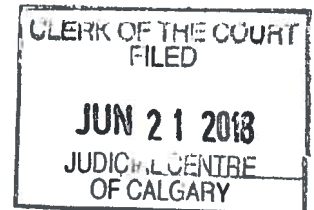


Clerk's Stamp



COURT FILE NUMBER 1701-07486  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF THE TORONTO-DOMINION BANK  
DEFENDANT RONALD C. WITZKE PROFESSIONAL DENTAL CORPORATION, MEDIDENT INNOVATIONS LTD., MEDIDENT HEALTH CENTRE LTD., DR. R.C. WITZKE PROFESSIONAL DENTAL CORPORATION, R.C. WITZKE PROFESSIONAL DENTAL CORPORATION, RONALD C. WITZKE

IN THE MATTER OF  
THE RECEIVERSHIP OF  
MEDIDENT INNOVATIONS LTD. AND  
RONALD C. WITZKE PROFESSIONAL  
DENTAL CORPORATION

DOCUMENT **FIRST REPORT OF THE RECEIVER,  
HARDIE & KELLY INC.  
JUNE 19, 2018**

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**FIRST REPORT OF THE RECEIVER  
HARDIE & KELLY INC.  
JUNE 19, 2018**

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## **INTRODUCTION**

1. On June 1, 2017, the Toronto-Dominion Bank (“TD”) made an application to the Court of Queen’s Bench of Alberta (the “Court”) for the appointment of a receiver (the “Receiver”) of the assets undertakings and properties of Ronald C. Witzke Professional Dental Corporation (the “PC”) and Medident Innovations Ltd. (“Medident”) (together, “the Debtors”).
2. The Honourable Justice G.A. Campbell granted an Order (the “Receivership Order”) on June 1, 2017 (the “Receivership Date”), appointing Hardie & Kelly Inc. as Receiver.
3. The purpose of this report (the “First Report”) is to advise the Court of:
  - Background information in respect of the Debtors;
  - The activities of the Receiver since the Receivership Date;
  - Details and results of the sales process and efforts undertaken by the Receiver to realize on the assets of Medident and the Receiver’s recommendation thereon; and
  - The extent of the known creditors' claims against the Debtors;
  - The receipts and disbursements of the Receiver since the Receivership Date.

## **TERMS OF REFERENCE**

4. In preparing this First Report, the Receiver has relied upon unaudited financial information, records of the Debtors and discussions with and information provided by the Debtors’ former management (“Management”) and advisors. The Receiver has not performed an audit, review or other verification of such information.

## **BACKGROUND**

### The PC

5. The PC is a dental professional corporation incorporated in Alberta in October 2012. It was originally registered under the name 1705603 Alberta Inc., but changed its name shortly after its incorporation. The PC's registered office is located in the City of Medicine Hat, Alberta, which is where its primary business operations were carried out.
6. The Receiver understands that the dental practice currently operating as Southside Dental was operated under the PC by Dr. Ronald C. Witzke until approximately February 2017, after which Dr. Witzke set up a new professional corporation, R.C. Witzke Dental Professional Corporation (the "New Prof Corp").
7. Since then, the Receiver understands the New Prof Corp has been operating the Southside Dental practice while using the assets of the PC. Prior to the Receivership Date, a five-year a lease agreement (the "Equipment Lease") dated February 7, 2017 was executed by Dr. Witzke which required the New Prof Corp to, *inter alia*, pay the PC \$3,083.33 for the use of specified PC assets on a monthly basis. However, the Receiver understands that no lease payments have ever been made in respect of the Equipment Lease.

### Medident

8. The Receiver understands Medident was incorporated with the intention that it would hold the assets that would be used to operate a dental surgical facility through a company named Medident Health Centre Ltd. ("MHCL"). Prior to the Receivership Date, Medident and MHCL entered into a lease with a commercial landlord for a premises located in Medicine Hat. Medident undertook extensive leasehold improvements, acquired surgical equipment and supplies, and took steps to prepare the surgical facility for the necessary accreditation process. However, these preparations were not completed and the facility was never certified by the required dental and medical/surgical professional associations. Therefore, the surgical facility never commenced operating.

