

Court File No. CV-25-00747132-00CL

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

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

and

2760831 ONTARIO INC.

Respondent

BOOK OF AUTHORITIES
(Receiver's Motion for Approval and Vesting Order,
and Approval and Distribution Order for
381 Leslie Street, Sudbury, Ontario)

April 10, 2026

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(as of April 10, 2026)

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TAB 1 *Bank of America Canada v. Willann Investments Ltd.*, [1993] OJ No. 1647
(Ont SCJ)

TAB 2 *The Toronto-Dominion Bank v 1871 Berkeley Events Inc. et al*, Ontario
Superior Court of Justice (Commercial List), Court File No. CV-23-00693494-
00CL, October 28, 2025

TAB 1

1993 CarswellOnt 216
Ontario Court of Justice (General Division)

Bank of America Canada v. Willann Investments Ltd.

1993 CarswellOnt 216, [1993] O.J. No. 1647, 17 C.P.C.
(3d) 296, 20 C.B.R. (3d) 223, 41 A.C.W.S. (3d) 662

**BANK OF AMERICA CANADA v. WILLANN INVESTMENTS
LIMITED and CRANBERRY VILLAGE, COLLINGWOOD INC.**

Farley J.

Judgment: June 28, 1993

Docket: Doc. B22/91

Counsel: *Harry Underwood*, for receiver, Coopers & Lybrand Ltd.

Stephen Schwartz, for Prenor Trust Co. of Canada.

Frank Bennett and *John Spencer*, for Attorney General of Canada on behalf of Her Majesty the Queen in Right of Canada and in Right of Ontario.

Subject: Corporate and Commercial; Insolvency; Civil Practice and Procedure

Related Abridgment Classifications

Debtors and creditors

VII Receivers

VII.6 Conduct and liability of receiver

VII.6.a General conduct of receiver

Headnote

Receivers --- Conduct and liability of receiver — General conduct of receiver

Receivers — Jurisdiction of court to approve activities and fees — Jurisdiction not requiring specific authorization in order establishing receivership — Court having inherent jurisdiction to review activities and fees of receiver.

Costs — Award of costs — Costs awarded against Crown for wasting court time with repeated adjournment requests and for failing to give advance notice of proposed jurisdiction challenge.

A receiver brought a motion for approval of its activities and fees as set out in two reports. The Crown raised an objection to the court's jurisdiction to hear the motion, arguing that there was nothing in the original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. The Crown argued that the court had jurisdiction only to pass the accounts and approve the fees of the receiver.

Held:

The receiver's activities and fees were approved.

The approval of the activities of a receiver, a court appointee and officer of the court, does not require specific words of authorization in the original order. The court has inherent jurisdiction to review and either approve or disapprove of the activities of a court-appointed receiver.

Creditors who take a reasonable position should not be punished by costs in the event they do not succeed. However, given the Crown's repeated requests for adjournments and resulting time wasted, the failure to give advance notice of the jurisdiction challenge and the late filings, an award of costs against the Crown was appropriate in this case.

Table of Authorities

Cases considered:

80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd., [1972] 2 O.R. 280, 25 D.L.R. (3d) 386 (C.A.) — referred to

Motion for order approving receiver's activities and fees.


Farley J.:

1 This was a motion for an order approving the receiver's activities and fees (including the fees of its counsel) as set out in the receiver's sixth report (covering the period October 1, 1992 to April 19, 1993) and seventh report (April 20, 1993 to June 13, 1993). At a previous hearing on May 14, 1993 the Crown had asked for an adjournment concerning the sixth report (the only report outstanding at that time) for the specific purpose of conducting consensual cross-examinations. Mr. Bennett who was fresh on the record (as of mid-morning today with no advance notice to other counsel) raised an objection as to my jurisdiction to hear the motion indicating that there was nothing in Blair J.'s original order establishing the receivership to allow for after-the-fact approval of the receiver's activities. His position was that the only jurisdiction I had was to pass the accounts of the receiver and approve its fees. He maintained that there was an inherent difference between passing of accounts and approval of activities.

