Regina, SK S4P 0J3

Attention: Tavengwa Runyowa

Dear Sir:

RE: Receivership of Goshen Professional Care Inc. ("Goshen")

I write to address three matters.

First of these is to address an issue arising from the material served on us, as counsel for the Receiver, respecting an application for leave pursuant to the provisions of the *Competition Act*. While the style of cause does not reference the Receiver as a respondent, we note that the Receiver is referenced as a respondent in your legal brief.

We accordingly seek clarification. Is it your client's intention to seek relief from the Receiver in this and any following *Competition Act* proceedings? If so, please advise the nature of the relief to be sought, and if not, please confirm the lack of intention to do so.

Second, we wish to address another matter arising from that application. As you are aware, the Receiver questions your ability to seek this relief in the name of the debtor company, as the power to direct such action is no longer vested in the directors. Before arriving at final position on this matter, we have the following question.

Insofar as proceedings have been in the name of the corporation, the proceeding exposes the corporation the potential of an adverse award of costs. This would have a negative effect on the receivership estate. Thus, our question. Are your principals prepared to post some manner of liquid security against the possibility of an adverse costs award?

Third is the matter of our letter of September 27, 2024, in which we raised the matter of your client's breach of undertaking. We have awaited an answer against the possibility that there is a mitigating

factor to be considered. Given the passage of time and the lack of an answer, we have advised the Receiver that recent case law suggests that regardless of the outcome, a matter of this should be brought to the attention of Justice Bergbusch. We will refrain from making any filing for a further two days against the possibility that there are circumstances that relieve the Receiver from taking that action.

We ask the favour of a prompt reply.

Yours truly,

Robertson Stromberg LLP

Barristers and Solicitors

For:

M. Kim Anderson, K.C. Legal Prof. Corp.

MKA:

CC: Eric Sirrs

RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE HOME INC.
RECEIVER'S THIRD REPORT TO COURT

SCHEDULE 4

Subject: FW: Goshen

From: Tavengwa Runyowa <law@runyowa.com>

Sent: October 17, 2024 4:59 PM

To: M. Kim Anderson <mk.anderson@rslaw.com>; Brandon Cain <brandon.cain@runyowa.com>

Subject: Re: Goshen

Good evening Mr. Anderson,

I reached out to my clients, and they advised that they are travelling and will be back next week. I have inquired when exactly they will return and am waiting to hear back. I will advise once they know but I will not be able to respond in full by this Friday. For now, I can provide the following positions regarding the questions you raised.

1. Regarding whether Goshen is seeking a remedy against the Receiver, Goshen's position is that it is seeking an order from the Competition Tribunal to bar the sale of Goshen's assets to the SHA. We did not name the Receiver as a "party" in the style of cause. However, given that the Tribunal's decision arises from, and will impact, the Receiver's decision to sell to the SHA, the Receiver is an interested party. That is why we included the Receiver on the service list.

Therefore, we will leave it up to the Receiver to determine whether the scope of its powers under the receivership order includes the authority to intervene in the Competition Tribunal proceedings, and whether this is appropriate (at both the leave stages and the substantive stages if leave is granted). Regardless, our clients reserve their rights to argue these questions if they become relevant. Also, given our clients' intention to seek an order preventing the sale of Goshen's assets to the SHA, our arguments before the Competition Tribunal will challenge any arguments that any interested parties may raise in favour of the sale.

2. Regarding Goshen's ability to participate in the Competition Tribunal proceedings independently from the Receiver, there is no bar against this for the same reason that Goshen and its principals could challenge the proposed sale before the Court of the King's Bench. While the Receiver has powers to make certain decisions regarding an insolvent's operations and litigation with third parties (e.g. Westridge), this does not extend to an insolvent's right to challenge a receiver's efforts to seek authorization to sell the insolvent's assets in any applicable legal forum.

If receivers had the power to authorize and bar a party under receivership from challenging such dispositive actions by the receivers, this would be inconsistent with precedents in which insolvent parties have challenged such sales separately from the receivers, and without seeking the permission of the receivers' to do so.