## **ACTIVITIES OF THE RECEIVER**

### The PC

#### Initial Attendance

9. The Receiver attended at Southside Dental on June 9, 2017 and met with Dr. Witzke to review the location of the various PC assets. The Receiver took photos and an inventory of the assets, which included comparing the PC assets against a listing that had been attached to the Equipment Lease.

#### Security

10. The Receiver entered into a custodial agreement (the “Custodial Agreement”) with Dr. Witzke and the New Prof Corp wherein they agreed to act as joint custodians of the assets and, *inter alia*, to keep the assets in good condition at the premises of the New Prof Corp. The joint custodians also agreed to notify the Receiver of any loss or deterioration of the assets, for which they would be liable. This Custodial Agreement was intended to cover an interim period during which the Receiver and the New Prof Corp would be negotiating a new lease agreement with respect to the PC assets.
11. The Receiver also met with a local contractor who runs a cleaning business which services the New Prof Corp’s premises, and arranged for this contractor to provide bi-weekly inspections of the premises and notify the Receiver of any deterioration or loss relating to the PC assets. As of the date of this First Report, the Receiver is not aware of any deterioration of the PC Assets.

#### Employees

12. As the PC is no longer operating, there are no employees. Given the length of time that the corporation had not been operating prior to the Receivership Date, it appears unlikely there would be any employee claims which would qualify under the Wage Earner Protection Program Act, and no such claims have been received as of the date of this First Report.

### Statutory Notices

13. The Receiver prepared and issued the *Notice of Receiver and Receiver's Statement* as prescribed by the *Bankruptcy and Insolvency Act* (the "BIA").

### Review of Potential Intangible Assets

14. Subsequent to its appointment, the Receiver was notified by a former business partner of Dr. Witzke that leasehold improvements listed on the PC's balance sheet and certain other unrecorded intangible assets, such as patient information and the Southside Dental name and telephone number, may have been transferred from the PC to the New Prof Corp for no consideration. The Receiver has reviewed various records and requested information from Dr. Witzke to attempt to confirm the extent to which this may have occurred. As a result of these efforts, the Receiver has determined that the practice currently operating as Southside Dental is using the trade name, premises, and phone number, as well as certain patient information, that had been previously used by the PC, and no consideration appears to have been paid to the PC by the New Prof Corp in respect of these items. However, Dr. Witzke has claimed that some or all of these assets belong to himself personally or a separate corporate entity, rather than the PC. Given the lack of clear documentation provided by Dr. Witzke, this issue has not yet been resolved at this time.

### Negotiating Lease Agreement

15. In order to realize on the assets of the PC, the Receiver has attempted to negotiate an all-encompassing lease agreement (the "Proposed Lease Agreement") with Dr. Witzke for the New Prof Corp's use of the PC's assets. The Proposed Lease Agreement included the use of the PC's tangible assets and any intangible assets, as well as an accounting for certain apparent non-arms-length payments that had been made prior to the Receivership Date for which the Receiver has requested but not received satisfactory supporting documentation. Dr. Witzke's legal counsel advised the Receiver that the Proposed Lease Agreement was unacceptable to Dr. Witzke; however, a counter proposal has not been advanced for the Receiver's consideration.

To date, the Receiver has still not received any compensation for the use of the PC's assets by New Prof Corp.