2 I dealt with this general area in my earlier endorsement in this relating to previous reports (endorsement of May 2, 1993: see pp. 16-18). I again note that Mr. Bennett in his own text: F. Bennett, *Receiverships* (Carswell: Toronto, 1985), said at p. 297:

One of the purposes of passing accounts is to afford the receiver judicial protection in carrying out his powers and duties. Another purpose is to afford the debtor, the security holder and any other interested person the opportunity to question the receiver's activities to date.

In reply Mr. Bennett referred me to p. 298 of his text without specifying what was contained there; he gave me a copy of that page after the hearing concluded. I could find nothing of assistance on that page. In my view Mr. Bennett's own text supports the position of the receiver that I have jurisdiction. It seems to me that the nature of a specific approval hearing is much better to review conduct than a passing of accounts which focuses on receipts and disbursements.

3 It does not seem to me that approval of the activities of the receiver, a court appointee and therefore an officer of the court, requires specific words of authorization in the original order. To the extent that certain approval activities are mentioned in that order, I would regard these references as merely examples of what may take place. In my view this court has the inherent jurisdiction to review and either approve or disapprove of the activities of a court appointed receiver. I note here that in this instance the activities were well summarized in the two reports; however, such approval (if given) would be to the extent that the reports accurately summarized the material activities of the receiver. As to inherent jurisdiction, see *80 Wellesley Street East Ltd. v. Fundy Bay Builders Ltd.*  (1972), 25 D.L.R. (3d) 386 (Ont. C.A.), at pp. 389-390.

4 I pause to note that it would be unusual and illogical that the receiver could come to court for prior approval but not post approval. If that were the case, one might well expect the courts to be inundated with prior approval requests for virtually any activity.

5 It seems to me that a receiver should be able to come to court and bare its breast. Having done so, it has exposed itself to the sword of any interested party which may feel aggrieved of any action by that receiver. However, if the court feels that the receiver has met the objective test required of it, then the court may bestow a shield to the receiver for that reviewed and approved activity. If the activity is disapproved, then the receiver is in the unenviable position of watching itself be disembowelled in court with sanctions then or to be dealt with in accordance with arrangements then worked out.

6 I would therefore dismiss the Crown's objection to my jurisdiction (now raised as to the sixth and seventh report but apparently the subject of appeal as to earlier approvals).

7 Having come to that conclusion, I have also concluded that the receiver has met the objective test and that its activities and fees for the period covered by the sixth and seventh report should be approved. I note in this respect while all concerned acknowledged that the fees were "expensive" that Prenor Trust, which will ultimately bear the cost, was supportive of the receiver. While "expensive", I found the fees in line with the complications and protraction of this receivership.

8 Costs were asked for in this instance. Mr. Bennett submitted that a cost award against the Crown would discourage creditors in general from appealing and objecting. That should of course be avoided where creditors have taken a reasonable position; in other words, the mere fact that a

creditor is not successful in persuading a court of the rightness of its position should not subject that creditor to a costs sanction. However, I view this day's events in a different light. In my view much time was wasted in the Crown's several requests for a further adjournment and there was no advance notice that jurisdiction would be challenged. I would also observe that the scheduled time for this matter was therefore greatly exceeded. Counsel on all sides of a matter owe a duty to ensure that the court office is kept up to date with a realistic estimate of time required. This will, of course, require the cooperation of counsel amongst themselves. (In speaking of cooperation, I note in passing that this motion was merely one of six motions dealt with today concerning this project.) Unfortunately none of the counsel involved in these six motions (there being other counsel with respect to the other five) was mindful of the practice directions' request that in a continuing complex or multiple motion file there be a sorting through and grouping of the materials to be dealt with the next day. In the present situation, this meant that several motion records had to be retrieved from the office once all the files were sorted out. There were as well the to-be-discouraged late filings. I note that Mr. Bennett indicated that his client never gave him a copy of the seventh report to review and that he had only reviewed the sixth report some 5 or 6 weeks ago for another purpose. His submissions with respect to the actual activities being reviewed were therefore rather limited in extent and time. Costs are awarded against the Crown payable forthwith to the receiver in the amount of \$1500 and Prenor Trust \$500.