Further, the style of cause for Justice Bergbusch's decision that gave rise to the Receivership order against Goshen only names Goshen, and not its directors or guarantors. And yet, not only did Justice Bergbusch permit "Goshen" to participate in the sale proceedings apart from MNP as the Receiver (as represented by Goshen's independent legal counsel), but the Receiver raised no objection to Goshen participating through the corporation's principals and without the Receiver's authorization.

Nor did the Receiver raise objections with the Court about Goshen launching a Competition Tribunal complaint without the Receiver's permission even though Goshen expressly raised the competition issue and the pending Tribunal proceedings before Justice Bergbusch on August 26, 2024. In fact, on that day, the Receiver and the other interested parties went further in suggesting that Goshen could only pursue competition arguments before the Competition Tribunal, conceding Goshen's ability to do so without the Receiver's consent.

Additionally, the legal tests that the *Competition Act* imposes on the Tribunal in applications for leave to appeal require an applicant party to show how the actions of another party affected their business through anti-competitive actions or a refusal to deal. In either case, Goshen is at the centre of the dispute and cannot be restrained from pleading its case regarding the potential business impact that the Receiver created by seeking the sale of Goshen's assets.

It would defeat the purpose of the *Competition Act* if Receivers could prevent insolvents from appearing before the Competition Tribunal to challenge allegations of anticompetitive conduct and impacts that the Receiver precipitated. This would also be inconsistent with the Receiver's duty as a Court officer to act in good faith by using the Receiver's Court-granted powers to bar the review of the Receiver's actions and decisions before a tribunal with the jurisdiction to do so.

In sum, the principle that a party under receivership can contest a receiver's efforts to sell the insolvent's property is consistent with the applicable authorities. Given that this is the case before the Court of the King's Bench, through which the Receiver obtained its authority, it also applies to the Competition Tribunal where Goshen's principals are challenging what would be the final disposition of substantially all of their assets.

3. Regarding potential costs against Goshen at the Competition Tribunal, our response builds on the rationale above. Any legal costs accruable to both MNP and CWB would be dealt with through the receivership process. Thus, there would be no need for security for costs because any of the Receiver and/or SHA's legal fees arising from the Competition Tribunal would be similarly protected.

In particular, the Receiver has the power to seek approval for the payment of such costs from the Court. Also, as the prospective buyer and interested party in the King's Bench receivership proceedings, any costs that the Tribunal awards the SHA would also be handled and dispensed through the Receiver with the Court's approval. Hence, there is no need for any security for costs while the Receiver is in charge of Goshen's financial affairs.

Furthermore, there is no question that Goshen's assets are sufficient to cover any Competition Tribunal costs and other accruing legal expenses, even at the low sale price that the SHA offered. Thus, the risk that would usually accompany litigation and justify security for costs does not exist here.

I will advise regarding the new resident issue once my clients return. I will also clarify their position on the security for costs issue if the Receiver insists on them notwithstanding the above.

Thank you,

Tavengwa Runyowa

Runyowa Law
7th Floor, Royal Bank Building
2010 11th Avenue
Regina, SK S4P 0J3

Phone: 306-206-2800
Fax: 306-206-2701
Email: law@runyowa.com
www.runyowa.com

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From: M. Kim Anderson <mk.anderson@rslaw.com>
Date: Wednesday, October 16, 2024 at 3:09 PM
To: Tavengwa Runyowa <law@runyowa.com>, Brandon Cain <brandon.cain@runyowa.com>
Subject: RE: Goshen

Of course. Thanks.

M. KIM ANDERSON, K.C.
Lawyer | [Robertson Stromberg LLP](#)
Direct Line: 306-933-1344

From: Tavengwa Runyowa <law@runyowa.com>
Sent: October 16, 2024 3:05 PM
To: M. Kim Anderson <mk.anderson@rslaw.com>; Brandon Cain <brandon.cain@runyowa.com>
Subject: Re: Goshen

Hello Kim,

We will get back to you on both the competition and new resident issues by Friday. I need to consult my clients on both.