Other Attempts to Realize Upon Assets

16. In addition to the Proposed Lease Agreement, the Receiver has taken the following steps toward attempting realize upon the known assets of the PC:
  - a. The Receiver discussed with multiple sales agents and liquidators a potential sale of the physical equipment owned by the PC, and was advised that there is a very limited market for used dental equipment and sale values would be substantially lower for equipment only, as compared to a form of going concern sale including intangible assets such as a patient list; and
  - b. The Receiver has been contacted by a party interested in purchasing the assets of the PC along with any assets belonging to the New Prof Corp, such that it would be purchasing all assets associated with Dr. Witzke's current practice operating as Southside Dental. Further details and the Receiver's analysis of this proposed transaction are contained in the confidential supplemental report that is being filed concurrently with this First Report (the "Confidential Supplement"). As discussed in the Confidential Supplement, the Receiver is at this time unable to support the contemplated transaction on the basis that, while there is insufficient information to fully evaluate the offer, available information indicates the offer is for insufficient value.

Medident

Initial Attendance

17. The Receiver attended at the premises of Medident on June 9, 2017 and met with Dr. Witzke to review the location of the various assets and records. The Receiver took photos and an inventory of the assets.
18. The Receiver also met with the Medident landlord and performed a walk-through of the premises with him.

19. A separate small medical practice was being run by a party related to Dr. Witzke out of a single office located within the Medident premises under an informal sub-tenancy-type arrangement. Access to the sublet office required access to the main door of the premises and the reception area, but otherwise the vast majority of the square footage and the Medident furniture and equipment were located in closed-off portions of the premises. The Receiver met with the subtenant to confirm the ownership of the assets located within the shared portion of the premises and to discuss the terms of a potential formal sub-lease to allow the party to remain operating in a small portion of the premises while the Receiver carried out its efforts to realize upon the Medident assets. The Receiver later entered into a sub-lease agreement with the subtenant and has collected rent on a monthly basis.

#### Security

20. With the cooperation of the landlord and the subtenant, the Receiver made arrangements to secure access to the Medident premises and change the locks to the portion of the premises that contained the vast majority of Medident's equipment.
21. The Receiver also met with a local contractor who agreed to check on the premises for insurance purposes and perform light cleaning where necessary.
22. The Receiver arranged for the continuation of Medident's insurance coverage.

#### Employees

23. The Receiver understands that while Medident had previously employed certain individuals, these employees had been let go approximately one year prior to the Receivership Date. Therefore, although the records showed that one or more of the employees had commenced a claim with Employment Standards, it appears such claim would not be eligible pursuant to the Wage Earners Protection Program Act.

#### Statutory Notices

24. The Receiver prepared and issued the *Notice of Receiver and Manager* and *Receiver and Manager's Statement* as prescribed by the BIA.

### Sales Process

25. Paragraph 3(k) of the Receivership Order authorizes the Receiver to market the Company's assets for sale. The Receiver determined that it would be appropriate to obtain the assistance of a broker to attempt to sell the assets of Medident en bloc to a party who may be interested in taking an assignment of the premises lease and operating a dental surgical practice or similar business, as this was likely the best way to recover value from specialized leasehold improvements that had been completed at the premises.
26. The Receiver requested proposals from four parties with experience selling dental practices in Southern Alberta, and received proposals from two of the parties. These proposals are discussed in the Confidential Supplement.
27. After reviewing the proposal terms and discussing them with Medident's primary secured creditor, TD, the Receiver entered into an exclusive listing agreement with Avail Dental Exit Advisory Services Inc. ("Avail"). The Receiver notes that Avail had provided TD with an appraisal of Medident's assets prior to the Receivership Date, which is discussed further in the Confidential Supplement.

### **MEDIDENT SALES PROCESS**

28. On October 5, 2017 the Receiver, with the assistance of Avail, initiated a marketing plan to sell the assets of Medident, including an assignment of the premises lease.
29. Avail marketed the Medident assets to dental and other medical professionals as well as its network of accounting, banking, and supply representative professionals, using the one page teaser attached as Appendix "A" to this First Report for its initial contact.
30. Inquiring parties were asked to execute a non-disclosure agreement, after which they would be provided with further details regarding the premises and equipment. Parties were invited to make offers for any portion of assets they wished to acquire including: en bloc, equipment only, and/or including the lease assignment for the entire premises or a portion of the premises.