Order accordingly.

TAB 2



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00693494-00CL

DATE: OCTOBER 28, 2025

NO. ON LIST: 2

**TITLE OF PROCEEDING: THE TORONTO-DOMINION BANK v. 1871
BERKELEY EVENTS INC., 1175484 ONTARIO INC., 111 KING STREET EAST,
504 JARVIS INC.**

BEFORE: JUSTICE MYERS

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ENDORSEMENT OF JUSTICE MYERS:

- 1) The Receiver moves for approval of the sale of the former church property located at 315-317 King Street East in Toronto.
- 2) The property was used by the respondent 1871 Berkeley Events Inc. as an event venue for weddings and similar gatherings.
- 3) The property is owned by a different company – the respondent 1175484 Ontario Inc.
- 4) Both companies are owned by Douglas Wheler.
- 5) There is nothing inherently nefarious about owning property through a holding company that is separate from the operating company that deals with the public. In this case, both of the relevant companies agreed to be responsible for around \$12 million in debt borrowed from TD Bank.
- 6) By order of the court dated July 7, 2023, the property, assets, and undertakings of all of the respondents were placed under the control of msi Spergel Inc. as court-appointed receiver.
- 7) By order of the court dated January 16, 2024, the court approved a process for the Receiver to market and sell the church property.
- 8) In its First Report dated January 3, 2024, the Receiver gave the following evidence:
 23. On its appointment, the Business had ceased. In the main, the events hosted by the Business were weddings in addition to certain corporate events.

24. A number of clients of the business had paid to Berkely deposits for weddings and corporate events scheduled following the Receiver's appointment. On its appointment the Receiver determined that no funds representing the deposits paid were available to the Receiver.

25. Upon appointment, the Receiver took possession of the Berkeley bank account which had approximately \$4,500 on deposit. No other funds were located by the Receiver for any of the other Debtors.

26. In discussions with parties that had booked the Berkeley Church for weddings together with a review of information provided to the Receiver by the management of Berkely, it was evident that a large number of deposits had been paid to Berkeley for weddings and corporate events scheduled in the future. While the Receiver has been unable to ascertain the timing of these deposits, it appeared from a review of bank statements that approximately \$193,000 was paid to Berkeley and \$90,000 to 111 King during the month of July in the face of these proceedings.

27. On the Receiver's review of the Business, taking into account the cash needed to operate the business, the losses that the estate would incur to continue to operate the Business and the costs to continue to insurance for the Business, the Receiver concluded that continued operations were not feasible.

28. From records provided to the Receiver, it was determined that 98 individuals and/or businesses had booked events for future dates. These parties were notified of the receivership on or about August 3, 2023. Individuals and/or businesses with weddings or events scheduled to and including October 31, 2023, were immediately contacted by telephone, and advised of the receivership and the fact that the recovery of their deposits would be based on the net realization from the assets of the Business. In the event that the Receiver determines that there are sufficient proceeds available to warrant a distribution to unsecured creditors, the Receiver will contact all customers to file a claim in the relevant estate.

9) Mr. Danielson acts for a couple whose deposit was lost when the business closed. I do not know the timing or whether they gave the deposit at a time when management knew that the bank was seeking the appointment of a receiver for example. The facts behind each deposit may provide retail customers with causes of action i.e. the right to sue. Claims against Berkeley Events are unlikely to yield recovery. Whether any claim might lie against the church property owner 1175484 Ontario Inc. and would have priority to the bank's secured claims is not yet known or discernable. There may also be claims against others if money was knowingly taken improperly or by misrepresentation for example.