Thank you,

Tavengwa Runyowa
Runyowa Law
7th Floor, Royal Bank Building
2010 11th Avenue
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Phone: 306-206-2800

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From: M. Kim Anderson <mk.anderson@rslaw.com>
Date: Wednesday, October 16, 2024 at 12:31 PM
To: Tavengwa Runyowa <law@runyowa.com>, Brandon Cain <brandon.cain@runyowa.com>
Subject: Goshen

I am attaching our correspondence for your consideration.

Best regards.



M. KIM ANDERSON K.C. (he/him) | [Bio](#)

Lawyer | Arbitrator |

P: (306) 933-1344

E: mk.anderson@rslaw.com

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Operating as M. Kim Anderson K.C. Legal Prof. Corp.

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RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE HOME INC.
RECEIVER'S THIRD REPORT TO COURT

SCHEDULE 5

October 15, 2024

VIA EMAIL

Runyowa Law
Royal Bank Building
7th Floor 2010 - 11th Avenue
Regina, SK S4P 0J3

Attention: Tavengwa Runyowa

Dear Sir:

RE: Receivership of Goshen Professional Care Inc. ("Goshen")

We have reviewed your email sent yesterday with the Receiver.

Please let us respond.

First, it is clear from your response that you are seeking a remedy which affects the Receiver and the receivership proceedings. This is inappropriate.

The guiding general rule in insolvency proceedings is the “single proceeding” principle, where all matters affecting an insolvency proceeding are routed through that proceeding. Since you have indicated that the goal of the proceeding is not simply aimed at the “named” respondents, this proceeding amounts to a collateral attack on the receivership process.

The single proceeding principle is embodied in paragraph 7 of the Receivership Order, which requires any proceeding against the Receiver to receive approval of the court. As you have not received court permission, the proceeding is barred.

Second is the matter of paragraph 2 of the Receivership Order, which appoints the Receiver as receiver over all of the assets, undertakings and properties of the debtor. As we have noted in the past, s. 9-2 of *The Business Corporations Act, 2021* provides as follows:

9-2 If a receiver-manager is appointed by the court or under an instrument or Act, the powers of the directors of the corporation that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged

Since the complaints you intend to present to the Competition Tribunal relate to the assets, undertakings and properties of the debtor, the directors have no power to commence the proceeding without the grant of permission of the receiver, or a ruling by the court.

In your email you suggest that the Receiver has acquiesced, thereby meaning that the directors may proceed. That is not the case.

As respects the builders' lien matter, the Receiver has taken the position that as there may be sufficient assets to pay the indebtedness of Goshen and that it is appropriate that the directors engage in those discussions and has left the matter in your hands. That is not acquiescence, it is positive action by the Trustee to authorize and encourage the involvement.

As respects the Receivership proceedings themselves, the directors do retain some residual right to participate in those proceedings.

As respects this matter, there has been no acquiescence and no authorization. We earlier raised this very point with you. We note that any continued delay in closing a sale increases the possibility that the sale will be lost. If that occurs, it may be that the possibility of a surplus disappears, all to the detriment of the receivership estate and the creditors.

For this reason, this letter shall operate as the Receiver's notification that the directors are required to immediately adjourn any proceedings involving the *Competition Act* and thereafter make arrangements to discontinue the proceeding.

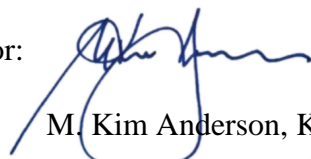
Third is the matter of the unauthorized admittance of residents. Two weeks have passed since we raised the matter. When we again addressed this issue earlier this week, we were advised that a response would be in hand this week. We now understand that you will not be in a position to respond until into next week. The fact that the Receiver has not received a prompt and forthright response to this matter gives rise to real concern.

We ask the favour of confirmation that the *Competition Act* proceedings have been adjourned or placed into abeyance, and require a response on the unauthorized admittance by close of business Monday.