31. The results of the sale process and the Receiver's analysis of the options available are discussed in more detail in the Confidential Supplement. However, ultimately, the Receiver accepted an offer from and entered into a series of agreements (the "Sale Agreements"), with a newly incorporated company by the name of Southland Surgical Centre Inc. ("SSC") to sell certain assets of Medident to it, subject to the approval of this Honourable Court. The Sale Agreements are attached to the Confidential Supplement, where they are discussed further.
32. The Receiver is concerned that in the event the pending sale to SSC does not close for any reason, the disclosure of the respective details of the various offers and the Sale Agreements may affect the Receiver's efforts to remarket the assets.
33. The Receiver will be seeking the Court's approval to have the Confidential Supplement sealed until three months following the discharge of the Receiver, assuming the contemplated sale to SSC is approved by the Court and closes.

## **CREDITORS**

### **Secured Creditors**

34. The Receiver is aware of the following creditors who have registered a security interest (collectively referred to as the "Secured Creditors") at the Alberta Personal Property Registry (the "PPR"):
  - TD – as at the Receivership Date, TD states it was owed approximately \$2.2 million, all of which is owed by the PC and/or Medident as a result of lending agreements wherein these corporations, as well as other related corporations including the New Prof Corp, have cross-guaranteed the debts of the others. The indebtedness to TD has been registered in the PPR for both Debtors in relation to various security interests including General Security Agreements entered into by the PC and Medident. As of the date of this First Report, the Receiver has not yet requested an independent security review of TD's security.
  - Related entities - Dr. Witzke, the PC, and another related corporation by the name of Dr. R.C. Witzke Professional Dental Corporation have registered

security interests in the PPR in relation to security over all of the assets of Medident. As of the date of this First Report, the Receiver has not requested an independent review of this security. The Receiver notes that each of these registering parties appear to be subject to guarantees to TD in respect of the Medident debt.

- Chris Baba Professional Corporation (“Baba”) – Baba, a former business associate which operated out of Southside Dental at the same time Dr. Witzke was operating under the PC, has registered a writ of enforcement in the PPR as against the PC for amounts totalling approximately \$350,000 relating to a judgment it obtained in March 2017. The Receiver understands the judgment stems from a claim relating to the termination of the business relationship between the parties in 2015.

Baba further registered a report of seizure of various assets of the PC on May 25, 2017. The assets subject to the report of seizure remained at Southside Dental after the seizure, and have since been taken possession of by the Receiver.

#### Canada Revenue Agency

35. Canada Revenue Agency (“CRA”) is listed as a creditor of the PC to the extent of approximately \$25,000, including approximately \$5,000 which appears to relate to the PC’s payroll account. The remainder appears to relate to income taxes owing. Medident’s records do not display any amounts owing to CRA. At this time, the Receiver has not received any claim from CRA which would suggest that it is advancing a deemed trust claim in respect of the PC or Medident.
36. The Receiver has been contacted by CRA in regard to a request to conduct a payroll audit in relation to the PC. There have been no requests to conduct a GST audit.
37. The Receiver has been notified by Dr. Witzke that there may be amounts owing to CRA by parties related to the PC and Medident in relation to payroll deductions; however, it is not known at this time the extent to which this may impact the PC or Medident.

Unsecured Creditors

38. The Receiver has not initiated a formal claims process, however; the books and records of the Debtors indicate the following additional claims:
- a. Several intercompany debts have been listed between Medident, the PC, and other related entities;
  - b. A small number of suppliers and professional service providers are owed approximately \$34,000 by the PC; and
  - c. A large number of suppliers, contractors, and service providers are owed approximately \$410,000 by Medident.