- 10) None of this is really on the table today. If any retail customers have a right to claim against the proceeds of the church property ahead of the bank will await a later review once the property is sold and the proceeds are in the Receiver's hands.
- 11) Mr. Danielson gently complains that his clients are interested parties and should have had a right to receive the confidential exhibits to the Receiver's Second Report so as to have a better say in the sale motion. I agree with the Receiver's counsel that this is premature. Even if the customers are able to make a claim against the holding company that owns the land, to have any interest in the proceeds the claim will need to be for a constructive trust that might stand in priority to the bank's secured claims. Otherwise, as the bank is deeply under water on its claims, there will be nothing for anyone else.
- 12) But a constructive trust does not exist as a property right until it is ordered by the court. Unlike express trusts, implied trusts, and resulting trusts, constructive trusts do not arise from dealings between the parties. A constructive trust is a remedy available in court if appropriate on equitable considerations. Until ordered, arguably a claimant has little if any actual interest in property.
- 13) That is not to say that a person who claims in a constructive trust in an insolvency proceeding never has standing until he or she obtains judgment. Here there is no claim yet. There is no way to assess the likelihood of the retail customers having any real claim to the property or its proceeds at this stage. As I said in court, every insolvency includes real harm suffered to real people. Everyone can be sympathetic with the distress suffered by people approaching their weddings who lose their venue and their deposits. But, while less personal, a bank suffering a loss near \$10 million is also a significant concern. There are people whose jobs may be affected. Shareholders' investments can be affected by an aggregate of cases. It is less easy to see peoples' suffering with a corporate creditor perhaps. But the law recognizes and sorts out all the legal and equitable rights of all interested parties.
- 14) Here, for better or worse, Mr. Danielson's clients have the fundamental deal terms that should have been kept confidential. Mr. Wheler has improperly made public information provided to him on his undertaking to keep it confidential. Mr. Wheler says the court needed the information to decide the issues today. But I had the information. It was provided to me in a sealed form to keep it out of the public eye. Instead of asking the Receiver or its counsel how the court was going to see the information, he decided to ignore the obligation of confidentiality to which he agreed.
- 15) There is another downside to what Mr. Wheler has done. He asks for six months to allow a possible competing bidder to explore making a bid for the church property. Due to Mr. Wheler's misconduct, that bidder now has the ability to know what the appraisals say and what bid the Receiver was prepared to accept (and TD to support). Were there to be another opportunity for bidders to make offers, no one would be expected to offer even \$1 more now that they know this.

- 16) Mr. Wheler has made the ability to hold a fair future bidding process practically if not legally impossible.
- 17) In any event, this property has been on the market for two years. It was offered for sale by the owner before the Receiver was appointed. It was then marketed by the Receiver in the spring of 2024 in conjunction with the neighbouring property to try to harvest synergistic development potential. When that failed, it has been marketed on its own.
- 18) Four bids were received last August – all relatively close to each other.
- 19) Mr. Wheler now proposes that the process wait until next March to allow a possible buyer to conduct due diligence, seek partnerships, and funding for a possible bid. He does not offer to hold the Receiver or TD Bank harmless from continued costs and interest that will accrue while this person kicks the tires and thinks about the possibility of considering whether it is potentially interested in maybe making a bid for the property. There is no suggestion that in the past two years it has expressed any interest in doing so.
- 20) It is not in the interests of justice to adjourn the motion to await either an improvement in the condominium market or an offer from a possible suitor six months hence. Senior creditors are not obliged to wait to hope to do better for those behind it in priority. If Mr. Wheler thinks there is a profit to be made, despite his inability to sell the property in 2023, he could have made an offer and, if he won the bidding, he would have taken the property and its potential profit for himself.
- 21) Mr. Wheler is very critical of the Receiver for shutting down the business when it took over in July, 2023. Mr. Wheler advises that there is a reserve fund available to the bank and the Receiver with as much as \$400,000 in it. But he does not refer to this account in his evidence. He did not provide an account number this morning. This is contrary to the Receiver's evidence and it is concerning that this information suddenly appeared today.
- 22) In addition, Mr. Wheler says that his staff had concluded that there was sufficient cash flow coming into the business to have allowed it to complete the weddings that had been sold prior to the receivership. But that assumes that the bank was willing to sit back and incur further losses on its debt while the debtor tried to finish projects – some of which were allegedly sold right before the receivership with knowledge that the business would cease. So exploration and critical examination is required before accepting this new version of history.
- 23) In any event, none of this is germane to the motion before me today. Mr. Wheler says he will be suing TD Bank, Equitable Bank, his former lawyers, and no doubt, others, arising from the failure of the business. If he has a right to sue and a basis to