Thanks and regards,

Robertson Stromberg LLP
Barristers and Solicitors

For:



M. Kim Anderson, K.C. Legal Prof. Corp.

CC: Eric Sirrs

RECEIVERSHIP OF GOSHEN PROFESSIONAL CARE HOME INC.
RECEIVER'S THIRD REPORT TO COURT

SCHEDULE 6



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October 23, 2024

Private and Confidential
Sent via E-mail & E-Filed

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Competition Tribunal
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K1P 5B4
tribunal@ct-tc.gc.ca
Badih.Abboud@tribunal.gc.ca

Attention: Badih Abboud

Dear Mr. Abboud:

**Re: Informal motion re: Leave to File Affidavit Evidence and Time Extension in
Goshen Professional Care Inc. v The Saskatchewan Health Authority and The
Ministry of Health
File No. CT-2024-007 (the "Proceeding")**

We are counsel to the respondent, the Saskatchewan Health Authority (the "**SHA**"), in this Proceeding by Goshen Professional Care Inc. ("**Goshen**") pursuant to section 103.1 of the *Competition Act* (the "**Act**")¹ seeking leave to bring an application against the SHA and the Ministry of Health under sections 75 and 79 of the Act (the "**Leave Application**").

This letter is intended to serve as an informal motion under Rule 81 of the *Competition Tribunal Rules* (the "**Rules**")² seeking an order from the Tribunal, in accordance with Rule 119(3), that the SHA be granted:

- i. leave to file affidavit evidence as part of the SHA's responding representations to the Leave Application; and
- ii. an extension of the deadline to deliver the SHA's responding materials, including the affidavit evidence, until November 15, 2024.

¹ R.S.C. 1985, c. C-34.

² SOR/2008-141.

I. The Test for Leave to File Responding Evidence in an Application for Leave

Rule 119(3) of the Rules gives the Tribunal discretion to permit a respondent to file affidavit evidence as part of its representations opposing an application for leave. The Tribunal has allowed such evidence where: i) the proposed evidence is relevant to the test for leave under section 103.1 of the Act; ii) it addresses discrete issues and is not part of an effort to adduce wide-ranging evidence; and iii) it is in the interests of justice to do so, having regard to the summary nature of leave applications.³

The Leave Application requires that Goshen satisfy the requirements set out in section 103.1(7) of the Act:

Granting leave

(7) The Tribunal may grant leave to make an application under section 75, 77 or 79 if it has reason to believe that the applicant is directly and substantially affected in the applicant's business by any practice referred to in one of those sections that could be subject to an order under that section.

In this case, the Tribunal must consider whether Goshen has provided sufficient credible evidence to give rise to a *bona fide* belief that Goshen is directly and substantially affected in its business by an alleged conduct that could be the subject of an order under section 75 or 79.⁴

II. SHA's Claims and Proposed Evidence

Goshen's arguments presented in the Leave Application are flawed. They do not meet the requisite elements required by s. 75 and s. 79. For example, among other misconstrued claims, SHA is not a "dominant" participant as alleged by Goshen. SHA's written responses will detail the legal and factual flaws in the allegations presented in the Leave Application.

With regard to the many factual errors, much of the conduct alleged in the Leave Application is inaccurate or based on speculation. The SHA's proposed evidence will contain specific facts that are relevant to whether the alleged conduct could be subject to an order under section 75 or 79 of the Act. The SHA's proposed evidence will demonstrate that the allegations made in the Leave Application are false or misleading. Due to the confidential nature of the personal health information of residents involved in this matter, many of the relevant facts are in the exclusive knowledge of the SHA and its affiant. It is therefore in the interests of justice that this evidence be placed in front of the Tribunal at this early stage, so that the Tribunal may effectively exercise its screening function.⁵ While the SHA broadly denies the allegations contained in the Leave Application, the proposed responding evidence focuses on the material facts that Goshen omitted as part of the Leave Application.

³ *Audatex Canada, ULC v. CarProof Corporation*, 2015 Comp. Trib. 13 at paras 9, 11, 16-19 [*"Audatex"*].