**STATEMENT OF RECEIPTS AND DISBURSEMENTS**

39. A copy of the Receiver's Statement of Receipts and Disbursements as at May 31, 2018 is attached as Appendix "B". The Receiver currently maintains \$458.02 in its trust account in relation to the PC and \$8,236.61 in relation to Medident. In order to fund expenses, including rent, utilities, and professional fees, the Receiver has borrowed funds from TD pursuant to a Receiver's Certificate as authorized by the Receivership Order totalling \$8,375 in relation to the PC and \$98,837.60 in relation to Medident. Due to limited funds being available, the Receiver has not submitted an invoices for its fees since September 30, 2017. As of May 31, 2018, its unbilled fees total approximately \$8,500 in relation to the PC and \$12,000 in relation to Medident.
40. The Receiver is not advancing a recommendation as to a distribution of funds at this time but proposes to do so at a later date pending the following:
- Court approval and closing of the contemplated sale to SCC;
  - Realization of the assets of the PC;
  - Receipt of independent security opinions in respect of the security held by TD; and
  - Confirmation from CRA as to whether it has a priority claim against the PC.

**RECOMMENDATIONS**

41. The Receiver is seeking approval of and recommends to this Honourable Court the approval of the Sale Agreements for the reasons set out in the Confidential Supplement.
42. The Receiver recommends that the Confidential Supplement be ordered sealed until three months after the Receiver's discharge for purposes of maintaining the integrity of the sales process in the event the contemplated sale to SCC does not close for any reason, and to preserve the Receiver's ability to realize upon the assets of the PC.

All of which is respectfully submitted this 19<sup>th</sup> day of June 2018.

Hardie & Kelly Inc., in its capacity as Receiver of  
Ronald C. Witzke Professional Dental Corporation and  
Medident Innovations Ltd.,  
and not in its personal capacity



Per:

\_\_\_\_\_  
Charla Smith  
Vice President

## PRACTICE SNAPSHOT

# MEDICINE HAT

Large surgical suite  
Medi-Dent Health Care  
105-7 Strachan Bay SE  
Medicine Hat, AB, Canada

## DESCRIPTION OF THE SURGICAL SUITE AND DETAILS

- Operatories:**
- There is currently 1 large surgical suite.
  - Bed and surgical equipment included
  - The clinic is in new condition.
  - Large recovery area.
  - Oversided front end and waiting area.
- Type:**
- General Surgical Practice
- Location:**
- Medicine Hat
  - Professional Strip mall (East side)
- Premises:**
- Term Aug 31, 2024
  - Renewal options One 10 year renewal
  - Base Lease are rates \$64,720/year (years 1-4)
  - Leased area 2400 sq ft lower level
  - Leased area 2nd level 2990 sq ft (Admin area and offices, fully developed)
  - Free and ample parking in the main parking area
- Key staff:** no staff included

Visual images:



**IN THE MATTER OF THE RECEIVERSHIP OF  
RONALD C. WITZKE PROFESSIONAL DENTAL CORPORATION ("PC")  
and MEDIDENT INNOVATIONS LTD. ("MEDIDENT")**

APPENDIX B

STATEMENT OF RECEIPTS AND DISBURSEMENTS  
AS AT MAY 31, 2018

RECEIPTS	PC	MEDIDENT
Receiver's Certificate borrowings	8,375.00	98,837.60
Sublease rental income		6,750.00
Misc - Refunds, interest, GST, etc	1.77	641.81
Total Receipts	<u>8,376.77</u>	<u>106,229.41</u>
DISBURSEMENTS		
Misc - postage, filing fees, locks	70.00	458.54
Insurance		17,398.32
Security & Cleaning		4,850.00
Rent		44,801.43
Utilities		12,536.82
Receiver's fees	7,475.00	14,189.00
GST Paid	373.75	3,758.69
Total Disbursements	<u>7,918.75</u>	<u>97,992.80</u>
CASH BALANCE	<u><u>458.02</u></u>	<u><u>8,236.61</u></u>