do so, then that would give him a platform to try to set straight the injury to his reputation due to sudden shutdown of the business.

24) There are two appraisals obtained for the property in which valuers express opinions that the property is worth far more than the proposed sale price. But those are just opinions. The true test of value is in the marketplace. Despite the appraisals, with the downturn in the market discussed by Colliers and the Receiver, no bids have been received anywhere near the value in the appraisals.

25) Colliers' summary of its marketing efforts show that the property was exposed to the relevant marketplace for an extended period of time. Nothing emerged that was better than what is brought forward. I have no issue accepting the Receiver's judgment that the clean offer accepted was the better offer rather than an offer subject to due diligence for a little more. The party with the biggest stake in an improved offer would be TD Bank as any more proceeds would first appear to belong to it (subject to others proving priority claims). The Bank support the sale and says it is unwilling to fund the process any further.

26) The best test of fair market value in a receivership is a robust marketing process. Exposure to a broad market of potentially willing buyers is a proxy for fair market value. Mr. Wheler shows pictures showing the receiver has left the property in less than a pristine, broom-swept state. This is not a residential dwelling however. Buyers are looking at development and/or operating a business from a site bought out of insolvency. There is no evidence that superficial messiness affects the value to a buyer of land bought for commercial redevelopment.

27) In its factum counsel or the Receiver summarizes the Receiver's evidence about the sales process:

22. Leading up to the Sale Agreement, the Real Property was marketed by Colliers for over 18 months. The Receiver is of the view that the Sales Process:

- a. Resulted in the best sale price for the Real Property under the circumstances;
- b. Considered the interests of all parties;
- c. Accounted for the declining market;
- d. Was a fair and public process; and
- e. Was conducted in a commercially reasonable manner in line with Soundair.

Second Report, para 41

23. The Receiver is of the view that the market for the Real Property was extensively canvassed pursuant to Colliers' marketing efforts, in accordance with professional and industry standard.

Second Report, para 42

- 28) The evidence supports each of these conclusions. I am satisfied that the Receiver in over 18 months has made a reasonable effort to sell the property in the interests of all stakeholders. The property has been widely marketed. The four offers show that the offer proposed is within a narrow range of the others and represents value maximization considering the fact that it is unconditional and therefore likely to close.
- 29) There is no evidence that the Receiver has acted in bad faith in the marketing of the property.
- 30) Mr. Danielson's client provides a speculative view that there is overlap in the conduct of Colliers and the Receiver. He therefore submits that the Receiver's fees are too high. I disagree. The Receiver and counsel have provided docket-level disclosure. The rates and time charged are reasonable. TD Bank supports the assessment of costs as sought despite the fact that payment comes first from its recovery.
- 31) There is no point trying to seal Mr. Wheler's affidavit as the proverbial horse is out of the barn. As a result there is no point sealing the confidential exhibits. Given the confidence that this unconditional sale will close, hopefully there will not be any downside from this outcome. If recovery is harmed by the release of confidential information, others have their rights.
- 32) I understand that Mr. Wheler is upset by the way things have played out. As noted above, he says he may be suing as a result. But that is not a basis to refuse to take the best offer that the free market has been able to produce from the property. Under the *Soundair* principle, absent very strong cause, I am required to give effect to the Receiver's judgment. I agree with it as well.



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