⁴ *Ibid.*

⁵ *JAMP Pharma Corporation v Janssen Inc.*, 2024 Comp. Trib. 4, Interlocutory Leave Decision dated August 22, 2024 at para 24 [*"JAMP"*]; *Audatex*, *supra* note 3 at paras 9, 11, 16-19.



As such, the SHA's proposed evidence is relevant as to whether:

- i. the SHA has engaged or is engaging in a practice of anti-competitive acts or conduct within the meaning of section 75 and section 79 of the Act as alleged in the Leave Application; and
- ii. Goshen's business could have possibly been directly and substantially affected by an alleged practice or conduct that could be the subject of an order under sections 75 and 79, which is expressly denied.

a. SHA has not engaged in any anti-competitive acts

As this Tribunal recently held in *JAMP*, the proposed responding affidavit evidence must be assessed in light of the applicant's allegations, which include both past and ongoing conduct by the respondent alleged to be a "practice of anti-competitive acts" under paragraph 79(1)(a) or "conduct" for the purposes of paragraph 79(1)(b).⁶

The role of the Tribunal at the leave stage is to assess whether the applicant's evidence could, in light of the respondent's written submissions, lead to an order under s. 79, on the lower standard of proof applicable at the leave stage, and that a respondent should be permitted to adduce focussed evidence in response if that evidence supports a finding that no order "could" be made under section 79 as a result of the applicant's allegations and evidence on the topic.⁷

The SHA seeks leave to file affidavit evidence on the following points to demonstrate that Goshen's allegations cannot give rise to a *bona fide* belief that the SHA has engaged in the alleged reviewable practices. In making its leave decision, this Tribunal should not be deprived of evidence to respond to factual allegations that can "easily be dismissed as false"⁸:

- i. Goshen's representations that SHA wrongfully, deliberately, and prematurely terminated the Accountability Agreement are factually inaccurate and misleading. The SHA will introduce evidence directly responding to and negating Goshen's factual allegations regarding the termination of the Accountability Agreement. The evidence will outline that the Accountability Agreement required that Goshen meet a specified standard of care pursuant to the Program Guidelines for Special Care Homes. SHA seeks to adduce evidence that the Accountability Agreement was terminated due to Goshen's inability to maintain this standard of care. Further, the evidence will show that the Accountability Agreement was not terminated prematurely.⁹
- ii. Goshen's representations regarding the legislative landscape for care homes in Saskatchewan are misguided and incorrect. The SHA will introduce evidence showing that it does not have the alleged oversight in approving personal care home plans and/or licensing as alleged in the Leave Application. Personal care homes are

⁶ *JAMP*, *supra* note 5 at para 24.

⁷ *Ibid* at paras 34, 36.

⁸ *Ibid* at paras 25-26.

⁹ *Ibid* at paras 48-49.



not a health service provided by the SHA pursuant to *The Provincial Health Authority Act*.¹⁰

- iii. SHA did not pay Goshen under the Accountability Agreement. The SHA intends to provide specific evidence that Goshen had individual contracts with the residents and that the SHA was not contractually obligated to pay Goshen.¹¹
- iv. SHA or its actions did not force Goshen into insolvency. The SHA seeks to adduce evidence that residents of Goshen were provided a choice to remain at the facility.¹²

b. SHA could not have directly and substantially affected Goshen's business

Goshen's claims regarding the effects of the SHA's alleged conduct do not accurately depict the competition between public and private sector care homes nor the distinction between personal care homes and long-term care homes. The SHA seeks to adduce evidence demonstrating that:

- i. The SHA does not own or operate any personal care homes in the Province of Saskatchewan. The Leave Application highlights Goshen's misunderstanding regarding the distinction between personal care homes and long-term care homes under the relevant legislation in Saskatchewan.¹³ The SHA is, by legislation, responsible for the oversight of publicly funded long-term care in Saskatchewan. Goshen operated a private personal care home, a distinct business under the governing legislation for care homes in Saskatchewan. The SHA seeks to provide credible, cogent, and objective evidence that its decision-making in the public interest could not have directly and substantially affected Goshen's private personal care home business.¹⁴
- ii. The SHA does not supply residents to personal care homes in Saskatchewan.¹⁵ The SHA seeks to adduce evidence that Goshen was only permitted to have long-term care residents pursuant to the Accountability Agreement, and the SHA was required to evaluate that care under the applicable legislation. The Accountability Agreement required that Goshen meet a specified standard of care pursuant to the Program Guidelines for Special Care Homes and failed to meet that standard.¹⁶

¹⁰ S.S. 2017, c. P-30.3.

¹¹ *Audatex*, *supra* note 3 at paras 21-22; *JAMP*, *supra* note 5 at paras 48-49.

¹² *JAMP*, *supra* note 5 at paras 48-49.

¹³ *Special-care Homes Regulations*, 2024, R.R.S. c. P-30.3 Reg 4; *Facility Designation Regulations*, R.R.S. c. R-8.2 Reg 6; *The Health Facilities Licensing Act*, S.S. 1996, c. H-0.02; *Health Facilities Licensing Regulations*, R.R.S. c. H-0.02 Reg 1 *The Health Information Protection Act*, S.S. 1999, c. H-0.021; *Health Information Protection Regulations*, R.R.S. c. H-0.021 Reg 2.

¹⁴ *Audatex*, *supra* note 3 at para 17.

¹⁵ *Ibid.*

¹⁶ Similar to the agreement in *JAMP*, *supra* note 5 at paras 48-49.



- iii. The SHA has no role in personal care homes, including licensing, supervising, or operating them. The Accountability Agreement was a field test/pilot project and the arrangements were all contractual. The Emmanuel Villa Personal Care Home has never been designated a special care home under the *Facility Designation Regulations* or *The Provincial Health Authority Act*. At all times, the Emmanuel Villa Personal Care Home remained licensed and regulated as a personal care home by the Government of Saskatchewan, Ministry of Health (including the beds for residents from the SHA field project). The higher level of care required by the SHA in the Accountability Agreement was based on a contractual arrangement only. The SHA seeks to provide credible, cogent, and objective evidence regarding the distinction between the long-term care services the SHA provides and the private care home services Goshen is permitted to provide under its license.

III. Deadline for Serving and Filing Response

The SHA seeks an extension of the time provided under Rule 119(1) of the Rules to file its response to the Leave Application. The evidence advanced by Goshen is based on speculative opinions and is factually misleading. The spirit of the Act requires that the SHA have a full opportunity to speak to the allegations made against them. Extensions of time are neither unreasonable nor unprecedented, as extensions of this nature were granted in *CarGurus*¹⁷, *JAMP*, and *Audatex*.

In *CarGurus*, responding representations were filed 69 days after the initial application was filed (April 15 – June 23, 2016). In *JAMP*, responding representations were filed 45 days after the initial application (July 26 – September 6, 2024). In *Audatex*, responding representations were filed 39 days after the initial application (October 1 – November 9, 2015).

The SHA's affiant, Terra Olynick, Executive Director of Continuing Care - Integrated Regina Health for SHA, is away on pre-booked holidays until October 28, 2024. Mrs. Olynick was involved in the dealings between the parties, and her unique and exclusive perspectives are critical to the ability of the SHA to prepare its responding materials.¹⁸

Additionally, due to the volume of the materials filed by Goshen in this Proceeding, including the 479-page Affidavit of Mrs. Onasanya and its 42 exhibits, the SHA requires additional time to prepare its responding materials.

We thank the Tribunal for considering the above and would be pleased to address any questions it may have in writing or at a case conference.

¹⁷ *CarGurus, Inc v Trader Corporation*, 2016 Comp. Trib. 12 [*"CarGurus"*].

¹⁸ *JAMP*, *supra* note 5 at para 53.



Yours truly,

MILLER THOMSON LLP

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a horizontal line extending to the right.

Eric Dufour

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